



United Nations Environment Programme



UNEP(DEPI/MED Compliance Committee.3/6
20 November 2009

ENGLISH
Original: FRENCH



MEDITERRANEAN ACTION PLAN

Third meeting of the Compliance Committee

Athens, Greece, 23-24 October 2009

REPORT OF THE THIRD MEETING OF THE COMPLIANCE COMMITTEE

Introduction

1. Pursuant to the decision taken at its second meeting (Athens, 26 and 27 March 2009) to meet again to finalize its first statutory report to the 16th Meeting of the Contracting Parties, the Compliance Committee held its third meeting in the premises of the Coordinating Unit in Athens (Greece) on 23 and 24 October 2009.

Participation

2. The following members and alternate members of the Committee participated in the meeting: Ms. Martina Sorsa (Croatia), Mr. Ahmed Elanwer (Egypt), Mr. Didier Guiffault (France), Ms. Angeliki Tsachali-Kalogirou (Greece), Ms. Daniela Addis (Italy), Mr. Abdulgader A. Abufayed (Libyan Arab Jamahiriya), Mr. Robert Kojc (Slovenia), Mr. Hawash Shahin (Syrian Arab Republic), and Mr. Osman Atilla Arikan (Turkey).

3. The Coordinating Unit was represented by Ms. Maria Luisa Silva Mejias, Deputy Coordinator/Officer in charge of MAP, and by Ms. Tatjana Hema, Programme Officer.

4. Mr. Gerhard Loibl, legal expert, took part in the meeting as a Consultant.

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

Agenda item 1: Opening of the meeting

6. Ms. Maria Luisa Silva Mejias, Deputy Coordinator of MAP, opened the meeting and welcomed participants. She emphasized that MAP as a whole attached special importance to the Committee, which represented a major development in its history. The Committee had been established by a decision of the 15th Meeting of the Contracting Parties in Almeria in January 2008, and at the same time the Procedures and mechanisms for its functioning were adopted. The Compliance Committee translated into practical terms the need for effective implementation of all the binding provisions in the Barcelona system in favour of the environment and sustainable development in the Mediterranean. At its two previous meetings, the Committee had fulfilled the tasks assigned to it by the meeting of the Parties. On the eve of the present meeting, she had attended an informal meeting of some of the Committee's members and the exchange of views held then had convinced her that the Committee's main task was not to set itself up as a tribunal to punish offenders but to assist countries to meet their obligations by seeking to understand their problems and providing help in overcoming them. MAP's credibility would thereby be reinforced, not only vis-à-vis ministries of the environment, which could then more effectively encourage other ministries or responsible bodies in their respective countries to take action, but also for investors such as the EC, the EIB and the WB, convinced by countries' determination to meet their commitments. For her part, she assured members of the Committee that the Secretariat was determined to give them all the assistance they might need in order to accomplish their mission.

7. Mr. Didier Guiffault, Chair of the Committee, thanked the Deputy Coordinator for her very apt description of the overall context in which the meeting was taking place. The meeting had a twofold objective: firstly, to assess the situation and to inform MAP as a whole and the Contracting Parties of the work carried out by the Committee since its creation in July 2008, pursuant to the decision taken at Almeria, and then to review and finalize the draft report which the Committee, for the first time, had to submit to the forthcoming 16th Meeting of the Contracting Parties in Marrakesh.

Agenda item 2: Adoption of the agenda and organization of work

8. The meeting agreed that the Rules of Procedure for Meetings and Conferences of the Contracting Parties to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean and its Protocols would apply *mutatis mutandis* to the present meeting (UNEP/IG.43/6, Annex XI).

9. The meeting adopted the agenda and annotated agenda contained in documents UNEP(DEPI)/MED Compliance Committee 3/1 and 3/2, respectively. The agenda is attached as **Annex II** to the present report.

Agenda item 3: Proposal on minimum measures to achieve compliance with the Barcelona Convention and its Protocols

10. The Chair recalled that, at its second meeting held in March 2009, the Committee had considered that a clear dividing line had to be drawn between temporary difficulties encountered by a particular country and confirmed cases of non-compliance. It had therefore authorized the Secretariat to entrust an independent legal expert with drafting a document on the issue and Mr. Gerhard Loibl had been given that responsibility. Just prior to the present meeting, an informal meeting of several members of the Committee had been held to consider the draft document prepared by the Consultant and to draw some preliminary lessons from it.

11. Mr. Gerhard Loibl, MAP Consultant, summarized document UNEP(DEPI)/MED Compliance Committee 3/3 – Proposal on minimum measures to achieve compliance with the Barcelona Convention and its Protocols. He explained that he had examined the issue entrusted to him from two standpoints: firstly, as a jurist, in order to define what provisions of the Convention and its Protocols were of a binding nature and what type of obligation they entailed – either very broad or specific; he had then considered the new reporting format to be used by countries and basically, of course, the questions of a legal nature that had to be answered, starting with the measures taken or not taken to implement the Barcelona instruments. He had reached the conclusion that, as was the case for the mechanisms introduced under other international environmental conventions or agreements, two aspects of compliance had to be taken into account: “formal compliance” and “substantive compliance”. Formal compliance related to the legal measures which a Party took to implement a particular provision and the obligations under the Convention and its Protocols which it had incorporated into its domestic legislation. Substantive compliance concerned the practical application of a provision to individual cases. In general, Parties had a degree of latitude regarding their international obligations. In the case of other conventions, he had noted that, in practice, their compliance procedures and mechanisms had shown that it was difficult to identify potential situations of non-compliance. For the Barcelona Convention, the reports which Parties had to submit should help in identifying the cases with which the Committee would have to deal because Parties were asked to describe the problems they had encountered in implementing the instruments. The purpose of the procedure thus triggered was to help the Party concerned to comply with its commitments and the best way of achieving that was to install an indispensable climate of confidence between the Party and the Committee. At the present initial stage of its work, it would therefore seem that the Committee should basically focus on formal compliance with the provisions, keeping substantive compliance for the very specific provisions that called for individual measures.

12. The first exchange of views following the Consultant's introduction gave participants an opportunity to thank him for his study's relevance to the Committee's work

and deliberations. In their view, the document's most important contribution was the distinction drawn between those provisions of the Convention and the Protocols that had very broad scope and thus called for formal monitoring of compliance, and some very specific provisions, particularly in the Protocols, which called for strict implementation by the Parties and closer substantive monitoring by the Committee. Two members strongly endorsed another of the Consultant's conclusions, considering that, for the Committee to play its role in the Barcelona system to the full, it had to be credible and accordingly give Parties full confidence in its role and its work. In other words, it had to give priority to its role of assisting and facilitating implementation of the Convention and the Protocols, otherwise it would appear to be a hindrance or obstacle. The Chair said that the initial exchange of views led to the conclusion that the Committee should remain vigilant on that aspect, particularly at a time when it was about to submit its first report to the Meeting of the Parties, and should play its role as an educator. Confidence and consensus in relations between the Committee and the Contracting Parties should be the first clear message to be conveyed in Marrakesh. Lastly, to allow the Committee to play its role, the Contracting Parties, on their part, had to play the game by sending in their biennial reports within the deadline and in the agreed format. Reports by the Parties as a whole were the essential tool for the Committee to succeed in its task, and that was the second message to deliver in Marrakesh.

13. The discussion continued on a question raised by one member concerning the respective roles of the Secretariat and the Committee, which should not lead to confusion. The Committee considered that the Secretariat was called on to play an important role in filtering or sounding a warning, in other words to identify far upstream any problems in implementing the legal instruments of the Barcelona system, which were mostly of a formal nature, so that they could be resolved amicably and effectively between the Party concerned and the Secretariat. It was only when a problem became a confirmed case of non-compliance that it should be brought before the Committee downstream. The Secretariat-Committee relationship and each one's role had to be clearly spelled out in the report to the 16th Meeting. The Secretariat should be given the resources to play its role and, once again, the focus should be on the need for all Parties to submit their reports to the Secretariat.

14. Two members emphasized that the Committee, now equipped with the Procedures and mechanisms adopted at Almeria and with its rules of procedure to be adopted in Marrakesh, was embarking upon a learning phase during which it would, in a sense, gradually have to test the position it would have to adopt depending on the case. So far, no case of non-compliance had been brought before it and it was of course not possible to forecast when the first case would arise and what it would involve. In the meantime, to facilitate the learning phase over the forthcoming biennium, the Chair proposed two approaches: (1) a Party could on its own, spontaneously, bring before the Committee any problem which it considered warranted the Committee's attention and consideration and provide input to the Committee's deliberations so as to enable it to define how the assistance sought by the Party concerned could be given; (2) the Secretariat, for its part, through its knowledge and examination of the reports submitted by the Parties, could select and bring before the Committee one of the mostly commonly found and recurrent general cases of non-compliance among those concerning the Parties and, once again, foster discussion and responses. One member, while considering that it was a good departure point for the dialogue to be created among the "Parties-Committee-Secretariat" trio, said it was not yet possible to ignore the problem that a degree of suspicion existed among the Parties regarding the Committee, and another member emphasized that, for the educational role mentioned to be effective, one essential pre-condition had to be met, namely, that all the Parties submit their reports, with the comments they were asked to include in the legal parts of the forms concerning the Convention and the various Protocols, and that the reports be submitted within the time limit. In the interests of compromise, a virtuous circle had to be created in which the Committee's educational role would end up by inspiring confidence and

in which the Parties themselves would instantly look to the Committee to provide support through a consensual approach. The impetus to be given was twofold and the Committee should not confine itself to formalist legal rigidity while passively waiting for a case to be brought before it. It was first necessary to create a certain climate.

15. The Programme Officer, summarizing the conclusions drawn by the Secretariat from the initial comments, underlined the Secretariat's decisive support role in ensuring that the reporting process was conducted successfully, an indispensable prerequisite for the proper functioning of the Committee, as all its members had agreed. Firstly, the Secretariat played this role by drawing up a report on the status of implementation of Article 26 of the Convention each biennium, and this would be the next agenda item in connection with the 2006-2007 biennium. As to the climate of confidence to be established on both sides, she had already noted very encouraging signs among Parties, taking into account the reception given to the work of the Committee at the MAP Focal Points meeting held the previous July when the programme of work for the coming biennium and the budgetary resources were adopted. She had no doubt that those favourable indications would be repeated in Marrakesh. She added that, in order to enhance this good climate, as planned, the Secretariat was working on the preparation of a brochure and of the page on the MAP web site to be devoted to the work of the Committee. Those communication endeavours would prove their worth by making Parties more aware of the opportunities for assistance afforded by the Committee. With regard to the proposal for a deliberate approach to the Committee by a Party, she considered that voluntary submission to the Committee should concern one or more problems of implementation shared with other Parties and not necessarily one single case of non-compliance. In that connection, it might be interesting to share experiences and approaches with compliance committees under other conventions.

16. The Deputy Coordinator recalled that the meeting of MAP Focal Points held the previous July had clearly raised the question of the definition of the respective roles of the Secretariat and the Committee, expressing the wish to see any ambiguity dissipated. According to the initial exchange of views that had just taken place, members appeared to be in agreement on that point so the ensuing discussion should focus on it and ensure that the report to be finalized and transmitted to the Contracting Parties very specifically responded to that aspect.

17. The Consultant considered it difficult to draw any lessons or to seek an "ideal" formula by looking at other conventions because each instrument had its own approach to the Secretariat-Committee relationship. For example, under the Kyoto Protocol, the Secretariat was simply a "letter box", transmitting to Parties the reports drawn up by monitoring teams and providing conference services for the meetings of the Parties without itself doing any preparatory work for the discussions; it was up to the compliance committee itself to examine the reports of the monitoring teams and to decide on the issues to be raised. In other instruments such as the Montreal Protocol, the Secretariat played a more active role by transmitting information to the Implementation Committee and drawing attention to any real problems. In his view, under the Barcelona system, it was up to the Committee and the Secretariat to define their roles in consultation and cooperation, without looking around them too much to find points of reference inasmuch as each instrument, because of its objective and scope, had to be seen within a particular context.

18. The Chair pointed out that the issue had already been raised when discussing the rules of procedure at the Committee's second meeting, particularly in regard to the possible attendance of members of the Secretariat at its meetings, and it now appeared accepted in the minds of all the members that there was a clear dividing line: the Secretariat had an "early warning" role, informing the Committee of any implementation problems that it had not been possible to resolve between the Secretariat and a particular Party on a bilateral basis,

but under no circumstances could the Secretariat take the place of the Committee, which remained sovereign as far as the assessment of any instance of non-compliance and the possible solution to it were concerned. All the responsibilities incumbent upon the Secretariat under the Procedures and mechanisms were in any event under the control of the Committee, which could direct them as it deemed useful.

19. The Committee endorsed the conclusions and findings of the Consultant's report, highlighting the fact that, in the first instance, it had to be seen whether the obligations under the Convention and its Protocols had been formally observed, in other words, a highly flexible approach that implied mutual confidence had to be followed.

Agenda item 4: Status of implementation of Article 26 of the Barcelona Convention during the 2006-2007 biennium

20. The Programme Officer introduced document UNEP(DEPI)MED Compliance Committee 3/4 entitled "Status of implementation of Article 26 of the Barcelona Convention on reporting during the 2006-2007 biennium". The report covered the Convention and five Protocols, two others – the ICZM and Offshore Protocols – were not yet in force. Information had been provided on the Hazardous Wastes Protocol, although it was not yet in force, and on the Dumping Protocol, whose original text was in force but not the text amended in 1995.

21. In the general comments, the report mentioned that 20 Contracting Parties in all had submitted reports, but their number varied according to each legal instrument: 15 for the Convention, 9 for the Dumping Protocol, 9 for the Hazardous Wastes Protocol, 14 for the Land-Based Sources Protocol, 15 for the Prevention and Emergency Protocol, and 20 for the Specially-Protected Areas and Biodiversity Protocol, which traditionally attracted the largest number of responses because it had been the first to enter into force. Only three Parties had submitted their reports on line, which can be explained by the fact that the system had only recently started to operate. Some Parties had submitted reports on instruments that had not yet entered into force for them, an encouraging sign for the Committee's future work. The new format allowing replies to be given by ticking boxes had undoubtedly facilitated reporting. Several Parties had used the optional boxes for comments on implementation problems, *inter alia*, mentioning the lack of human and financial resources and inadequate coordination between ministries and the sectors concerned. The Programme Officer then gave details on each country's reporting, explaining for each of the six instruments the tables showing the number of Parties that had responded to the various questions or parts of the form. More specifically, for the Prevention and Emergency and the SPA and Biodiversity Protocols, because of the contributions by the RACs concerned, the report contained some 20 statistical charts on the specific technical questions in the form and the responses given by the countries, for example, on the measures taken for port reception facilities or implementation of the various aspects of the seven action plans for the protection of endangered species. In conclusion, she emphasized that it was the first such report drawn up by the Secretariat and asked the Committee to explain what approach it would like to see followed in order to improve it and if, on the basis of the initial analyses collected, certain amendments to the format needed to be envisaged in order to make the report as informative as possible with a view to the Committee's future work.

22. During the ensuing debate, all the speakers expressed the view that the report was an excellent point of departure, highlighting some general problems and some of form. One member considered, however, that more elements regarding the Parties themselves were required. For example, for those Parties that had not submitted reports, it would be interesting to know the reason why they had not met their obligation under Article 26. Another member suggested that the Parties be contacted directly and the problem discussed with them. All speakers, however, stressed the difficulty of reporting, not so much regarding

the legal sections, which were in general easy to complete, but for those concerning very different and more specific areas, which meant contacting ministries or bodies other than those responsible for the environment, added to which the data were not always available and Parties had to accomplish the task with very different financial, human and institutional capacities. Such disparity among Parties regarding reporting was an essential element to be taken into account for the assistance that could be provided by the Secretariat.

23. The Programme Officer replied that she had not directly contacted Parties because of time constraints and the Secretariat's priorities in recent months. Moreover, it was clear that one had to wait until the last minute before knowing whether or not a country was going to submit its report. The Parties knew that if there was a lack of financial or human resources, the Secretariat was ready to help them, for example, by enabling them to recruit a consultant to complete the report. It was, however, an aspect that deserved attention and regarding which the meeting could give clear instructions.

24. Participants then put forward a number of ideas. One was to organize a workshop bringing together persons responsible for reporting in the various countries to look at the problems, most of which were common to all countries, and ways of resolving them. Two members drew attention to the fact that Article 26 laid down an obligation and that failure to respect it was a clear case of non-compliance for which concrete measures should be imposed if the situation persisted.

25. The representative of the Secretariat pointed out that the Convention and other instruments such as the Procedures and mechanisms gave the Secretariat a clearly defined role in reporting. The Secretariat had to ensure that a streamlined, harmonized and easily completed form facilitated the Parties' task. It had also seized numerous occasions to emphasize to Parties the importance of reporting, first of all by organizing reporting exercises with volunteer Parties. The Coordinating Unit and the MAP components worked to draw up indicators – of effectiveness and enforcement – for which guidelines were established. Rather than a workshop, which would have financial implications, general guidelines for reporting and ways of overcoming the problems could be envisaged.

26. The Chair indicated that reporting was a difficult and time-consuming exercise because it was often repetitive and for each Party it had to be added to all the other reports to be submitted, which in recent years had tended to multiply with the signing of numerous environmental agreements (CBD, chemicals and POPs, maritime safety, etc.). That being said, there was indeed an obligation under Article 26 and the Parties should explain the reasons why they had not submitted a report. The stage was one of transition and the Committee should show understanding, seeking explanations quite transparently, at the same time making sure that as soon as possible there was compliance with what was at the very heart of its mission, implementation of Article 26.

27. Regarding the reporting responsibilities incumbent on all Parties, the Consultant gave examples from other Conventions. In the United Nations, there had been discussions on how to limit and streamline reporting on chemicals, but each Convention had its own system and, as they often had to transmit the same information – for example, for the CBD and the SPA/Biodiversity Protocol - Parties were often tempted to do so without paying too much attention to the format of presentation. As a way of simplifying reporting on line, it was possible to click on the site of another report in a similar domain. For the European Community, whose seven Mediterranean countries were members, the system of reporting on important environmental directives such as that on water was even more complex and intensive. Harmonization was a sensitive issue and far from being resolved.

28. One member of the Committee supported the idea of guidelines proposed by the Secretariat, adding that she herself had been greatly assisted by the guidelines issued under the Aarhus Convention and by the European Commission for various international conventions, without this imposing any limitations or simplifying to the extreme. The Programme Officer said that one of the proposals could be to put the reporting formats on line in four languages in which they had been adopted in Almeria provided that Parties complete them in English or French and to do the same for the guidelines that had been suggested. It would undoubtedly greatly facilitate reporting by countries in the future.

29. In response to one member who asked the Secretariat itself to put previous reports on line so that countries would only have to update them, the Programme Officer said that would mean using each country's code and password and the system of reporting on line itself prohibited such access as long as the report had not been submitted officially. The Committee agreed that such a "facility" would lead to serious confusion about responsibilities.

30. Concluding its examination of the Secretariat's report on implementation of Article 26, the Committee agreed that a certain degree of hindsight was needed in order to obtain a precise idea of the status of reporting under current conditions and that the Secretariat's report, extremely informative and synthetic, required further close attention before drawing all possible conclusions regarding the problems and the measures called for, as well as the abstention of some Parties. As to the content of reports, the format adopted in Almeria, which the Secretariat had amended and rationalized following a lengthy consultation process, undoubtedly made it easier to obtain information on implementation of the Convention and its Protocols, but the Secretariat could consult Parties to ask them whether they were fully satisfied or whether, in the light of recent experience, they wished to see further improvements. Lastly, the Committee agreed with the idea of guidelines proposed by the Secretariat and strongly supported during the discussion as they would assist all Parties to improve the information on implementation and could even eliminate certain common problems caused by incorrect interpretation of the questions. The formats and the guidelines, put on line simultaneously, would complement each other and make the system more effective. In any event, to the extent of countries' capacity, it was to be hoped that reporting on line would become the rule because it would facilitate the Parties' work in submitting reports and that of the Secretariat in examining them. With all the flexibility and tolerance required, both on the part of the Committee and the Secretariat, all efforts had to be focused on ensuring that the obligation in Article 26 was observed by all without exception and as soon as possible, in other words, in the course of the next biennium.

Agenda item 5: Draft report of the Compliance Committee to the 16th Meeting of the Contracting Parties

31. The Chair recalled the legal context for the draft report UNEP(DEPI)/MED Compliance Committee 3/5 under consideration. The report's submission was required by Article 31 of the Procedures and mechanisms on compliance and the content had to be approved under the conditions laid down in Article 16 thereof. Its purpose was to present the results of the Committee's work during the past biennium, any recommendations or conclusions on the issues before it, and to propose amendments to the Procedures and mechanisms. It was the Committee's first report to the Parties and also had to recall the creation and role of the Committee because, in all modesty, it had to be acknowledged that this new component of the Barcelona system was not yet quite clear in the minds of the delegates who would meet in Marrakesh. Moreover, it was not the major item the Parties would have to consider because, as the supreme decision-making meeting, it had an important ministerial segment devoted to major challenges such as climate change. The report's introduction therefore contained a brief reminder of what the Committee was, its

composition and its role. The second section covered the Committee's activities since its creation, particularly the preparation of draft rules of procedure, to be submitted for adoption in Marrakesh, subject to one point pending, namely, the use of Arabic as one of the Committee's working languages. The meeting of Focal Points in July 2009, while approving the text as a whole, had transmitted the matter to the meeting of the Parties for a final decision. Section II also contained some paragraphs on the Committee's work programme for 2010-2011, and the adoption of the minimum measures proposed by the Consultant on the implementation of Article 26 by the Parties. Lastly, section III set out proposals to improve the Committee's working capacity, emphasizing the need for a quorum, its role as a facilitator, the distinction between the roles of the Committee and of the Secretariat, the definition of criteria for identifying cases of non-compliance, the need for strict compliance with the reporting obligation incumbent upon Parties, and consideration of general non-compliance issues. The report included a draft decision covering those aspects, to be submitted to the Parties for adoption in Marrakesh.

32. The Committee had received a proposal to add a paragraph 22bis to the report summarizing the discussions at the informal meeting held immediately prior to the present meeting when considering the Consultant's document under agenda item 3.

33. One member pointed out that none of the problems encountered by Parties and covered in certain reports had been emphasized in the report before the Committee and this omission called at least for an explanation. In reply, the representative of the Secretariat said that the majority of the reports by the Parties had been received between March and September 2009 so it had obviously not been possible to carry out a detailed analysis of that aspect, but that would be done for the next biennium, as foreseen in the Committee's work programme for 2010-2011, and the Parties concerned would be contacted to provide further details if needed. The member also considered that it should be explicitly mentioned – and not indirectly as had been done in the report – that no case had yet been brought concerning any Party and that the Committee had therefore not yet dealt with any case of non-compliance. The meeting asked that that point be included in the report.

34. Three other members asked that the report be made more explicit concerning the unequivocal obligation on Parties to report pursuant to Article 26 and to use the new format for that purpose, otherwise there would be a situation of non-compliance. It was also necessary to reaffirm the need to create a climate of confidence between the Committee and the Parties. The Chair indicated that all those points were covered in a paragraph, in the form of a very clear political message, in the draft decision proposed for adoption by the Parties and it was the draft decision that was important and needed to be looked at carefully. The text of the report was simply the introduction to the draft decision. There would be 18 draft decisions in Marrakesh and that of the Committee would be the first to be discussed, which could be an advantage in retaining the attention of the delegates.

35. The Programme Officer added that the report for the 16th Meeting had been prepared before the present meeting, convened precisely in order to finalize it. It would have to be updated in regard to certain points in the light of the discussions that had just taken place, such as, in relation to the report on implementation of Article 26 of the Convention and the Consultant's report. The new elements would have to be incorporated into the report for the 16th meeting and all comments for that purpose would be welcome. The Programme Officer urged caution, however, in too hastily presenting failure to submit a report as a case of non-compliance. It should not be forgotten that the instrument in question had to be in force for the Party concerned. Any generalization therefore had to be avoided. Mr. Guiffault, in response, explained that the situation was currently an intermediate one, with a totally new format, and all the problems encountered by the Parties and the disparity in their respective situations were not yet fully known. It was sufficiently implicit from reading the report and the

draft decision that a Party which had ratified an instrument was in non-compliance if it did not report on its implementation. Once more, the Committee needed to look at the situation objectively and find out more about the reasons for failure to comply before it could judge them and help to find a solution.

36. One member, while fully endorsing the facilitating and conciliatory role of the Committee, on which there was consensus, expressed the hope that the Committee would be more persuasive and incisive in its report in order to encourage Parties experiencing problems to approach it. The problem was often a psychological one caused by a sort of fear of speaking of problems, financial, technical or institutional obstacles. Perhaps the text should be made more succinct and stronger to give it a greater impact in Marrakesh. Furthermore, if the Committee was to play its role to the full, it needed more than one meeting a year and more financial and human capacity.

37. The Chair pointed out that it was the decision – not the report – which would be examined in detail and first of all in Marrakesh, before the other 17 decisions for adoption, so it should be the subject of the effort just requested, quite rightly, because it would be the basic text for the Committee's activities over the coming biennium and which the meeting of the Parties would have to adopt. As to the report itself, he would have to introduce it to the Parties and he would do his utmost to make himself heard.

38. The Committee had before it amendment 28bis concerning the importance of the reporting format in order to verify the incorporation of the Convention and the Protocols into domestic legislation, the role of the Secretariat in identifying possible problems in that regard and the establishment of a constructive dialogue intended to resolve them with the Party or Parties concerned.

39. A remark by one member concerning the meaning of incorporation into domestic legislation led to a detailed legal discussion of the distinction between ratification, incorporation, transposition, implementation, which did not necessarily go together. It was indicated that some countries ratified, but did not transpose, adopting a law for the implementation of international conventions, while others transposed without adopting an implementing decree. It was finally agreed that the words "incorporate in their national legislation and/or implement the provisions of the Convention and its Protocols" covered all situations of national law.

40. The Committee then made a number of editorial amendments. The draft decision was amended to include the Committee's examination of generally recurring problems of compliance, pursuant to paragraph 17(b) of the Procedures and mechanisms on compliance.

41. The Committee considered the draft report after the Secretariat had incorporated the amendments already made at the meeting and mentioned above, as well as new amendments drafted in the light of the discussion. It examined the report paragraph by paragraph.

42. A new paragraph 10bis was added to indicate that the Committee, after a preliminary examination of the Secretariat's report on implementation of Article 26 of the Convention, acknowledged the progress made in implementing the legal, political and institutional aspects of the Convention and the Protocols, noting that several Contracting Parties had not yet submitted any report, and asking the Secretariat to prepare a detailed analysis of the report to permit a more careful examination of the reports to be submitted during the next biennium. The previous amendment 22bis was also reworded in the light of the discussions that followed the Consultant's presentation and was separated into six new paragraphs (23-28). With regard to new paragraph 30 (formerly 24), which showed in detail

the number of Parties that had submitted their reports on various instruments, based on the report on implementation of Article 26, following a lengthy discussion it was decided to delete the statistical data and to amend the wording slightly without changing the basic message, and to make it into new paragraph 34.

Agenda item 6: Other matters

43. As provided in the annotated agenda, under this item the Secretariat informed the meeting of the procedure to be followed for the election by the 16th meeting in Marrakesh of the four new members of the Committee for a full term of office to replace those elected by the 15th meeting for half a term (Tunisia, France, Slovenia, Bosnia and Herzegovina, the representative of Lebanon never having been appointed). The Programme Officer recalled the provisions of paragraphs 4-9 of the Procedures and mechanisms, completed by those in the rules of procedure (submitted for adoption at Marrakesh) on cases of resignation or non-attendance by a member. Two principles in regard to renewal were important: equitable geographical representation ensuring rotation, and non-renewal for a second consecutive term – a provision formally confirmed by the meeting of Focal Points in July 2009. Each of the four groups of countries had to decide on the countries to be nominated and it was intended that informal consultations be held for that purpose. The Secretariat did not wish to intervene in the process, but in the unlikely case of a deadlock, it could possibly act as a facilitator. Countries belonging to the various groups had received a reminder informing them of the renewal.

44. In reply to a question concerning the possible appointment of a National Focal Point or a MAP Focal Point as a member of the Committee, the representative of the Secretariat said that States were sovereign regarding the nomination of their representatives and, according to paragraph 11 of the Procedures and mechanisms, members of the Committee “shall serve in their individual capacities and shall act objectively in the interests of the Barcelona Convention...”.

45. The Chair added that all the details of the nomination procedure had been specified in a decision by the Parties that also requested the Committee to mention the difficulties encountered and, if necessary, to make recommendations to improve the Procedures and mechanisms. Consequently, nothing was set in stone and the procedure could be revised if needed, but he underlined the importance of the rules requiring rotation and geographical balance among countries.

Agenda item 7: Adoption of the conclusions and decision

46. Following further verification of the text of the draft report to the 16th meeting as a whole and of the draft decision, the Committee formally adopted both texts. The Chair declared that, when he introduced the report in Marrakesh, he would refer to the concerns raised and the desire to assist and facilitate expressed by the Committee throughout its discussions.

Agenda item 8: Closure of the meeting

47. In addition to the customary courtesies that formally marked the closure of all meetings, the members of the Committee and the representatives of the Secretariat wished to express their emotion at the end of the first – and perhaps most decisive – phase of the Committee’s work. Over the first two years of its work, friendly relations and a good climate of understanding had been created among all the members. The procedure required that some must leave, including the Chair, who was unanimously thanked for his enlightened

guidance of the debates, together with his great courtesy and an acute and vigilant concern for the interests of the Barcelona Convention.

48. The Chair thanked the participants for their warm words, expressing his conviction that the Committee would move ahead along the path that all had helped to trace, combining efficiency and tolerance. He himself had learned a lot over the years. To create, put in place and make the Committee operational had been a long-drawn-out process that would be of benefit to the Convention, its Protocols and the Mediterranean environment. He particularly wished to thank the Secretariat, which had given him the support and understanding essential to his task, as well as the Consultant for his recognized expertise. He then declared the meeting closed on Saturday, 24 October 2009, at 12.30 p.m.

ANNEX I
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ANNEX II

AGENDA

1. Opening of the Meeting
2. Adoption of the Provisional Agenda and organization of work
3. Proposal on Minimum measures to achieve compliance with the Barcelona Convention and its Protocols
4. Status of implementation of Article 26 of the Barcelona Convention during the 2006-2007 biennium
5. Review of the draft report of the Compliance Committee for the 16th Meeting of the Contracting Parties
6. Other matters
7. Adoption of the conclusions and decisions
8. Closure of the meeting

