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14th Meeting of the Compliance Committee of the Barcelona Convention
and its Protocols

Athens, Greece, 27-29 June 2018

Resumed Session of the 14th Meeting of the Compliance Committee of the Barcelona Convention
and its Protocols

Teleconference, 30 October 2018

Report of the Meeting

Note by the Secretariat: This Report is the result of intersessional consultation among the Members and Alternate Members of the Compliance Committee. It includes all comments to the Report received and addressed during the consultation process. This Report will be submitted for formal adoption at the 15th Meeting of the Compliance Committee.

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Table of Contents

	Pages
Report of the 14th Meeting of the Compliance Committee (27-29 June 2018 and resumed session on 30 October 2018)	1-15
Annexes	
Annex I	List of Participants
Annex II	Agenda
Annex III	Guidelines for the Compliance Committee to consider/review the information submitted on the received national implementation reports for 2014-2015 and provide key findings and recommendations for COP 21
Annex IV	Analysis of the Legal Nature of the Main Obligations Contained in the Regional Plans Adopted by the Meeting of the Contracting Parties under the Land-Based Sources Protocol

Report of the 14th Meeting of the Compliance Committee (27-29 June 2018 and resumed session on 30 October 2018)

Session of 27-29 June 2018

Agenda item 1: Opening of the Meeting

1. The 14th Meeting of the Compliance Committee of the Barcelona Convention and its Protocols was held on 27-29 June 2018, in Athens, Greece at the premises of the UN Environment Programme /Mediterranean Action Plan (UNEP/MAP) Coordinating Unit.
2. The meeting was attended by the following Members and Alternate Members of the Compliance Committee: Daniela Addis, Milena Batakovic, Bernard Brillet, Ahmad El-Khatib, François Guerber, Samira Hamidi, Ezzedine Jouini Berzine, José Juste-Ruiz, Orr Karassin, Selma Osmanagić-Klico, Aysin Turpanci and Joseph Edward Zaki; Invitees from the International Maritime Organization (IMO) London Convention/Protocol, the General Fisheries Commission for the Mediterranean (GFCM) and the Basel, Rotterdam and Stockholm (BRS) Conventions, and the Secretariat. Apologies were received from Odeta Cato, Member of the Compliance Committee, who could not attend the meeting. The list of participants is at Annex I to this report.
3. After the Secretariat ascertained the existence of the required quorum under Paragraph 15 of the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols (Decision IG.17/2, as amended), Milena Batakovic, Chairperson of the Compliance Committee welcomed the participants and observers, and opened the meeting by highlighting the importance to keep on working as efficiently as now and advancing through the ambitious agenda ahead in order to successfully deliver the Committee's agreed programme of work at the 21st Ordinary Meeting of the Contracting Parties to the Barcelona Convention (COP 21) (Naples, Italy, 2-5 December 2019).
4. Gaetano Leone, UNEP/MAP Coordinator, welcomed the participants and invitees and emphasized the role of the Compliance Committee in contributing to the institutional strengthening of UNEP/MAP. He stressed the need to keep up the momentum and progress in preparation for COP 21 by addressing the broad agenda for the meeting. Among the key priorities of that agenda are the following: (1) to determine the most effective way to deal with the information submitted by Contracting Parties in their national implementation reports in order to come with clear recommendations on compliance to COP 21, (2) to address the communication from Ecologistas en Acción de la Región Murciana (Spain) under the Admissibility Criteria, and (3) to discuss the proposed criteria for assessing compliance.
5. The Coordinator also welcomed the opportunity set in the agenda for further strengthening cooperation and synergies with the IMO London Convention/Protocol, the GFCM and the BRS Conventions by sharing mutual experience. In this context, he referred to the long-standing collaboration with these organizations, and in particular to the Memorandum of Understanding (MOU) with the GFCM, under which compliance is one of the areas of cooperation.

Agenda item 2: Adoption of the Agenda and Organization of Work

6. The Compliance Committee adopted the Provisional Agenda (UNEP/MED CC.14/1) and the revised Provisional Annotated Agenda (UNEP/MED CC.14/2/Rev.1) and agreed to re-structure the revised timetable (UNEP/MED CC.14/3/Rev.1) to meet the identified priorities. A copy of the Provisional Agenda submitted to the meeting is at Annex II to this report.
7. Following the proposal from an Alternate Member, the Compliance Committee agreed to discuss procedural matters related to the timing and election of its officers under Agenda item 11: Other Matters.
8. The Compliance Committee noted as background information the Report of the 13th Meeting of the Compliance Committee of the Barcelona Convention and its Protocols (Athens, Greece, 26-27

September 2017) (UNEP/MED CC.14/Inf.3), as adopted intersessionally by the 13th Meeting of the Compliance Committee.

Agenda item 3: Signature of the Solemn Declaration by new Members and Alternate Members

9. Members and Alternate Members who were elected or renewed by Decision IG.23/2 of the 20th Meeting of the Contracting Parties (COP 20) (Tirana, Albania, 17-20 December 2017) and were present at the meeting took the written oath pursuant Rule 13 of the Rules of Procedure of the Compliance Committee (Decision IG.21/1).

Agenda item 4: Cooperation with other Compliance Procedures and Mechanisms of Multilateral Environmental Agreements

10. To strengthen cooperation with the Compliance Procedures and Mechanisms established under other Multilateral Environmental Agreements (MEAs), representatives of the IMO London Convention/Protocol, the GFCM and the BRS Conventions Compliance Committees presented the work of their Committees.

11. Andrew Birchenough, representative of the IMO London Convention/Protocol presented the work of the Compliance Committee established under the London Protocol with 15 members, by referring to the facilitative nature of the Committee acting through a yearly governance parties meeting and working groups, how it could be triggered and the measures the Committee could take when facing a non-compliance situation. He also referred to the “*Removal Barriers to Compliance*” (B2C) Project, the challenges in dealing with reporting, including meeting the targets from 50% to 75% reporting by 2022 and 100% reporting by 2030, and the IMO Technical Assistance and Cooperation Programme. In his presentation, Andrew Birchenough pointed out that on average, 50% of Contracting Parties provide annual dumping reports, with higher reporting levels for the London Protocol Parties compared to London Convention Parties. He also developed on the different reporting obligations under the London Protocol and how to report using the online database system. In closing his presentation Andrew Birchenough detailed how the B2C works with the London Protocol Compliance Committee on a number of projects, such as provide guidance to Parties about compliance and annual reporting requirements for permits and monitoring.

12. Nicola Ferri, representative of GFCM introduced the work of the GFCM Compliance Committee by referring to the background and key features of the Committee, including its mandate and its relations with scientific advisory groups. He elaborated on the mandate of the Compliance Committee, including the assessment of compliance by Contracting Parties, Cooperating non-Contracting Parties and relevant non-Contracting Parties with recommendations adopted by the GFCM Commission. He further provided details of the clarification process to request Contracting Parties for information on the status of implementation of GFCM binding decisions and data submission, focusing on the six GFCM criteria used for assessing the status of implementation of GFCM decisions (i.e. implemented, partly implemented, implementation in progress, not implemented, not applicable, not reported) and its associated matrix. In the case of lack of implementation or non-transmission of data, as reflected in the matrix on data and information transmission status, the Committee could decide to send to the relevant Contracting Parties letters of concern or letters of identification of non-compliance. Following the replies received to these letters, the Compliance Committee can recommend any other actions it deems appropriate, including the taking of sanctions. He pointed out that in populating the matrix on status of implementation, Contracting Parties have to provide supporting evidence, for instance, by submitting their relevant implementing legislation. He also noted that the availability of scientific data is a challenge when it comes to the population by Contracting Parties of the matrix on data and information transmission. In closing his presentation, he referred to the technical assistance provided to enhance compliance.

13. Juliette Kohler, representative of BRS Conventions presented the work of the 15 members’ Compliance Committee of the Basel Convention by providing a detailed overview of the background,

features and procedures of the Committee, as well as the measures it can adopt when it comes to non-compliance. In her presentation, Juliette Kohler detailed the procedure for specific submissions, which are those triggered by a Party's own difficulty, a Party regarding other Party's compliance and the Secretariat, as well as the measures that the Compliance Committee can adopt in those cases, including advice, non-binding recommendations and information to the concerned Contracting Party. She also elaborated on the general mandate of the Compliance Committee, as directed by the Conference of the Parties, to review general issues of compliance and implementation under the Convention, and the measure that the Compliance Committee can adopt under the general review mandate, such as implementation of Convention's specified obligations. On reporting, she noted the reporting rates from 2009 to 2015, on average around 50%, and the classification on compliance performance based on timelines and completeness. In concluding her presentation, she referred to the functioning of the Implementation Fund to facilitate compliance.

14. In the questions and answer discussion, it was explained that in the three Committees technical assistance was key and provided upon request of the Contracting Party concerned and subsequent evaluation, that criteria for assessing compliance varied from Committee to Committee and that no sanctions so far had been imposed by those Committees with the ability to do so.

15. Based on discussion, the Compliance Committee agreed as follows:

Conclusions and Recommendations

The Compliance Committee highlighted the value of inviting representatives from other MEAs Compliance Procedures and Mechanisms to participate in its meetings as a way of building synergies on compliance and agreed on the Secretariat to continue with that practice for future meetings, subject to agenda needs.

With regard to the examples of the criteria adopted in other contexts to assess non-compliance cases, it was agreed that the Secretariat, in consultation with GFCM, will draft a proposal on the set of criteria and the related matrix, if applicable, to be discussed at the 15th Meeting of the Compliance Committee.

Agenda item 5: Status of Reporting and Examination of Reports Received under Article 26 of the Barcelona Convention

Status of Reporting under Article 26 of the Barcelona Convention

16. The Secretariat introduced document UNEP/MED CC.14/4, which listed those Contracting Parties, which had not yet submitted their national implementation reports for the reporting period(s) 2012-2013 and/or 2014-2015 according to Article 26 of the Barcelona Convention.

17. The Secretariat pointed out that following the 13th Meeting of the Compliance Committee and COP 20, MAP Focal Points of those Contracting Parties with outstanding national implementation reports for the above mentioned reporting periods (i.e. Egypt, Libya, Monaco, Slovenia, Spain, Syria and Tunisia) were once again contacted bilaterally by telephone and email, resulting in: (1) the submission of national implementation reports by Egypt for the reporting period 2012-2013, Monaco and Spain for the reporting periods 2012-2013 and 2014-2015, and Slovenia for the reporting period 2014-2015; and (2) the confirmation by Egypt for the reporting period 2014-2015 and, Libya, Syria and Tunisia for the reporting periods 2012-2013 and 2014-2015 of on-going arrangements to submit their pending national implementation reports as soon as possible.

18. The Secretariat further pointed out that by Decision IG. 23/1, COP 20 adopted the revised reporting format for the implementation of the Barcelona Convention and its Protocols, which sought to harmonize and simplify the reporting requirements while at the same time facilitate reporting. National implementation reports for the reporting period 2016-2017 will be submitted using the revised reporting format.

19. In the ensuing discussion, the following points were made:
- a. at the time of writing, out of the 22 Contracting Parties 18 have submitted their national implementation reports for the biennium 2014-2015 and 19 for the biennium 2012-2013. This is a highly satisfactory situation and indicates that efforts in the same direction should continue in order to further increase the submission rate of national implementation reports and achieve 100% submission. These efforts include continued diplomatic pressure and provision of support to Contracting Parties, as resources permit;
 - b. letters from the Coordinator to MAP Focal Points encouraging timely and quality reporting have proved to be very effective, together with follow-up emails and phone calls at bilateral level from the Secretariat. This adds to the high-level missions undertaken by the Coordinator with Contracting Parties, in the framework of which, reporting issues have been addressed where appropriate and relevant;
 - c. the Secretariat together with MAP components have provided different degrees of support for facilitating reporting in light of the difficulties faced by Contracting Parties. Technical guidance has been given on the use of the online system for reporting, i.e. the Barcelona Convention Reporting System (BCRS), and specific advice delivered on how to populate the BCRS;
 - d. to clearly identify and effectively address what constitutes difficulties to implementation is crucial. Difficulties experienced by Contracting Parties to implement and comply with the Barcelona Convention and its Protocols may cover a whole range of issues, such as lack of financial resources, lack of scientific and technical expertise, poor monitoring and information systems unable to bring in time the elaborated data on which to base compliance assessments or fragmentation of roles and responsibilities amongst government ministries. On the lack of financial resources, an Alternate Member pointed out that when assessing potential cases of non-compliance allegedly due to the lack of financial resources, particular caution should be exercised to avoid the lack of financial resources to be misinterpreted as a broad mitigating factor of non-compliance;
 - e. different degrees of assistance should be provided for facilitating implementation and compliance in light of the difficulties confronted by Contracting Parties. The Secretariat is providing as much facilitating support as possible to the Contracting Parties within the available resources;
 - f. capacity building through technical assistance is a fundamental tool to improve compliance with the Barcelona Convention and its Protocols. The meeting expressed the view that there is a need for the Compliance Committee to pronounce itself strongly with Contracting Parties in order to mobilize funding for technical assistance to reinforce compliance;
 - g. the challenging political landscape in the region may be a cause for lack of reporting by some Contracting Parties. In those cases, technical assistance may not be the most effective tool to address the non-submission of reports, being most appropriate to explore other avenues, such as continued consultations, for instance at various UNEP/MAP meetings;
 - h. the Compliance Committee noted with appreciation that work is underway in Tunisia to submit its national implementation reports for the reporting periods 2012-2013 and 2014-2015;
 - i. to achieve full reporting, a letter by the Compliance Committee should be sent to those Contracting Parties with outstanding national implementation reports for the reporting period(s) 2012-2013 and/or 2014-2015. The letter should be sent by the Chair of the Compliance Committee to the National Focal Points of those Contracting Parties, and ask them for their difficulties in fulfilling their obligations under Article 26 of the Barcelona Convention and the kind of attention or assistance needed.
20. Based on discussion, the Compliance Committee agreed as below:

Conclusions and Recommendations

The Chair of the Compliance Committee to send a letter, through the Secretariat, to the National Focal Points of Egypt, Libya, Syria and Tunisia, asking those Contracting Parties to provide an explanation of the nature of the difficulties encountered in submitting their outstanding national implementation reports and how they could be overcome; and to report back to the 15th Meeting of the Compliance Committee.

Examination of Reports Received under Article 26 of the Barcelona Convention

21. The Secretariat introduced document UNEP/MED CC.14/5, which presented an updated synthesis analysis of the information provided in the national implementation reports submitted by Contracting Parties for the biennium 2014-2015. The updated synthesis was purely factual and provided a detailed description of the legal and policy implementation aspects as reported per country and legal instrument.
22. The Secretariat also introduced document UNEP/MED CC.14/Inf.5, which presented an updated general status of progress made in implementing the Barcelona Convention and its Protocols. The updated general status of progress drew on the information contained in the national implementation reports submitted by Contracting Parties for the biennium 2014-2015, providing per legal instrument a detailed overview of the status of its implementation and main overall findings.
23. On the basis of the updated synthesis analysis and the updated general status of progress, Selma Osmanagić-Klico and Milena Batakovic had undertaken intersessional work, in coordination with the Secretariat, to assess the information provided in both documents as regards the Barcelona Convention and the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean (SPA/BD Protocol), respectively. This resulted in a set of key findings (UNEP/MED CC.14/6), supported by its associated underlying assessment (UNEP/MED CC.14/Inf.4).
24. In the discussion, the following points were raised:
 - a. the mandate of the Compliance Committee is defined in Paragraph 7 of its Procedures and Mechanisms, under which the Compliance Committee will consider specific situations of actual or potential non-compliance by individual Parties; at the request of the meeting of the Contracting Parties general compliance issues, and any other issues as requested by the Meeting of the Contracting Parties. The Compliance Committee must act within its remit;
 - b. the Compliance Committee welcomed the work carried out by Selma Osmanagić-Klico and Milena Batakovic in preparing the key findings, as an attempt to provide a simplified and operational way to deal with the information contained in the national implementation reports submitted by Contracting Parties for the biennium 2014-2015, as presented in the updated synthesis analysis and the updated general status of progress. The key findings bring to the table the challenges that the Compliance Committee face in assessing compliance with the Barcelona Convention and its Protocols;
 - c. both the updated synthesis analysis and the updated general status of progress provide an initial basis for further work in order to put forward a consistent and balanced package of recommendations on compliance issues to COP 21. In this context, the point whether the key findings are instrumental to that end merits detailed consideration;
 - d. reflection is needed on the working methodology before the analysis of the key findings. Establishing a clear methodology to guide the work of the Compliance Committee in assessing compliance is of paramount importance to collectively produce comparable outcomes and on that basis to formulate recommendations to COP 21. The methodology should include a clear set of criteria. In this context, GFCM work in developing criteria for assessing compliance could be taken as inspiration, where appropriate and relevant, so that for the next meeting a draft proposal on criteria could be discussed. The Secretariat and relevant MAP components could work towards that direction in consultation with the GFCM Secretariat;

- e. the preparation of key findings based on the updated synthesis and the updated general status of progress is a learning-by-doing process, which offers a window of opportunity for formulating a methodology built on experience and lessons learnt for the upcoming reporting period (2016-2017) under the revised reporting format;
- f. the key findings as presented to the Compliance Committee refer to the Barcelona Convention and the SPA/BD Protocol. For some Members and Alternate Members, expanding the key findings to cover the remaining Protocols was the way forward in order to provide a comprehensive and integrated picture as regards compliance, thus avoiding a fragmented and piecemeal approach. Others favoured a stepwise process, under which prioritization is key to ensure delivery. From that point of view, the Barcelona Convention and its key findings should be the point of departure for drafting the appropriate recommendations to COP 21. The experience gained in the course of this exercise would allow to formulate a strategic plan for the upcoming national implementation reports corresponding to the biennium 2016-2017;
- g. criteria are needed to address the key findings in a coherent and coordinated manner. Not all the key findings may be relevant for the purpose of formulating recommendations on compliance issues to COP 21. A screening exercise is needed in that respect. For instance, as a matter of priority, the focus should be put on those key findings reflecting a low level of implementation among reporting Contracting Parties;
- h. key findings should allow to identify whether there are systemic issues of general compliance, i.e. issues which are common to a large number of reporting Contracting Parties. In so doing, it is also important to bring Contracting Parties to the picture to ensure targeted support measures;
- i. intersessional work is needed to make sure that deliverables timely feed into COP 21. To facilitate intersessional work, an online working space should be set up, to allow all Member and Alternate Members of the Compliance Committee to communicate within the group, check on progress on key work items and share files. All Members and Alternate Members must be part of this online space and be responsible for the delivery of their assigned work packages;
- j. uniform distribution of work among all Members and Alternate Members of the Compliance Committee is key. Two options were considered: (1) each Member and Alternate Member to examine the updated synthesis analysis and the updated general status of progress for the Barcelona Convention and its seven Protocols, extract the key findings and on that basis to formulate a set of recommendations to COP 21; or (2) each Member and Alternate Member to examine the updated synthesis analysis and the updated general status of progress for at least one instrument, extract the key findings and on that basis to formulate a set of recommendations to COP 21. The second option was favoured in order to facilitate delivery;
- k. some argued that in some cases the information contained in the aforementioned synthesis analysis report should be examined in greater detail, and therefore expressed the wish to consult the national implementation reports for the reporting period 2014-2015 and, when available, the ones corresponding to the reporting period 2016-2017, on request to the Secretariat;
- l. for the 2016-2017 national implementation reports, the development of a table summarizing per country and instrument whether the requested measures have been put in place and if not, the difficulties reported was recommended in preparation for the next meeting;
- m. to avoid ambiguity and any impression of non-reporting by leaving parts of the reporting format in blank, it would be advisable to encourage Contracting Parties to respond to all questions, if only by indicating “*nothing to report*” or “*not applicable*” or “*no data available*”.

25. Based on discussion, the Compliance Committee agreed as follows:

Conclusions and Recommendations

- a. the Compliance Committee agreed on the “*Guidelines for the Compliance Committee to consider/review the information submitted on the received national implementation reports for 2014-2015 and provide key findings and recommendations for COP 21*”, as presented in Annex III to this report, and
- b. the Secretariat to prepare a brief synthesis in table form per country and legal instrument of the national implementation reports received for the biennium 2016-2017, including the difficulties reported by Contracting Parties, in preparation for the 15th Meeting of the Compliance Committee.

Agenda item 6: Testing Results of the Draft Guidelines for the Preliminary Assessment of Reports Submitted under Article 26 of the Barcelona Convention

26. The Secretariat introduced document UNEP/MED CC.14/7, which summarised the results of the testing of the draft Guidelines for the Preliminary Assessment of Reports to Identify Actual or Potential Cases of Non-Compliance. For easy reference, the tests conducted were presented in documents UNEP/MED CC.14/Inf.6 and UNEP/MED CC.14/Inf.6 Add.1, and the text of the draft Guidelines in document UNEP/MED CC.14/Inf.7.

27. The results of the testing had been tabled at the 13th Meeting of the Compliance Committee. However, time constraints prevented the meeting from examining them and the meeting agreed the results of the testing to be resubmitted to the 14th Meeting of the Compliance Committee together with the supporting tests. The testing exercise had been conducted intersessionally, following on the conclusions of the 12th Meeting of the Compliance Committee, which agreed on arrangements among its members for testing the draft Guidelines against three national implementation reports, from Israel, Montenegro and Morocco, for the biennium 2014-2015.

28. In the subsequent discussion, the following points were raised:

- a. the results of the testing of the draft Guidelines are quite diverging. The overall assessment of compliance for Israel, which is the only case a national implementation report has been tested by three members of the Compliance Committee allowing then for comparisons, deviate from one member to another showing contradictory outcomes;
- b. the testing exercise of the draft Guidelines brings to the surface the major challenges in setting criteria for assessing compliance. The clear-cut “yes” or “no” criteria do not offer enough flexibility to capture the efforts made by Contracting Parties in putting in place the regulatory and institutional framework implementing the Barcelona Convention and its Protocols;
- c. building on the experience gained from the testing of the draft Guidelines, a more holistic approach should be taken in establishing criteria for assessing compliance. Broader criteria are advisable, in order to factor in the assessment of compliance aspects such as the difficulties faced by Contracting Parties;
- d. in establishing criteria for assessing compliance, work carried by the GFCM Secretariat in that area could serve as inspiration, as already discussed under Agenda item 5;
- e. an effort should be made to better integrate *de jure* and *de facto* elements involved in compliance. In other words, how the regulatory and institutional framework translates into results on the ground. This leads to the consideration of different levels of compliance. A first tier of compliance would be represented by the submission of the national implementation reports. A second one would address the quality of submissions, and the third tier of compliance would refer to the extent to which measures reported are substantially compliant to the Barcelona Convention and its Protocols in the Mediterranean;
- f. the Compliance Committee, acting within its mandate, as established in its Procedures and Mechanisms, may consider assessments such as for the Good Environmental Status (GES) of

the Mediterranean. Numerous assessment products have been delivered in 40 years of UNEP/MAP work in this field, the most recent the 2017 Mediterranean Quality Status Report (QSR) (<https://www.medqsr.org>). It was recalled that UNEP/MAP assessments were available on the UNEP/MAP website as well as COP Decisions.

29. Based on discussion, the Compliance Committee agreed as follows:

Conclusions and Recommendations

- a. the Compliance Committee highly valued the work undertaken in providing, through the Draft Guidelines, a set of objective criteria for the preliminary assessment of reports submitted under Article 26 of the Barcelona Convention and the lessons learned from the testing of the Draft Guidelines;**
- b. there was a need to refocus the work to respond to the revised reporting format and in that sense to explore a set of more general criteria building on the experience gained so far. Work in that direction should be carried out following the “Guidelines for the Compliance Committee to consider/review the information submitted on the received national implementation reports for 2014-2015 and provide key findings and recommendations for COP 21”, as presented in Annex III to this report, so that the Secretariat in consultation with GFCM will draft a proposal on the set of criteria and the related matrix, if applicable, to be discussed at the 15th Meeting of the Compliance Committee.**

Agenda item 7: Review of the Communication from Ecologistas en Acción de la Región Murciana (Spain)

30. Following-up on the conclusions of the 13th Meeting of the Compliance Committee, the Secretariat had written to Ecologistas en Acción de la Región Murciana (EARM), Spain, asking them to provide a translation and summary of twelve pages at maximum of its original communication regarding the implementation of the SPA/BD Protocol by Spain in English or French. Dr. Orr Karassin, appointed Rapporteur, presented the communication as translated by EARM (UNEP/MED CC.14/8) together with additional supporting documentation provided by them (UNEP/MED CC.14/Inf.8).

31. In her presentation, the Rapporteur recalled the meeting the Admissibility Criteria of Relevant Information Sources and Procedure under Paragraph 23.bis of the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols (COP 20 Decision IG.23/2, Annex I). The Admissibility Criteria establish a process for the Compliance Committee to deal with communications from the public and observers. Under that procedure, in order to determine its admissibility, a communication should include a minimum of technical requirements (Paragraph 5) as well as to meet a number of admissibility criteria (Paragraphs 12 and 13).

32. The Rapporteur pointed out that the communication from EARM should be examined in light of the abovementioned provisions. In that context, the Rapporteur provided a comprehensive overview addressing the following points: (1) the documents received from EARM; (2) the status of EARM; (3) the content of the communication from EARM; (4) the steps taken by EARM to use the remedies available at national level; and (5) the action taken by other bodies as means of redress.

33. In the ensuing discussion, the following points were made:

- a. the Compliance Committee expressed its appreciation for the work of Dr. Orr Karassin, as Rapporteur, in summarizing and clearly presenting the information submitted by Ecologistas en Acción de la Región Murciana, in order to facilitate discussion;
- b. the Compliance Committee is not a judicial body and therefore should not exercise a judicial function. The Procedures and Mechanisms on Compliance are non-confrontational, facilitative in nature and oriented in the direction of facilitating and promoting compliance with the Barcelona Convention and its Protocols;

- c. the Admissibility Criteria were agreed by the 13th Meeting of the Compliance Committee in 2017. The communication from EARM is the first communication addressed to the Compliance Committee from the public, and as such, an opportunity for the Committee to test the Admissibility Criteria and set the path to follow in dealing with potential future communications;
 - d. in the view of some, further information should be sought from EARM on, firstly, the specific provisions of the Barcelona Convention and its Protocols allegedly contravened, making the link between the facts presented and the provisions of the Barcelona Convention and its Protocols and, secondly, on the specific request to the Compliance Committee. In order words, clarification is needed of both the *causa petendi* (factual and legal basis for the claim) and the *petitum* (claim);
 - e. for others, from the information so far provided by EARM in its communication, it could be inferred that the case mainly deals with the implementation of the SPA/BD Protocol, in particular the management measures in place for the protection of the Mar-Menor as a SPAMI. Some noted that other Protocols, such as the Land-Based Sources (LBS) Protocol and the Integrated Coastal Zone Management (ICZM) Protocols, may also require to be considered. It was noted that in examining the case, relevant MAP components should be also involved, where appropriate;
 - f. there was general agreement that documents should be obtained from EARM proving to which extent remedies available at national and or international had been explored and, if so, the results. This would facilitate the creation of a file with the supporting documents for the claims in that regard made by EARM. This is of key importance, as in determining admissibility “(...) *the Compliance Committee will consider whether domestic remedies have been exhausted*” (Paragraph 13 of the Admissibility Criteria). On this criterium, some raised the point that further elaboration is needed on what exhaustion means in the context of the Admissibility Criteria. It could be the case that remedies are not exhausted but are unreasonably prolonged or do not provide an effective or sufficient means of redress;
 - g. it was generally felt that making a decision on the admissibility of the communication from EARM was premature at this point in time. An informed decision on the admissibility of the communication requires further information. It would be wise to seek additional information on the factual and legal basis for the claim, the claim and the actual state of affairs concerning the use of domestic and/or international remedies. This would enable the Rapporteur to draft a preliminary decision on admissibility to be discussed at the next meeting, in line with Paragraph 9 of the Admissibility Criteria;
 - h. some participants favored going a step further; in addition to ask for the information needed, the Compliance Committee should confirm the preliminary admissibility of the communication from EARM, under Paragraph 16 of the Admissibility Criteria;
 - i. there was general consensus that Spain as the Party concerned should be informed in a preliminary way of the steps taken by the Compliance Committee in dealing with the communication from EARM.
34. Based on discussion, the Compliance Committee agreed on the following steps:

Conclusions and Recommendations

- a. **the designated Rapporteur, Dr. Orr Karassin, to address, through the Secretariat, Ecologistas en Acción de la Región Murciana (Spain), and ask for the following additional information: (1) a document identifying the facts of the alleged non-compliance stating how they constitute a case of non-compliance with the Barcelona Convention and/or its Protocols, (2) the specific and circumscribed request to the Compliance Committee, and (3) documentation showing whether remedies available at national and/or international level have been taken and if so the current status;**

- b. on that basis, and building on the information so far received, the designated Rapporteur to present its findings and a proposal of draft preliminary decision on admissibility in preparation for the 15th Meeting of the Compliance Committee;**
- c. for the sake of transparency, the Compliance Committee, through the Secretariat, should inform Spain in a preliminary way, as the Party concerned.**

Agenda item 8: Legal Analysis of the Regional Plans Adopted under the Land-Based Sources Protocol

35. As agreed at the 13th Meeting of the Compliance Committee, Bernard Brillet and José Juste-Ruiz carried out intersessional work, in coordination with the Secretariat, to analyse the legal nature of the main obligations contained in the LBS Protocol related regional plans adopted by the Meeting of the Contracting Parties, for the purpose of assessing compliance.

36. The result of this work was presented in document UNEP/MED CC.14/9, which provided a comprehensive legal analysis of: (1) the Regional Plans on Persistent Organic Pollutants (POPs); (2) the Regional Plans on the Reduction of BOD₅; (3) the Regional Plan on the Reduction of Inputs of Mercury; (4) the Regional Plan on Marine Litter Management in the Mediterranean; and (5) the Regional Action Plan on Sustainable Consumption and Production in the Mediterranean. For each of the regional plans the following elements were considered: (1) the legal basis for the adoption of the regional plans, (2) the general form and terminology employed for the regional plans, and (3) the wording and content of each regional plan specific provision.

37. The legal analysis triggered the questions whether regional plans were also mandatory for those countries which are not Contracting Parties to the LBS Protocol, and whether the Strategic Action Programme to address pollution from Land-Based Activities (SAP-MED), notably through its regionally agreed pollution Hot Spots and targets, should be included in the analysis. It was recalled that the terms of the analysis, as agreed at the 13th Meeting of the Compliance Committee, were “*to analyse the legal nature of the main obligations contained in the Land-Based Sources related Regional Actions Plans adopted by COP*”. It was felt that both questions should be addressed bilaterally by the Secretariat. In addition, it was also recalled that this exercise was intended to facilitate the assessment of compliance with regional action plans under the revised reporting format.

38. Based on discussion, the Compliance Committee agreed as below:

Conclusions and Recommendations

The Compliance Committee commended the legal analysis undertaken on the Legal Nature of the Main Obligations contained in the Regional Plans adopted by the Meeting of the Contracting Parties under the Land-Based Sources Protocol, as presented in document UNEP/MED CC.14/9, and agreed the document to be annexed to the report of the 14th Meeting of the Compliance Committee, and be presented as an outcome from the 14th Meeting of the Compliance Committee to COP 21.

Agenda item 9: Awareness Raising and Outreach Activities to Promote the Role of the Compliance Committee

39. Following-up on the conclusions of the 13th Meeting of the Compliance Committee, Ayşin Turpanci, Milena Batakovic and Orr Karassin, in coordination with the Secretariat, revisited the text on the Compliance Committee as shown on the UNEP/MAP webpage and prepared a number of recommendations to make it easier for the Contracting Parties and the public to find information on the Compliance Committee. The result of this work was presented in detailed by Ayşin Turpanci as in document UNEP/MED CC.14/10.

40. In the discussion, it was emphasized that information-based approaches, such as public awareness and publicity, could be very effective in promoting compliance. From a communication

perspective, covering internal and external visibility is key. The alternative text then should reach both Contracting Parties and the general public. To that end, the alternative text, refined as needed, could replace the current one on the UNEP/MAP webpage and at the same time serve as a building block for preparing an e-leaflet on the Compliance Committee. In reaching the public, it should be highlighted in a clear and understandable language that Admissibility Criteria are in place to deal with communications from the public to the Compliance Committee.

41. Based on discussion, the Compliance Committee agreed as follows:

Conclusions and Recommendations

a. the Compliance Committee welcomed the alternative text to improve the text on the Compliance Committee presented on the UNEP/MAP webpage, as presented in document UNEP/MED CC. 14/10, and agreed: (1) that the alternative text should replace the existing one on the UNEP/MAP webpage once it has been refined by the Secretariat, and intersessionally agreed by the Compliance Committee; and (2) that the alternative text, should serve as a basis for the Secretariat to prepare an electronic (paperless) leaflet promoting the role and work of the Compliance Committee;

b. to continue to work in order to enhance Compliance Mechanism's and Procedures effectiveness, with a focus on awareness raising activities;

c. to increase visibility of and underlying the importance of the Compliance Committee in strengthening the credibility and effectiveness of the UNEP/MAP system, the Secretariat to explore the possibility of having either a "Compliance Committee" tab as part of the options on the main menu or a "Compliance Committee" drop down item under the "Who we are-Institutional Framework" link.

Agenda item 10: Proposal to Amend the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols

42. The Secretariat introduced document UNEP/MED CC.14/11, which contained a proposal to amend the Procedures and Mechanisms on Compliance. The proposal had been tabled at the 13th Meeting of the Compliance Committee by Nicos Georgiades, Member of the Compliance Committee at that time, and its consideration was deferred to the 14th Meeting of the Compliance Committee due to time constraints.

43. The subsequent discussion focused on the point whether there were substantive grounds for amending the Procedures and Mechanisms on Compliance. It was noted that since their adoption in 2008, the Procedures and Mechanisms had been amended twice, and that any amendment to the Procedures and Mechanisms should be also transposed into the Rules of Procedure of the Compliance Committee. It was emphasised that this would entail a full and detailed review of both instruments intersessionally, and that given the heavy workload already agreed in preparation for the next meeting, this task was not a priority at this stage. The Alternate Member of the Committee, Daniela Addis, offered to share intersessionally her comments on the proposed amendments among the Members and Alternate Members of the Committee for future work.

44. Based on discussion, the Committee agreed as follows:

Conclusions and Recommendations

In light of the heavy workload ahead in preparation for the 15th Meeting of the Compliance Committee and COP 21, the Compliance Committee agreed that the proposal to amend the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols, as presented in document UNEP/MAP CC.14/11, should be deferred to a later stage. In this context, the Compliance Committee welcomed the offer from Daniela Addis to circulate among the Members and Alternate Members of the Committee the proposal presented in document UNEP/MAP CC.14/11 integrating her comments for future work.

Agenda item 11: Other Matters

45. Under this Agenda item the following issues were raised: the timing and election by the Compliance Committee of its officers and whether the reports of the meeting of the Compliance Committee should be made publicly available on the UNEP/MAP webpage.

46. It was raised by an Alternate Member that, taking into account the rules on Decision IG.17/2, as amended by Decisions IG.20/1 and IG.21/1, on Procedure and Mechanisms on Compliance under the Barcelona Convention and its Protocols, and Decision IG.21/1 on Rules of Procedure of the Compliance Committee under the Barcelona Convention and its Protocols:

1. A full term of office commences at the end of an ordinary meeting of the Contracting Parties and runs until the end of the second Ordinary Meeting of the Contracting Parties thereafter. That means that the election of officers (Chairperson and two Vice-Chairpersons) shall be done at the first meeting of the Compliance Committee right after the end of the Ordinary Meeting of the Contracting Parties, and not before (as it has been done at the 13th Meeting of the Contracting Parties);

2. The Committee consists of seven Members. Members have corresponding Alternate Members that will act as Member on the absence of the related-correspondent Member. Stated that only Members have full power, included the right to vote, officers shall be chosen only from Members.

47. As to the Officers of the Compliance Committee, i.e. the Chairperson and two Vice-Chairpersons, the current situation is two Alternate Members holding the position of Chair and Vice-Chair and a Member holding the position of Vice-Chair. The three were re-elected as such by the 13th Meeting of the Compliance Committee, which subjected the re-election of the Chair to her renewal by COP 20. In this context, the point raised was whether in electing its Officers, the Compliance Committee should consider both Members and Alternate Members. Diverging views were expressed in that regard.

48. For some, nothing in the Procedures and Mechanisms prevented the Committee from doing so. In their view, the drafting of Paragraph 10 of the Procedures, which reads "*The Committee shall elect its officers - a Chairperson and two Vice-Chairpersons - on the basis of equitable representation and rotation*" means that the Procedures and Mechanisms make no distinction between Members and Alternate Members when it comes to the election of Chair and Vice-Chairs. For this school of thought, the current arrangements were valid from a legal and practical perspective.

49. Others argued that the status of Chair and Vice-Chairs can only be held by Members. In their view, Paragraph 10 should be read in conjunction with Paragraph 3 of the Procedures, which reads "*The Committee shall consist of seven members elected by the Meeting of the Contracting Parties from a list of candidates nominated by the Contracting Parties. (...)*". According to these participants, Paragraph 3 makes clear that the Compliance Committee is made up of seven members, and among those seven members the Compliance Committee should elect its officers, in line with Paragraph 10. In addition, it was noted that Alternate Members do not have the right to vote in contrast to Members. For this other school of thought, new arrangements were needed to be in line with the Procedures and Mechanisms.

50. The timing for the election of officers was also raised, by making reference to Paragraph 4 of the Procedures.

51. The discussion recalled the difficulties in ensuring the continuity of the work of the Compliance Committee and its stability when the tenure of Chairs and/or Vice-Chairs has expired, they are not renewable and the full membership of the Compliance Committee is not complete.

52. As a way forward in order to continue advancing work in preparation for the next meeting, the Compliance Committee agreed as follows:

Conclusions and Recommendations

- a. the Compliance Committee agreed to seek clarification from Contracting Parties on whether Alternate Members can be elected as Officers and on the timing of the election of Officers;**

b. any other matters of the Procedures and Mechanisms requiring interpretation by the Contracting Parties will be discussed at the 15th Meeting of the Compliance Committee and, c. the Compliance Committee recommends holding a meeting for the purpose of the election of its Officers immediately following the COP, where its membership is endorsed. Depending on resources availability, the meeting may be held via electronic means.

53. The Secretariat raised the issue of the circulation of reports of the meeting of the Compliance Committee, following the Report of COP 20 (UNEP(DEPI)/MED IG.23/23). The meeting expressed its concerns over how this may affect its independency. It was noted that the possibility to set up a “*Compliance Committee Area*” on the UNEP/MAP webpage, only accessible to Members and Alternate Members for the distribution of meeting documents, including the report of the meeting, should be explored. As to the way to communicate to Contracting Parties the work carried out per biennium, it was recommended to continue with the practice to prepare a specific report for each COP subject to the approval of the Compliance Committee.

54. Based on discussion the Compliance Committee agreed as follows:

Conclusions and Recommendations

The Compliance Committee clarifies that its reports are for internal purposes and cannot be made publicly available. An abstract of the reports of the meetings of the Biennia will continue to be developed, cleared at the last meeting of the Biennium and shared with the COP.

Agenda Item 12: Place, dates and duration of the 15th Meeting of the Compliance Committee

55. The Compliance Committee discussed the place, dates and duration for its next meeting and agreed to hold its 15th Meeting on 25-26 June 2019, in Athens, Greece at the premises of the UNEP/MAP-Coordinating Unit.

Agenda Item 13: Draft Conclusions and Recommendations

56. On the basis of a draft prepared by the Secretariat in consultation with the Chairperson of the Compliance Committee, the Compliance Committee agreed on the Conclusions and Recommendations listed under each Agenda item above.

Agenda Item 14: Closing of the Meeting

57. The Meeting was closed by the Chairperson of the Compliance Committee, Milena Batakovic, at 12:00 on 29 June 2018.

Resumed Session of 30 October 2018

Agenda item 1: Opening of the Meeting

58. Following-up on the discussion at the 14th Compliance Committee Meeting (27-29 June 2018) and the conclusions of the 86th Meeting of the Bureau of the Contracting Parties (11 July 2018), a Resumed Session of the 14th Meeting of the Compliance Committee of the Barcelona Convention and its Protocols, was held through electronic means (Teleconference) on 30 October 2018 from 10:30 to 12:30 am (Athens time).

59. The meeting was attended by the following Members and Alternate Members of the Compliance Committee: Daniela Addis, Milena Batakovic, Bernard Brillet, Odeta Cato, Ahmad El-Khatib, Samira Hamidi, Ezzedine Jouini Berzine and Aysin Turpanci and the Secretariat. Apologies were received from François Guerber, José Juste-Ruiz, Orr Karassin and Selma Osmanagić-Klico. The list of participants is at Annex I to this report.

Agenda item 2: Adoption of the Agenda and Organization of Work

60. After the Secretariat ascertained the existence of the required quorum under Paragraph 15 of the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols (Decision IG.17/2, as amended), Milena Batakovic, Chairperson of the Compliance Committee, welcomed the participants and opened the meeting, which had one additional item on the agenda: “*Election of the Officers of the Compliance Committee for the Current Biennium*”. The Compliance Committee agreed on the additional item to the Agenda of the 14th Meeting of the Compliance Committee as in Annex II to this report.

Agenda item 3: Election of the Officers of the Compliance Committee for the Current Biennium

61. Mr. Gaetano Leone, UNEP/MAP Coordinator, welcomed the participants and introduced the subject matter of the meeting: “*Election of the Officers of the Compliance Committee for the Current Biennium*”. He recalled the meeting that the 12th Meeting of the Compliance Committee (Athens, Greece, 24-25 January 2017) elected its officers, a Chairperson and two Vice-Chairpersons, for the biennium 2016-2017 and that the 13th Meeting of the Compliance Committee (Athens, Greece, 26-27 September 2017) elected the same officers for the biennium 2018-2019, provided that they continue to be members of the Compliance Committee after COP 20. COP 20 was held in Tirana, Albania from 17 to 20 December 2018. He referred to the Rules of Procedure for Meetings and Conferences of the Contracting Parties to the Convention for the Protection of the Mediterranean Sea against Pollution and its related Protocols, and the Rules of Procedure of the Compliance Committee (Decision IG. 21/1), governing the timing for the election of officers. Within that framework, he brought to the attention of the meeting the conclusions of the 86th Meeting of the Bureau of the Contracting Parties, on the need to urgently address and solve existing issues that are critical for the functioning of the Compliance Committee.

62. To facilitate discussion and the subsequent election process, the Secretariat orally informed the meeting of the past rotation of chairing of the Compliance Committee among its Members and the current status of the Compliance Committee Members. All Groups have had the opportunity to chair the Committee since the first meeting of the Compliance Committee in 2008. Groups I and II did so twice. The same applies to Group III, should Group III complete the current biennium. As to the Members, three Members were elected until COP 22 and four until COP 21. Two out the four Members elected until COP 21 are non-renewable.

63. The Secretariat also informed the meeting orally of the legal advice provided by the UNEP Principal Legal Officer, according to which the rule that no officers shall serve for more than two consecutive terms applies irrespective of the length of the term.

64. In the ensuing discussion it was emphasized that: (1) the Committee shall elect its officers “*on the basis of equitable geographic representation and rotation*”, as laid down in Paragraph 10 of the Procedures and Mechanisms on Compliance; (2) in order to ensure the continuity of the work of the Compliance Committee, when proceeding with the election of its officers, it would be wise to consider at least an officer to hold the tenure until COP 22; and (3) it would be equally reasonable to try to strike a balance between experienced Members and new Members, as well as to take into consideration gender parity, in line with the UN Strategy on Gender Parity.

65. In light of the discussion above, and pursuant Paragraph 10 of the Procedures and Mechanisms on Compliance, and Rule 6 of the Rules of Procedure of the Compliance Committee, the Compliance Committee elected for the biennium 2018-2019 the following Members:

Conclusions and Recommendations

- **Odetta CATO (Group III) as Chairperson of the Compliance Committee;**
- **Bernard BRILLET (Group II) as Vice-Chairperson of the Compliance Committee; and**
- **Ezzedine Jouini BERZINE (Group I) as Vice-Chairperson of the Compliance Committee.**

66. In the process for the election of officers, Milena Batakovic requested the Secretariat to note her abstention and referred to the letter sent by Montenegro to the Secretariat on this issue on 23 October 2018. The Secretariat confirmed that based on the legal advice provided by the UNEP Principal Legal Officer, a response will be sent to Montenegro as soon as possible.

67. The UNEP/MAP Coordinator welcomed the new Chair and Vice-Chairs and wished them all the best in their tenure ahead. He also expressed the most sincere gratitude to Milena Batakovic for her work and leadership as Chair of the Compliance Committee. He also extended his gratitude to the outgoing Vice-Chairs, José Juste-Ruiz and Samira Hamidi. The Compliance Committee also expressed its gratitude in depth to the outgoing officers. He also stressed the increasing importance of the role of the Compliance Committee within the UNEP/MAP system, the wider visibility of the Committee in the international arena, and the key role that the Committee is called to play in ensuring a successful COP 21.

Agenda item 4: Other Matters

68. No other matters were raised by the Participants.

Agenda item 5: Closing of the Meeting

69. The Meeting was closed by the Chairperson of the Compliance Committee, Odeta Cato, at 12:30 on 30 October 2018.

Annex I
List of Participants

**List of Participants / Liste des participants
(Session of 27-29 June 2018)**

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**SECRETARIAT TO THE BARCELONA CONVENTION
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(Session of 27-29 June 2018 and Resumed Session of 30 October 2018)

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Annex II

Agenda

Agenda
(Session of 27-29 June 2018)

- | | |
|-----------------------|---|
| Agenda item 1 | Opening of the meeting |
| Agenda item 2 | Adoption of the agenda and organization of work |
| Agenda item 3 | Signature of the solemn declaration by new members and alternate members |
| Agenda item 4 | Cooperation with other compliance procedures and mechanisms of
Multilateral Environmental Agreements |
| Agenda item 5 | Status of reporting and examination of reports received under Article 26 of
the Barcelona Convention |
| Agenda item 6 | Testing results of the draft Guidelines for the preliminary assessment of
reports submitted under Article 26 of the Barcelona Convention |
| Agenda item 7 | Review of the communication from Ecologistas en Acción de la Región
Murciana (Spain) |
| Agenda item 8 | Legal analysis of the regional plans adopted under the Land-Based Sources
Protocol |
| Agenda item 9 | Awareness raising and outreach activities to promote the role of the
Compliance Committee |
| Agenda item 10 | Proposal to amend the Procedures and Mechanisms on Compliance under the
Barcelona Convention and its Protocols |
| Agenda item 11 | Other matters |
| Agenda item 12 | Place, dates and duration of the 15 th Meeting of the Compliance Committee |
| Agenda item 13 | Draft Conclusions and Recommendations |
| Agenda item 14 | Closing of the Meeting |

Agenda
(Resumed Session of 30 October 2018)

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|----------------------|--|
| Agenda item 1 | Opening of the meeting |
| Agenda item 2 | Adoption of the agenda and organization of work |
| Agenda item 3 | Election of the Officers of the Compliance Committee for the Current
Biennium |
| Agenda item 4 | Other matters |
| Agenda item 5 | Closing of the Meeting |

Annex III

Guidelines for the Compliance Committee to consider/review the information submitted on the received national implementation reports for 2014-2015 and provide key findings and recommendations for COP 21

Guidelines for the Compliance Committee to consider/review the information submitted on the received national implementation reports for 2014-2015 and provide key findings and recommendations for COP 21

A. Background documents

- UNEP/MED CC.14/5: Updated Synthesis Analysis of the Information Provided in the National Implementation Reports Submitted by Contracting Parties for the Biennium 2014-2015;
 - UNEP/MED CC.14/Inf.5: Updated General Status of Progress in the Implementation of the Barcelona Convention and its Protocols;
 - UNEP/MED CC.14/6: Key Findings of the Updated Synthesis Analysis and General Status of Progress as regards the Barcelona Convention and the Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean;
- Updates to UNEP/MED CC.14/5 and UNEP/MED CC.14/Inf.5 will be provided by the Secretariat to reflect the newly submitted reports

B. Mandate and deliverables

Based on the information provided by Contracting Parties in their national implementation reports as presented in documents above, the main scope of this exercise is:

- A) to **prepare key findings** on the implementation of the Barcelona Convention and its Protocols and **identify main difficulties and general non-compliance issues**; and
- B) to **draft recommendations** to improve the implementation of the Barcelona Convention and its Protocols to COP 21.

Also, from the experience of this joint exercise and from the lessons learned, to extract:

- C) **analysis/stock taking/possible tools on how to improve the methodology for the elaboration of the key findings and recommendations in the future**, i.e. when the 2016-2017 reports based on the new reporting format will be available.

In parallel the Secretariat in consultation with GFCM will **draft a proposal on the set of criteria and the related matrix**, if applicable, to be discussed at the 15th Meeting of the Compliance Committee.

The outcome of the work of this group will be consolidated by the Secretariat, in preparation of a working document for 15th Meeting of the Compliance Committee.

The final deliverable with the concrete recommendations, following discussion at the 15th Meeting of the Compliance Committee, will be sent to COP 21.

To this aim, the group will work intersessionally (as per the division of labour and roadmap below). The Members and Alternate Members of the Compliance Committee will work on small sub-groups, each sub-group dealing with one legal instrument.

A Compliance Committee **platform** will be set to share background documents and facilitate exchanges between different Members and Alternate Members and subgroups.

The Compliance Committee may consult as needed the national implementation reports for the biennium 2014-2015.

C. Division of labour

Barcelona Convention: Ms. Orr KARASSIN and Ms. Selma OSMANAGIC-KLICO;

Dumping Protocol: Mr. Ahmad EL-KHATIB and Ms. Ayşin TURPANCI;

LBS Protocol: Mr. François GUERBER and Mr. Ezzeddine Jouini BERZINE;

SPA/BD Protocol: Ms. Milena BATAKOVIC and Ms. Selma OSMANAGIC-KLICO;

Prevention and Emergency Protocol: Mr. José JUSTE-RUIZ and Ms. Ayşin TURPANCI;

Offshore Protocol: Mr. Joseph Edward ZAKI and Mr. José JUSTE-RUIZ;

Hazardous Wastes Protocol: Ms. Odeta CATO and Mr. Bernard BRILLET, and

ICZM Protocol: Ms. Daniela ADDIS and Ms. Samira HAMIDI.

D. Roadmap/timeline

- Secretariat to update documents with inputs from newly submitted reports (end-July 2018);
- Platform for exchange/communication between group members established (end-July 2018);
- Preparation of first set of key findings/initial draft recommendations (by mid-November 2018);
- Exchange between group members on first set through electronic means (December 2018/mid-January 2019);
- Preparation of final draft findings and recommendations by group members (end-February 2019);
- Preparation of consolidated key findings and draft recommendations by Secretariat (end-March 2019);
- Final working document to be sent to 15th Meeting of the Compliance Committee (May 2019);
- Stock taking on how to do this work in the future to be discussed at the 15th Meeting of the Compliance Committee (late-June 2019)

Annex IV

**Analysis of the Legal Nature of the Main Obligations Contained in the Regional Plans
Adopted by the Meeting of the Contracting Parties under the Land-Based Sources Protocol**

Analysis of the Legal Nature of the Main Obligations Contained in the Regional Plans Adopted by the Meeting of the Contracting Parties under the Land-Based Sources Protocol

Introduction

1. This document provides an analysis of the legal nature of the main obligations contained in the regional plans adopted by the Meeting of the Contracting Parties under the Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities Protocol (LBS Protocol) for compliance purposes. This covers the following regional plans:

- (a) Regional Plans on Persistent Organic Pollutants (POPs) (COP Decisions IG.19/8, IG.19/9 and IG.20/8.3);
- (b) Regional Plans on the Reduction of BOD5 (COP Decisions IG. 19/7 and IG. 20/8.2);
- (c) Regional Plan on the Reduction of Inputs of Mercury (COP Decision IG.20/8.1);
- (d) Regional Plan on Marine Litter Management in the Mediterranean (COP Decision IG.21/7);
and,
- (e) Regional Action Plan on Sustainable Consumption and Production in the Mediterranean (COP Decision IG.22/5).

2. In undertaking the present analysis, the following elements have been considered for each of the regional plans listed above: (1) the legal basis for the adoption of the regional plans, (2) the general form and terminology employed for the regional plans, and (3) the wording and content of each regional plan specific provision.

Analysis

First stage: legal basis for the adoption of the regional plans

3. In assessing the legal nature of the regional plans main obligations, as a point of departure, the first element to be considered is the relevant Article(s) of the Barcelona Convention and LBS Protocol based on which the regional plan has been adopted. In that respect, the preambular paragraphs of the COP Decisions adopting the regional plans have been examined as follows.

4. For the Regional Plans on Persistent Organic Pollutants (POPs), on the Reduction of BOD5, on the Reduction of Inputs of Mercury and on Marine Litter Management in the Mediterranean, COP Decisions examined refer specifically to the following articles:

- (1) Article 8 of the Barcelona Convention, under which Contracting Parties have the obligation to take all appropriate measures to prevent, abate, combat and to the fullest possible extent eliminate pollution of the Mediterranean Sea and draw up and implement plans for the reduction and phasing out of substances that are toxic, persistent and liable to bioaccumulate arising from land-based sources;
 - (2) Article 5 of the LBS Protocol, which sets out the obligation of the Contracting Parties to undertake to eliminate pollution from land-based sources and activities, in particular to phase-out inputs of the substances that are toxic, persistent and liable to bioaccumulate listed in Annex I to the LBS Protocol. To this end, Contracting Parties shall elaborate and implement national and regional action plans and programmes containing measures and timetables for their implementation; and,
 - (3) Article 15 of the LBS Protocol, whereby the meeting of the Parties shall adopt regional action plans and programmes containing measures and timetables for their implementation provided for in article 5 of the LBS Protocol. Paragraph 3 of Article 15 further states that: “[t]he measures and timetables adopted ... *become binding* on the one hundred and eightieth day following the day of notification for the Parties which have not notified the Secretariat of an objection within one hundred and seventy-nine days from the date of notification.” (*emphasis added*)
5. Most COP Decisions examined also recall in their preambles COP 15 Decision IG.17/8, entitled “Implementation of NAPs and the preparation of *legally binding measures and*

timetables required by Art. 15 of the LBS Protocol (*emphasis added*). Therefore, it can be concluded that Articles 5 and 15 of the LBS Protocol provide the legal base under which the Regional Plans on POPs, on the Reduction of BOD5, the Reduction of Inputs of Mercury, and on Marine Litter have been adopted. Furthermore, as clearly stated in Article 15, the measures and timetables contained in regional plans impose binding obligations to the Contracting Parties.

6. As regards the Regional Action Plan on Sustainable Consumption and Production (SCP) Article 4 of the Barcelona Convention provides the legal basis for adoption. Under this Article, Contracting Parties have the general obligation to take all appropriate measures to prevent, abate and combat and to the fullest possible extent eliminate pollution of the Mediterranean Sea Area and to protect and enhance the marine environment in that Area so as to contribute to sustainable development.

7. This adds to the acknowledgment that the tools and instruments of the SCP Regional Action Plan are well anchored in: (1) Article 5.4 of the LBS Protocol, which provides for the implementation of Best Available Techniques (BAT) and Best Environmental Practices (BEP); (2) Article 5.2 of the Hazardous Wastes Protocol, according to which Parties shall take all appropriate measures to reduce to a minimum, and where possible eliminate, the generation of hazardous wastes; and (3) Article 9 of the Integrated Coastal Zone Management (ICZM) Protocol on the sustainable development of economic activities in the immediate proximity to, or within, the coastal zones. The articles referred to highlight the cross-cutting nature of the SCP Regional Action Plan as a transversal instrument to support the implementation of the Barcelona Convention and its Protocols as well as the Mediterranean Strategy for Sustainable Development.

8. Furthermore, the Decision adopting the SCP Regional Action Plan strongly encourages Contracting Parties “to mainstream SCP in national and local development policies, according to national laws” and “to include information on measures taken implementing the Action Plan” when reporting.

9. The references above put together a picture on the legal basis of the SCP Regional Action Plan that substantially differs from the one for the Regional Plans on POPs, on the Reduction of BOD5, on the Reduction of Inputs of Mercury and on Marine Litter.

Second stage: general form and terminology employed for the regional plans

10. In a second stage, it is important to consider the general form and terminology used in drafting the regional plans. In the case of the Regional Plans on POPs, on the Reduction of BOD5, the Reduction on Inputs on Mercury and on Marine Litter, they consciously employ a treaty form and language (“Article”, “shall”, “agree”, “obligations”, “Party” etc.). This gives a strong indication of the binding character of these regional plans, which is explicitly formulated in their entry into force clauses, drafted as follows: “The present regional Action Plan shall enter into force and *become binding* on the 180th day following the day of notification by the Secretariat in accordance with Article 15, paragraph 3 and 4 of the LBS Protocol” (*emphasis added*).

11. A quite a different situation emerges as regards the SCP Regional Action Plan, which was developed as a forward-looking framework to complement and work in full synergy with existing national and regional policy frameworks. This responds to the specific mandate from COP 18 to design the SCP Plan “as a dynamic and forward-looking framework, integrating the potential of the different policy instruments and measures addressing targeted human activities which have a particular impact on the marine and coastal environment and related transversal/cross-cutting issues”. Having been developed as a “forward-looking framework”, the implementation of which requires the adoption of specific guidelines, the SCP Regional Action Plan should be seen in the context of soft law.

Third stage: the wording and content of each regional plan specific provision

12. In addition to, and this brings us to the third stage of this analysis, in order to further elaborate on the binding content of each regional plan specific provision, it is important to review each relevant provision of the regional plans on the light of the following criteria: (a) wording of the obligations (binding or aspirational terms), (b) content of the obligations (obligation of means or obligation of

result), (c) precision of the obligations (specific measures and timetables), and (d) hard law and soft law considerations. As a practical way forward, this assessment is focused on the provisions listed for each regional plan in the Revised Reporting Format (COP Decision IG. 23/1) as shown below.

Regional Plans on Persistent Organic Pollutants (POPs)

- (1) Prohibit and/or take legal and administrative measures necessary to eliminate the production and use, import and export of POPs and their wastes;
- (2) Application of BAT and BEPs for environmentally sound management of POPs; and,
- (3) Take appropriate measures to handle, collect, transport, store and dispose in an environmentally sound manner POPs wastes, including products and articles upon becoming wastes

13. All regional plan provisions on POPs are drafted in mandatory terms: this includes the obligations concerning wastes' reduction and use, application of BAT and BEP and appropriate measures to handle, collect, transport, store and dispose in an environmentally sound manner. The terms used have a clear binding character. In general, the regional plan provisions on POPs are construed as obligations of results rather than obligations of means and they employ categorical terms such as "shall prohibit", "shall ensure", "shall take appropriate measures", "shall report". With respect to application of BAP and BEPs, Art. II, 4 of both Decisions on POPs use the qualifier "shall endeavour" which is the appropriate wording for a procedural obligation. Only in rare cases it is said that Parties "should" act in a given way (such as in identifying to the extent practicable stock piles containing POP wastes in Art.VI of Decision IG.19/8). Timetables and deadlines for implementation are also set forth very precisely in Art. III of both Decisions on POPs.

Regional Plans on the Reduction of BOD5

- (1) Adopt National Emission Limit Values (ELV) for BOD5 in urban wastewater after treatment in accordance with the requirements of the Regional Plan (Article III.2 and 3);
- (2) Monitor discharges from municipal wastewater treatment plants to verify compliance with the requirements of the Regional Plan taking into account the Guidelines included in Appendix II to the Regional Plan (Article III.4);
- (3) Ensure that all agglomerations of more than 2000 inhabitants collect and treat urban wastewater before discharging them into the environment (Article III, [1] Appendix I and Appendix III);
- (4) Establishment of ELV and authorization compatible with the operation and the emission discharge values of the urban waste water treatment plan, in case the food sector installation discharges into the sewage system (Article IV.1); and
- (5) Monitor food sector installation discharges into water to verify compliance with the requirements of the Regional Plan taking into account the Guidelines included in Appendix I to the Regional Plan (Article IV.2).

14. The regional plan provisions concerning the reduction of BOD5, both from urban waste water and in the food sector, are drafted in mostly mandatory terms. The words employed are categorical and generally express binding obligations for the Contracting Parties which are formulated using the verb "shall". The obligations established are obligations of result consisting in the reduction of BOD5 wastes but not its outright elimination. This explains why the language used is sometimes less radical than the one used in the POPs decisions. The quantitative limits of discharges permitted are very precise as well as the timetables and deadlines for implementation of the reduction of BOD5. It could be then concluded that all five obligations enumerated above are binding and shall be implemented as indicated in the relevant provisions.

Regional Plan on the Reduction of Inputs of Mercury

- (1) Prohibit the installation of new Chlor-alkali plants using mercury cells and vinyl chloride monomer production plants using mercury as a catalyst (Article IV.1 A);
- (2) Ensure that the releases of mercury from the activity of Chlor-alkali plants shall cease by 2020 at the latest (Article IV.A);
- (3) Adopt National Emission Limit Values (ELVs) by 2015 and 2019 for mercury emissions based on values included in the Regional Plan on the Reduction of inputs of Mercury from other than Chlor-alkali industry (Article IV.B);
- (4) Monitor releases of mercury into water, air and soil in order to verify compliance with the requirements of the Regional Plan (Article IV.D);
- (5) Achieve environmental sound management of metallic mercury from the decommissioned plants (Article IV.A);
- (6) Progressively reduce total releases of mercury (to air, water and to products) from existing Chlor-alkali plants until their final cessation with the view not to exceed 1.0g per metric tonne of installed chlorine production capacity in each plant (Article IV.A); and
- (7) Take appropriate measures to isolate and contain the mercury containing wastes (Article IV.D).

15. The wording used in drafting the specific provisions of this Regional Plan range from directly opposable formulations (e.g. “The Parties shall prohibit the installation of new Chlor-alkali plans using mercury cells with immediate effect” (Article IV. A.1), or “The Parties shall neither open new mines nor re-open old mercury mining sites” (Article IV. B. 6), or “The present regional Action Plan shall enter into force and become binding” the 180th day after notification of the Decision (Article VIII)) to other gradually looser formulations in terms of effectiveness (e.g. “The Parties shall identify existing sites which have been historically contaminated with mercury ... and take with regard to these sites, environmental management measures.... as appropriate” (Article IV. B. 5) or “The Parties shall take the necessary steps to enforce the above measures” (Article IV. B.8)).

16. In addition, some provisions of the Regional Plan are formulated as obligations of result (e.g. “The Parties shall adopt by 2015 and 2019 National [Emission Limit Values] ELV for Mercury emissions from other than Chlor-Alkali industry” (Article IV B); “The Parties shall ensure the releases of mercury from the activity of Chlor-alkali plants shall cease by 2020 at the latest” (Article IV A. 3), or “The Parties shall ensure that the total releases of mercury (to the air, the water and to the products) from existing Chlor-alkali plants are progressively reduced until their final cessation with a view not to exceed 1.0g per metric tonne” (Article IV A. 3.ii), whereas others are formulated as obligations of means (e.g. “The Parties shall report to the Secretariat by January 2013 on the identified sites [which have been historically contaminated with mercury]”(Article IV B.5.ii) or “The Parties shall ensure that their competent authorities or appropriate bodies monitor releases of mercury into water, air and soil to verify compliance with the requirements of the above table” (Article IV B.7).

17. Based on the analysis above, it can be said that the obligations contained in the Regional Plan on the Reduction of Inputs of Mercury are legally binding. The implementation of the administrative, legal and other measures laid down in the Plan rests on the Contracting Parties, though the Secretariat has a key role in following-up on the implementation of the Plan as reported in the national implementation reports. In so doing, it is key to keep in mind that all the obligations of the Regional Plan (either obligations of means or result) aim at achieving the overall goal of the protection of the coastal and marine environment and human health from the adverse effects of mercury (Article II.2).

Regional Plan on Marine Litter Management in the Mediterranean

- (1) Reduction of fraction of plastic packaging waste that goes to landfill or incineration (Article 9. Timetable-2019);
- (2) Ensure adequate urban sewer systems, wastewater treatment plants and waste management systems to prevent run-off and riverine inputs of marine litter (Article 9. Timetable 2020);
- (3) Application of cost effective measures to prevent any marine littering from dredging activities (Article 9. Timetable 2020);
- (4) Urban solid waste management is based on reduction at source with the following waste hierarchy: prevention, re-use, recycling, recovery and environmental sound disposal (Article 9. Timetable 2025);
- (5) Enhancement of public awareness and education of pollution and involvement of various stakeholders with regard to marine litter management (Article 16. Timetable: as appropriate);
- (6) Adopt preventive measures to minimize inputs of plastic in the marine environment (Article 9. Timetable 2017);
- (7) Implement programmes on regular removal and sound disposal of accumulations/hotspots of marine litter (Article 10. Timetable 2019);
- (8) Remove existing accumulated litter from Specially Protected Areas of Mediterranean Importance (SPAMI) and litter impacting endangered species listed in Annexes II and III of the SPA and Biodiversity Protocol (Article 10. Timetable 2019);
- (9) Close to the extent possible existing illegal solid waste dump sites (Article 9. Timetable 2020);
- (10) Explore and implement National Marine Litter Cleanup Campaigns, participate in international Coastal Cleanup Campaigns and Programmes, apply Adopt a Beach or similar practices and apply Fishing for Litter practices (Article 10. Timetable 2019) and
- (11) Explore and Implement a No-Special Fee System in port facilities used for implementing the measures provided for in Article 10 of the Regional Plan on removing existing marine litter and its environmentally sound disposal (Article 10. Timetable 2019).

18. In assessing the legal nature of the main obligations contained in the Regional Plan on Marine Litter, consideration shall be given to the fact that its purpose is twofold: i.e., to set up a “strategic framework” for marine litter management and to “control pollution by persistent synthetic materials” in the Mediterranean (3d. preambular paragraph). As a consequence, the provisions of the Regional Plan on Marine Litter combine “measures” and “operational targets” (Part II), which are not all of the same legal nature.

19. This is evidenced by a comparative analysis of Article 9, which uses treaty language (“Contracting Parties”, “shall implement by the year”, etc.), and other articles, such as Article 16, which employ a somewhat more qualified wording (“shall undertake”, “where appropriate”, etc.). The former measures are closer to obligations of results whereas the latter might rather be characterized as obligations of means. But that by itself does not modify its normative character and legally binding force.

20. More in detail, the analysis of the provisions of Article 9 of the Regional Plan on Marine Litter shows that most of the obligations set forth are worded in mandatory terms and shall therefore be implemented by the Contracting Parties within the indicated deadlines. This includes the obligations (1) to (4) listed above. Other provisions of the Regional Plan on Marine Litter establish obligations that are qualified by terms such as “as appropriate”, “to the extent possible” and other similar expressions. Such obligations are nonetheless equally binding in their terms for the Contracting Parties which shall implement the measures concerned within the deadlines established. However, it is equally true that these provisions, which include the obligations (5) to (11) listed above, by being qualified by

the terms “as appropriate” or “to the extent possible” provide Contracting Parties with an important degree of flexibility when it comes to their implementation. This should be considered by the relevant bodies when assessing compliance, with particular focus on the reasons provided by the concerned Contracting Party on the level of implementation achieved.

Regional Action Plan on Sustainable Consumption and Production in the Mediterranean

- (1) Food, Fisheries and Agriculture (FFA): Adoption and implementation of Good Agricultural Practices (GAP) in line with the EcAP ecological objectives and ICZM guidelines;
- (2) Food, Fisheries and Agriculture (FFA): Adoption and implementation of Sustainable Fishing Practices, in line with the EcAP ecological objectives and ICZM guidelines;
- (3) Food, Fisheries and Agriculture (FFA): Establishment of certification schemes (eco-labels) that confirm the sustainable production of food and fisheries products;
- (4) Food, Fisheries and Agriculture (FFA): Adoption of Sustainable Public Procurement (SPP) schemes for food and fisheries products;
- (5) Food, Fisheries and Agriculture (FFA): Adoption of measures in the field of communication and education to promote the consumption of sustainable, healthy and local food;
- (6) Goods Manufacturing: Adoption of measures to implement the waste management hierarchy, develop extended produced responsibility schemes, and encourage circular economy;
- (7) Goods Manufacturing: Development of policy instruments to support the private sector;
- (8) Goods Manufacturing: Adoption and implementation of Sustainable Public Procurement (SPP) in the Goods Manufacturing Sector;
- (9) Goods Manufacturing: Establishment of certification schemes (eco-labels) for manufactured goods and awareness raising among the population on the consumption of eco-labelled goods;
- (10) Tourism: Creation of eco-taxes, eco-charges or fees to internalize externalities of tourism activities;
- (11) Tourism: Revision of the current national tourism legislation to integrate sustainable principle and measures;
- (12) Tourism: Adoption of measures to promote the diversification of the tourism offer from mass tourism to alternative forms of tourism;
- (13) Tourism: Adoption of measures to promote tourism eco-labels and facilitate their award by tourist facilities;
- (14) Housing and Construction: Develop measures to support sustainable coastal urban development and green construction, taking into account the entire life cycle of buildings; and,
- (15) Promote sustainable public procurement in the public housing and construction sector.

21. As drafted, some of the provisions of the SCP Regional Action Plan have the character of public regulation, being therefore legally binding. This includes for instance the general actions aimed at “develop[ing] an institutional framework to encourage integrated national and local decision making” (Action 17, Operational Objective 2.2) or “develop[ing] and encourage[ing] regulatory and incentives policies” (Action 41, Operational Objective 4.2). Other provisions are of markedly technical nature, such as to “[a]dopt Good Agricultural Practices (GAP) schemes” (Action 1, Operational Objective 1.1) or the “[i]mplementation of Environment Management Systems (EMS) and Ecolabels” (Action 21, Operational Objective 2.2).

22. Against this background, it can be concluded that the SCP Regional Action Plan is an instrument of “soft law”, providing mainly for obligations of means. However, the SCP Regional Action Plan is instrumental in achieving the objective of reducing anthropogenic pressures on the

Mediterranean, and therefore a necessary condition for achieving the objectives of the Barcelona Convention and maintain the Mediterranean Sea Area in a good state of conservation.

23. The implementation of the SCP Regional Action Plan at both national and local levels rests upon Contracting Parties. In addition, as shown in the operative paragraph of the Decision adopting the Plan, the Coordinating Unit and the MAP components, are requested “to ensure the coordinated delivery of regional actions in support of the countries’ efforts” in implementing the SCP Regional Action Plan. In short, it is up to the Contracting Parties to implement the SCP Regional Action Plan, with the Secretariat to follow-up on its overall implementation. Within this framework, reporting on the national implementation of the Plan becomes fundamental. Firstly, for the Compliance Committee to assess general compliance issues, with particular focus on the measures referred to in paragraph 21 above. Secondly, in undertaking by the Secretariat in 2020 an indicator-based midterm evaluation of the Action Plan implementation.

Concluding remarks

24. As laid down in the Procedures and Mechanisms on Compliance, the objective of the Compliance Committee is to facilitate and promote compliance with the Barcelona Convention and its Protocols. In this context, the role of the Compliance Committee is to consider specific situations of actual or potential non-compliance by individual Parties as well as general compliance issues, at the request of the Meeting of the Contracting Parties. Within that mandate, after considering compliance issues, the Compliance Committee can make recommendations to the Meeting of the Contracting Parties on cases of non-compliance. In this framework, the role of the Compliance Committee in providing advice and impetus is crucial in meeting the objectives of the Barcelona Convention.

25. Although the varying wording and bindingness of the obligations of the regional plans examined before might affect the normative intensity and reach of the measures concerned, this shall not be regarded as an impeachment for the Compliance Committee to exercise its functions as established in its Procedures and Mechanisms

26. It should be stressed that the task of the Compliance Committee is to verify the existence of cases of possible non-compliance and recommend the appropriate remedial cooperative actions to the Meeting of the Contracting Parties. For the purposes of the work of the Compliance Committee, it is sufficient to verify that the measures listed in the reporting format have a normative (prescriptive) character and, therefore, its compliance or non-compliance by Contracting Parties can be assessed and on that basis to decide upon the appropriate measures, including making recommendations to the Meeting of the Contracting Parties.