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16th Meeting of the Compliance Committee of the Barcelona Convention and its Protocols

Teleconference, 16-18 June 2020

Agenda Item 8: Effective Functioning of the Compliance Committee

Effective Functioning of the Compliance Committee

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Note by the Secretariat

By Decision IG.24/1 entitled “*Compliance Committee*”, the 21st Meeting of the Contracting Parties to the Barcelona Convention (COP 21) (Naples, Italy, 2-5 December 2019) adopted the Programme of Work of the Compliance Committee for the Biennium 2020-2021. One of the activities of the Programme of Work for the biennium 2020-2021 is “*to review the Rules of Procedure of the Compliance Committee in order to further clarify a number of outstanding issues and make a proposal as appropriate for adjusting accordingly the Procedures and Mechanism on Compliance for consideration by COP 22*”.

To this aim, the Secretariat has prepared the present document, which presents a proposal made by a former member of the Compliance Committee, Mr. Nicos Georgiades, regarding the amendment to the Procedures and Mechanisms on Compliance. Such proposal was tabled at the 14th Meeting of the Compliance Committee (Athens, Greece, 27-29 June 2018), which concluded as follows: “*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 said proposal should be deferred to a later stage*” (UNEP/MED CC. 14/12, §44).

Issues related to the strengthening of the work of the Compliance Committee were also addressed during the 15th Meeting of the Compliance Committee (Athens, Greece, 25-26 June 2019), which included in its agenda an item addressing the functioning of the Committee within the framework of its Procedures and Mechanisms as well as its Rules of Procedure. Under that agenda item, legal advice concerning specific issues under the Procedures and Mechanisms and Rules of Procedure was presented (UNEP/MED CC.15/11). The Compliance Committee concluded that due to heavy time constraints and workload the Committee was not able to address document UNEP/MED CC.15/11 and decided to include in its Programme of Work for the biennium 2020-2021 the following activity: “*To review the Rules of Procedure of the Compliance Committee in order to further clarify a number of outstanding issues and make a proposal as appropriate for adjusting accordingly the Procedures and Mechanism on Compliance for consideration by COP 22.*” (UNEP/MED 15/15, §27.c).

To take work forward at the present meeting, the proposal to amend the Procedures and Mechanisms on Compliance as tabled at the 14th Meeting of the Compliance Committee and prepared by Mr. Nicos Georgiades is presented in this document, together with the legal advice concerning specific issues under the Procedures and Mechanisms and Rules of Procedure tabled at the 15th Meeting (UNEP/MED CC.16/10).

The proposal from Mr. Nicos Georgiades shows a number of amendments to the Procedures and Mechanisms on Compliance in track changes as well as the rationale behind the amendments proposed in the form of comments provided by Mr. Nicos Georgiades. In discussing the amendments, key points below have been identified for the consideration of the Compliance Committee. They address some of the amendments proposed, which in the view of the Secretariat raise some particular issues to consider during discussion:

- (1) the proposal to delete “*geographical representation, shall ensure rotation*” in paragraph 9 as criteria for the election of members of the Committee and their alternates is felt that substantially alters the basis on which the Compliance Committee is constituted, which reflects the long standing United Nations principle to give due regard to equitable geographical representation and to which the Mediterranean Action Plan (MAP)/Barcelona Convention fully adheres, as its practice built over 40 years in the composition of its decision making bodies show; and
- (2) the proposal to redraft paragraph 12 to read “*The Secretariat shall inform all Contracting Parties on the date and venue of the meetings of the Committee*”, deleting the remaining text referring to the opening of the Compliance Committee to Contracting Parties and observers is felt that it considerably affects the functioning of the Compliance Committee preventing observers, including Contracting Parties, from participating in the meetings of the Compliance Committee. In the reading of the Secretariat, this is not in line with the spirit of Article 20¹ of the Barcelona Convention which together with Rule 6² of the Rules of Procedure for Meetings and Conferences of the Contracting Parties to the Barcelona Convention sets the conditions for the admission and participation of observers.

In addition to the above key points, notes from the Secretariat are inserted in the text from Mr. Nicos Georgiades for the Compliance Committee to also consider when addressing the amendments proposed.

Action requested

The 16th Meeting of the Compliance Committee is expected to consider the information contained in this document together with the information presented in document UNEP/MED CC. 16/10 and advice on the next steps to take in preparation for the 17th Meeting of the Compliance Committee.

¹. Article 20 of the Barcelona Convention reads: “1. The Contracting Parties may decide to admit as observers at their meetings and conferences: (a) any State which is not a Contracting Party to the Convention; (b) any international governmental organization or any non-governmental organization the activities of which are related to the Convention. 2. Such observers may participate in meetings without the right to vote and may present any information or report relevant to the objectives of the Convention. 3. The conditions for the admission and participation of observers shall be established in the Rules of Procedure adopted by the Contracting Parties”.

². Rule 6 reads: “1. The Executive Director shall, with the tacit agreement of two thirds of the Contracting Parties, invite to send representatives to observe any meeting or conference, any other State Member of the United Nations or member of its specialized agencies which so requests and has a direct concern in the protection of the Mediterranean Sea against pollution. 2. Such observers, upon invitation of the President and with the tacit consent of the meeting or the conference, may participate without vote in the deliberations of the meeting or of the conference in matters of direct concern to the States they represent”.

Proposal to amend the Procedures and Mechanisms on Compliance

Decision IG.17/2: Procedures and mechanisms on compliance under the Barcelona Convention and its Protocols

(Consolidated text)¹

Amended by:

Decision IG. 20/1, Annex I. (Source: UNEP (DEPI)/MED IG 20/8, Annex II)

Decision IG. 21/1 Annex IV. (Source: UNEP (DEPI)/MED IG 21/9, Annex II)

I Objective

1. The objective of the compliance mechanism is to facilitate and promote compliance with the obligations under the Barcelona Convention and its Protocols, taking into account the specific situation of each Contracting Party ~~in particular those, which are developing countries.~~^{2 3}

II Compliance Committee

2. A compliance committee, hereinafter referred to as "the Committee", is hereby established.

3. 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. For each member of the Committee, the Meeting of the Contracting Parties shall also elect an alternate member from the above-mentioned list: provided that, nominations and elections shall be for specific individuals and not for unspecified Party representatives to be named later.^{4 5}

4. 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, provided that, in the case of the Chairperson of the Committee, his/ hers term of office extends after its end and until a new Chairperson is elected.⁶ Further provided that in case of absence from two consecutive meetings, the member concerned automatically loses his/ hers membership and his/ hers alternate member takes his/ hers place as a member of the Committee.^{7 8}

~~5. 5. At the Meeting of the Contracting Parties at which the decision establishing the mechanism is adopted, the Meeting shall elect three members and their alternates for half a term and four members and their alternates for a full term. At each ordinary meeting thereafter, the Contracting Parties shall~~

¹The consolidated text integrates the text of the Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols as contained in the Annex to Decision IG 17/2 adopted by the 15th Meeting of the Contracting Parties to the Barcelona Convention and its Protocols (COP 15), with the subsequent amendments adopted by COP 17 Decision IG. 20/1 and COP 18 Decision IG. 21/1 for ease of reference only.

² *Comment: Very patronizing term, at least for the Parties to this Convention. The obligations are spelled out in the various texts and the Convention does not differentiate the Parties with regards to their obligations.*

³ **Note from the Secretariat:** The Compliance Committee may wish to consider this proposal in light of the fact that the specific situation of each Contracting Party is taking into account by the Committee when considering situations of actual or potential non-compliance, so the particular attention to developing countries may be construed as part of the specific situation of each Contracting Party.

⁴ *Comment: Necessary clarification. Currently, instead of nominating persons, as provided, countries just assure a representation and then it takes them months to nominate the person, thus causing problems in the convening of meetings.*

⁵ **Note from the Secretariat:** The Compliance Committee may wish to consider this proposal as part of the efforts in strengthening the functioning of the Committee.

⁶ *Comment: To address problems encountered and avoid gaps in continuity.*

⁷ *Comment: To address problems encountered*

⁸ **Note from the Secretariat:** The Compliance Committee may wish to consider this proposal within the framework of its Rules of Procedure

~~elect for a full term new members and alternates to replace those whose period of office is about to expire.~~⁹

~~6.5.~~ Members and alternates members shall not serve on the Committee for more than two consecutive terms.

6. The members of the Committee shall be nationals of Parties to the Barcelona Convention. The Committee shall not include more than one national of the same State.

7. Nominated candidates shall be persons of recognized competence in the matters dealt with by the Barcelona Convention and its Protocols ~~and in~~¹⁰ relevant scientific, technical, socioeconomic, legal or other fields. Each nomination shall be accompanied by the curriculum vitae of the candidate. Contracting Parties may consider the nominations of candidates from civil society and academia ~~and are encouraged to avoid the nomination of government officials directly involved in matters related to the Barcelona Convention.~~^{11 12}

8. In electing members of the Committee and their alternates, the Meeting of the Contracting Parties shall take into consideration equitable ~~geographical representation, shall ensure rotation in order to secure the~~¹³ participation of ~~nominated~~ individuals from all Contracting Parties as members of the Committee within a reasonable period of time. To the extent possible, they shall also take into consideration a balance of scientific, legal and technical expertise.

9. The Committee shall elect its officers - a Chairperson and two Vice-Chairpersons, ~~—on the basis of equitable geographic representation and rotation.~~¹⁴

~~1044.~~ Members of the Committee and their alternates shall serve in their individual capacities and shall act ~~with independence and objectively impartially~~ in the interests of the Barcelona Convention and its Protocols for the protection of the Mediterranean Sea and its coastal area ~~and avoid real or apparent conflicts of interest.~~

III Meetings of the Committee

11. The Committee shall meet at least once a year. The Committee may decide to hold additional meetings, in particular in conjunction with those of other Convention bodies.

~~12.—12.~~ The Secretariat shall inform all Contracting Parties of the date and venue of the meetings of the Committee. ~~Unless the Committee or the Party whose compliance is in question (hereinafter "the Party concerned") decides otherwise, the meetings of the Committee will be open to:~~

~~(a) — Parties to the Convention, which shall be treated as observers in accordance with the Rules of Procedure for meetings and conferences of the Contracting Parties for the purpose of their participation in the Committee; and~~

~~(b) — observers, in accordance with Article 20 of the Convention and the Rules of Procedure for the meetings and conferences of the Contracting Parties.~~¹⁵

~~13.~~ In the absence of a member from a meeting, the respective alternate shall serve as the member.

⁹ **Note from the Secretariat:** The Compliance Committee may wish to consider retaining Paragraph 5 which captures both the process of establishment of the Compliance Committee and the mechanism of renewal of membership.

¹⁰ *Comment: The two parts of the sentence are interlinked and not different.*

¹¹ *Comment: To limit conflicts of interest and incompatibility.*

¹² **Note from the Secretariat:** This is a sensitive issue for the Compliance Committee to consider.

¹³ *Comment: Geographical attributes have no relevance to the work of the Committee.*

¹⁴ *Comment: Geographical attributes have no relevance to the work of the Committee*

¹⁵ *Comment: Redundant provisions. They have never been used.*

14. For each meeting, a quorum of seven members is required including alternates serving as members.^{16 17}

15. The Committee shall make every effort to reach agreement by consensus on its findings, measures and recommendations. If all efforts to reach consensus have been exhausted, the Committee shall as a last resort adopt its findings, measures and recommendations by at least a three-fourths majority of the members present and voting. "Members present and voting" means members present and casting an affirmative or a negative vote.

IV Role of the Compliance Committee

~~17~~16. The role of the Committee shall be to consider:

(a) specific situations of actual or potential non-compliance by individual Parties with the provisions of the Convention and its Protocols;

(b) ~~at the request of the Meeting of the Contracting Parties,~~¹⁸ general general compliance issues, such as recurrent non-compliance problems, including in relation to reporting, taking into account the reports referred to in Article 26 of the Convention and any other report submitted by the Parties; and

(c) any other issues as requested by the Meeting of the Contracting Parties or a Contracting Party or the Secretariat.^{19 20}

17. In assessing and verifying information provided and the actual situation on the ground, the Committee is assisted by the MAP components responsible for the Convention and its various Protocols.^{21 22}

V Procedure

1. Submissions by Parties

18. The Committee shall consider submissions by:

(a) a Party in respect of its own actual or potential situation of non-compliance, despite its best endeavours; and

(b) a Party in respect of another Party's situation of non-compliance, after it has undertaken consultations through the Secretariat with the Party concerned and the matter has not been resolved within three months at the latest, or a longer period as the circumstances of a particular case may require, but not later than six months.

19. Submissions as referred to in paragraph 18 concerning the alleged non-compliance of a Party shall be addressed in writing to the Committee through the Secretariat, supported by substantiating information setting out the matter of concern and the relevant provisions of the Barcelona Convention and its Protocols.

¹⁶ *Comment: Clearer*

¹⁷ **Note from the Secretariat:** The Compliance Committee may wish to consider retaining this proposal for the sake of clarity.

¹⁸ *Comment: The current text clearly limits the independence of the Committee and its power to act unilaterally*

¹⁹ *Comment: More flexibility. Reflects actual practice.*

²⁰ **Note from the Secretariat:** The Secretariat wish to bring to the attention of the Compliance Committee this proposal which carries financial implications, in the sense that any other issues requested to the Compliance Committee by a Contracting Party or the Secretariat as proposed should be reflected in the Programme of Work with the associated budget allocation, as appropriate.

²¹ *Comment: Necessary in order to address a serious weakness in the process.*

²² **Note from the Secretariat:** The Compliance Committee may wish to consider this proposal as a way of strengthening compliance with the Barcelona Convention and its Protocols across the board by working in close coordination with MAP components.

20. The Secretariat shall, within two weeks of receiving a submission in accordance with paragraph 18 (b), send a copy of that submission to the Party concerned.

21. The Committee may decide not to proceed with a submission that it considers to be

- ~~anonymous,~~
- ~~de minimis or~~^{23 24}
- manifestly ill founded.

22. The Secretariat shall inform both the Party concerned and the Party indicated in paragraph 18(b) about the Committee's findings under paragraph 21 within two weeks of the date of the findings.

2. Referrals by the Secretariat

23. If the Secretariat becomes aware ~~from the periodic reports referred to in Article 26 of the Convention and any other reports submitted by the Parties²⁵ that that~~ a Party is facing difficulties in complying with its obligations under the Convention and its Protocols, the Secretariat shall ~~notify the Party concerned and discuss with it the Party concerned~~ ways of overcoming the difficulties. If the difficulties cannot be overcome within a maximum period of three months, the Party concerned shall make a submission on the matter to the Compliance Committee in accordance with paragraph 18 (a). In the absence of such a submission within six months of the date of the above mentioned notification, the Secretariat shall refer the matter to the Committee

2.bis Referral to the Committee on its own initiative

23. bis The Committee may examine, on the basis of the biennial activity reports or in the light of any other relevant information, any difficulties encountered by a Contracting Party in the implementation of the Convention and its Protocols. The Committee may ask the Party concerned ~~through the Secretariat to~~²⁶ to provide all additional information. The Party concerned shall have a period of two months to respond.

Paragraphs 24 to 30 and 32 to 34 shall apply, *mutatis mutandis*, in the case of referral to the Committees on its own initiative.

3. Proceedings

24. The Party concerned may present information on the issue in question and present responses and/or comments at every stage of the proceedings. At the invitation of the Party concerned, the Committee may undertake on-site appraisals at the Party's own cost.²⁷

25. The Committee may:

- (a) ask the Party concerned to provide further information, including an assessment of the reasons
- (b) why the Party may be unable to fulfill its obligations; and with the consent of the Party concerned, gather information in the territory of that Party, including on-site appraisals.

26. In its deliberations, the Committee shall take into account all the available information concerning the issue in question, which shall also be made equally available to the Party concerned.

27. The Party concerned shall be entitled to participate in the discussions of the Committee and present its observations. The Committee may, if it considers it necessary in a particular case of non-compliance, ask the Party concerned to participate in the preparation of its findings, measures and recommendations.

²³ *Comment: Too restrictive (the first), too vague (the second)*

²⁴ **Note from the Secretariat:** The Compliance Committee may wish to consider retaining these key criteria which are also part of the admissibility criteria for dealing with communications from the public under paragraph 23.bis.

²⁵ *Comment: Too restrictive*

²⁶ *Comment: Reflects current practice*

²⁷ *Comment: The Compliance Committee has no funds to carry out on-site visits*

28. The Committee shall be guided by the principles of "due process" and "due diligence"²⁸ in order to ensure fairness and transparency.

29. The Committee shall, through the Secretariat, notify the Party concerned of its draft findings, measures and recommendations in writing within two weeks from the date of their completion. The Party concerned may comment in writing on the draft findings, measures and recommendations of the Committee within a period of time determined by the Committee and the Committee shall take the comments into account in finalizing its findings, measures and recommendations.²⁹

30. The Committee, any Party or others involved in its deliberations shall protect the confidentiality of information transmitted in confidence by the Party concerned.

VI Committee reports to the Meetings of the Contracting Parties

31. The Committee shall prepare a report on its activities.

- (a) The report shall be adopted in accordance with paragraph 16. Where it is not possible to reach agreement on findings, measures and recommendations by consensus, the report shall reflect the views of all Committee members.
- (b) As soon as it is adopted, the Committee shall submit the report through the Secretariat, including such recommendations on individual and general issues of non-compliance as it considers appropriate to the Parties for consideration at their next meeting.meeting.

VII Measures

32. The Committee may take one or more of the following measures with a view to promoting compliance and addressing cases of non-compliance, taking into account the capacity of the Party concerned, in particular if it is a developing country,³⁰ and also factors such as the cause, type, degree and frequency of non-compliance:

- (a) provide advice and, as appropriate, facilitate assistance;
- (b) request or assist, as appropriate, the Party concerned to develop an action plan to achieve compliance within a time frame to be agreed upon between the Committee and the Party concerned;
- (c) invite the Party concerned to submit progress reports to the Committee within the time frame referred to in subparagraph (b) above on the efforts it is making to comply with its obligations under the Barcelona Convention and its Protocols; and
- (d) make recommendations to the Meeting of the Contracting Parties on cases of non-compliance, if it finds that such cases should be handled by the Meeting of the Contracting Parties.

33. The Meeting of the Contracting Parties may decide, upon consideration of the report and any recommendations of the Committee, taking into account the capacity of the Party concerned, in particular if it is a developing country, and³¹ and also factors such as the cause, type and degree of non-compliance, appropriate measures to bring about full compliance with the Convention and its Protocols, such as:

- (a) facilitate implementation of the advice from the Committee and facilitate assistance, including, where appropriate, capacity-building, to an individual Party;
- (b) make recommendations to the Party concerned;
- (c) request the Party concerned to submit progress reports on achievement of compliance with the obligations under the Convention and its Protocols; and

²⁸ *Comment: Relates to impartiality and objectivity*

²⁹ *Comment: Logical step*

³⁰ *Comment: Very patronizing term, at least for the Parties to this Convention. The obligations are spelled out in the various texts and the Convention does not differentiate the Parties with regards to their obligations.*

³¹ *Comment: Very patronizing term, at least for the Parties to this Convention. The obligations are spelled out in the various texts and the Convention does not differentiate the Parties with regards to their obligations.*

- (d) publish cases of non-compliance.

34. In the event of a serious, ongoing or repeated situation of non-compliance by a Party, the Meeting of the Contracting Parties, where appropriate, may:

- (a) issue a caution;
- (b) issue a report of non-compliance regarding that Party; or
- (c) consider and undertake any additional action that may be required for achievement of the purposes of the Convention and the Protocols.

VIII Review of procedures and mechanisms

35. The Meeting of the Contracting Parties shall regularly review the implementation and effectiveness of the compliance mechanism and take appropriate action.

IX Relationship with Article 28 of the Convention (Settlement of Disputes)

36. These procedures and mechanisms shall operate without prejudice to the settlement of disputes provisions of Article 28 of the Convention.

X Sharing of information with other relevant multilateral environmental agreements

37. Where relevant, the Committee may solicit specific information, upon request by the Meeting of the Contracting Parties, or directly, from [other](#) compliance committees dealing with comparable matters [for other MEAs](#)^{32 33}, and shall report on its consultations to the Meeting of the Contracting Parties.

XI Secretariat

38. The Coordinating Unit shall serve as the Secretariat of the Committee. It shall, inter alia, arrange and service the meetings of the Committee.

³² *Comment: For clarification purposes*

³³ **Note from the Secretariat:** The Secretariat wish to bring to the attention of the Compliance Committee that this proposal can be construed as limiting the possibility of creating synergies with other Mechanisms of Compliance which may not operate under Multilateral Environmental Agreements (MEAs).