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10th Meeting of the Compliance Committee of the Barcelona Convention
and its Protocols

Athens, Greece, 21-22 May 2015

Agenda Item 7: Implementation of the Reform of the Initiative Power Granted to the Compliance Committee

Background document on the initiative Power of the Compliance Committee

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I – Introduction

1. The acknowledgement of an initiative power to the Compliance Committee of the Barcelona Convention doesn't constitute an exceptional case in the field of the legal environmental conventions. Most multilateral environmental conventions providing a compliance Committee procedure granted to it the right to examine from its own initiative cases of non compliance resulting either from state reports or information received by the Committee or information requested by it.

2. Decision IG. 17/2 on Procedures and Mechanisms on Compliance under Barcelona Convention and its protocols provides two cases of intervention of the Compliance Committee. The first one concerns submissions by a Party in respect of its own actual or potential situation of non compliance (article 18 (a)) or a Party in respect of another Party's situation of non compliance (article 18 (b)).

3. The second one is related to Referrals by the Secretariat. Section V, paragraph 23 of Decision IG. 17/2 provides for referral to the Compliance Committee through the Secretariat. This Article states if the Secretariat becomes aware from the periodic reports referred to in Article 26 of the Convention and of any reports submitted by the Parties 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 ways for overcoming these difficulties. In the case 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). Article 23 precise that in the absence of such submission within six months of the date of this notification, the Secretariat shall refer to the Compliance Committee. In the case of a submission made by a Party to the Committee, the Committee may, in accordance with Article 25 of the Decision IG. 17/2 ask the Party concerned to provide further information or gather information in the territory of that Party with its agreement.

II – The reasons of the adoption of an initiative power to the Compliance Committee.

4. The procedure for makings referrals to the Committee as defined in paragraph 18 and 23 of the Procedures and Mechanisms on compliance has never as yet been implemented. This can be ascribed to several factors: the first derives from the fact that any Party will clearly be reluctant to alert the Committee to submit its own case of non compliance. This reluctance will be even greater in situations where a Contracting Party has to refer a case of non compliance to the Committee for its consideration that it has identified about another Party. In that regard, during the presentation of its biennial activity report for the Biennium 2010-2011 to the Seventeenth Meeting of the Contracting Parties, the Chairperson of the Compliance Committee noted that, over the previous two years, no cases of non-compliance or difficulty in the application of the Convention or its protocols have been reported to the Committee. In an effort to boost the referral arrangements set out in Section V of Decision IG. 17/ 2, the Chairperson of the Compliance Committee requested in the presentation of its Report the Contracting Parties to consider the possibility of introducing a third modality for referral to the Compliance Committee and suggested that they adopt a draft decision to this effect at the Eighteenth Meeting of the Contracting Parties.

5. Taken into consideration the “chomage technique”, the Compliance Committee discussed at its sixth Meeting held in Athens on 30 January 2013 on the possibility of adoption of an self-referral to the benefit of the Compliance Committee (cf. note UNEP (DEPI) MED CC6/ 7). In that regard, the Committee put forward in its Activities Report for the biennium 2012-2013 several arguments in favour of the adoption of an Initiative power. The Committee underlined that this new competence would contribute in particular to strengthen the Committee itself, to make its actions more dynamic and to facilitate its rapid intervention in case of non-compliance of which it may become aware. In conclusion of the debates of the members of the Committee, the Chairperson proposed to two members to provide comments on the draft amendment proposed by the Secretariat in the document CC.6/7 here above mentioned and to prepare a revised working document.

6. The note (UNEP(DEPI)/ MED CC.7/6) submitted at the seventh Meeting of the Compliance Committee put several others arguments in favor of the proposed reform: This new power would mainly make it possible to crystallize and strengthen the role of the Committee as a body primarily intended "to assist the Contracting Parties" (preamble to Decision IG 19/1) and also mandated to "facilitate and promote compliance with the obligations" (paragraph 1 of Decision IG 17/2). As the cornerstone of the compliance mechanism, the Committee possesses ample authority to identify cases of non-compliance by directly requesting the Party concerned to explain its situation of non-compliance. This system of referral on the Committee's initiative presents the main advantage of rapid implementation by establishing a direct link between the Committee and the Party involved in non-compliance. It would also contribute to the progressive democratization initiative according to article 15 of the Convention on information and public participation. The note underlined that the only difference to the existing procedures is that the Committee has more opportunity to exercise its mission to render the system of Barcelona more effective in accordance with the objectives set by Decision IG 17/2. In that regard, the note proposed a short amendment of Decision IG.17/2 as follows:

"3. Initiative of the Committee

23a. "The Committee may examine, on the basis of the biennial activity reports or in the light of information received from the partner NGOs of the MAP or any other [relevant] source of information, the difficulties encountered by a Contracting Party in the application of the Convention and its protocols. [The Committee shall examine the information collected in a non-discriminatory, non-arbitrary and objective manner]. The Committee shall request the Party concerned to provide 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 initiation by the Committee".

7. The Eighteenth Meeting of the Contracting Parties (Istanbul/ December 2013) approved the addition of a paragraph 2a to Section V of Annex III to Decision IG.17/2 on Procedures and Mechanisms on compliance concerning the Committee's power of initiative which provided as follows:

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 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 Committee on its own initiative.

III – Exercise of the initiative power granted to the Compliance Committee

8. The initiative power of the Compliance Committee is clearly independent of the others referrals provided by Decision IG. 17/2. This new referral is triggered in two cases: Either the Committee may intervene on the basis of the biennial activities reports submitted by the Contracting Parties accordingly to the new article 23bis of Decision IG. 17/ 2 or it has the possibility to intervene at the request of the Meeting of the Contracting Parties on the basis of the assessment of the biennium Reports submitted by Contracting Parties accordingly Article 17 paragraph b of Decision IG. 17/2. That means that the initiative power of the Committee is strictly limited to the Biennium reports. Regarding others Reports submitted by Parties, the Committee could be seized only by the Meeting of the Contracting Parties or the Secretariat.

9. The new article 23 bis states that the Committee may also examine any difficulties encountered by a Contracting Party in the implementation of the Convention and its Protocols "*in the light of any relevant information*". This wording differs of the initial text submitted to the Meeting of Contracting

Parties which proposed an assessment of the Compliance Committee “*in the light of information received from the partner NGOs of the MAP (...)*”. The Compliance Committee’s proposal allowed the possibility for NGO’s to communicate informations to the Committee which underlined it would be reasonable to give this opportunity to at least those organizations which have an observer status under article 20 of the Barcelona Convention. This would also have the merit of rendering effective Decision IG. 19/6 of the sixteenth Meeting of Contracting Parties (Marrakesh 2009) on Cooperation and partnership between MAP and civil society.

10. It is true that the content of this sentence doesn’t refer explicitly to the possibility for the Compliance Committee to get officially information from NGO’s. However, the reference to "other relevant sources of information" to the Committee gives to it a wide opportunity to obtain information from various stakeholders both from observers referred at article 20 of the Barcelona Convention as well as from the Public as defined in Rule 3.12 of the Rules of Procedure of the Compliance Committee adopted by Decision IG. 19/1.

IV - Conclusion

11. While it is true the initiative power of the Compliance Committee is independent of the other cases of consultation provided by IG Decision. 17/2, the Compliance Committee would coordinate the implementation of its initiative power with the referrals of the Secretariat according to article 23 of the Decision IG. 17/ 2. It is expected that the Compliance Committee will discuss this issue at its 10th Meeting.