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DRAFT PAPER ON A POSSIBLE COMPLIANCE MECHANISM UNDER THE BARCELONA CONVENTION AND ITS PROTOCOLS

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Introduction

1. Since 1976 the Mediterranean region possesses a legal system (the Barcelona Convention and its Protocols) for the protection of the sea and its coastal zones. An update of the text of the Convention was adopted by the Contracting Parties in 1996, followed by the update of the text of other Protocols and development of new Protocols.

2. Article 27 of the revised Convention provides for:

The meetings of the Contracting Parties shall, on the basis of periodical reports referred to in Article 26 and any other report submitted by the Contracting Parties, assess the compliance with the Convention and the Protocols as well as the measures and recommendations. They shall recommend, when appropriate, the necessary steps to bring about full compliance with the Convention and the Protocols and promote the implementation of the decisions and recommendations.

3. The Contracting Parties in 1996 committed themselves to set up a reporting system under the Barcelona Convention and its Protocols. In Catania, at their 13th meeting (2003), the Contracting Parties decided to start implementing Article 26 of the revised Convention by promoting the preparation and submission of the national reports on the implementation of the Barcelona Convention and its Protocols.

4. They also decided to establish a Working Group of Legal and Technical experts on Compliance (here in after called "Working Group") for preparing a document-platform related to a possible compliance mechanism under the Barcelona Convention. The Working Group held two meetings in Athens (first meeting on 8 and 9 November 2004 and second meeting on 11 and 12 April 2005) in order to review the legal basis for the establishment of a compliance mechanism and to elaborate a possible compliance mechanism under the Barcelona Convention and its Protocols. At its first meeting the Working Group discussed a document prepared by the Secretariat entitled "Setting up an implementation and compliance mechanism under the Barcelona Convention and its Protocols". The Working Group asked the Secretariat to revise this document based on the discussion at its first meeting and to submit a revised document to its second meeting. Furthermore it asked the Secretariat to prepare "a draft paper on the main elements for a possible compliance mechanism on the basis of its findings and conclusions", including "draft criteria to be applied by the CPs in proposing candidates for membership in the Compliance Committee". At its second meeting (held on 11 and 12 April 2005 in Athens) the Working Group of Legal and Technical experts on Compliance discussed the revised document on "setting up an implementation and compliance mechanism under the Barcelona Convention and its Protocols" as well as a "draft paper on the main elements for a possible compliance mechanism".

5. As a result of its work at the two meetings the Working Group on Implementation and Compliance under the Barcelona Convention presented a "draft paper on the main elements for a possible compliance mechanism" under the Barcelona Convention and its Protocols to the 14th Meeting of the Contracting Parties in 2005. The draft paper drew upon the experience of international and regional international agreements addressing environmental issues, which had established compliance mechanisms and procedures. Attention was focused on international agreements to which Parties to the Barcelona Convention and its Protocols are parties. In particular, the compliance mechanisms and procedures established under the Montreal Protocol on Substances that Deplete the Ozone Layer, the Basel Convention on Transboundary Movement of Hazardous Wastes and Their Disposal, the Cartagena Protocol on Biological Safety and the Kyoto Protocol to the United Nations Framework Convention on Climate Change served as sources for the elaboration of elements for a compliance mechanism under the Barcelona Convention and its Protocol. Furthermore, implementation and compliance procedures established under the Berne

Convention for the Conservation of European Wildlife and Natural Habitats, the Convention on Long-Range Transboundary Air Pollution, the Espoo Convention, the Aarhus Convention, the Protocol on Water and Health under the Convention on the Protection of Transboundary Water Courses and International Lakes and the OSPAR Convention were taken into consideration. Moreover, the experience gained by international organisations, such as IMO and WHO, in dealing with issues of implementation of and compliance with international agreements, was considered in the elaboration of the elements of a compliance mechanism under the Barcelona Convention and its Protocols.

6. The 14th Meeting of the Contracting Parties decided to extend the mandate of the Working Group on implementation and compliance and its membership to include all Contracting Parties with a view to developing a full compliance mechanism for adoption by the 15th Meeting of the Contracting Parties in 2007. It stated that the Working Group should develop the compliance mechanism on the basis of the principles, findings, recommendations and deliberations set out in document UNEP(DEC)MED WG.270/7.

Draft Text for a compliance mechanism

*The following draft text for a possible compliance mechanism, based on the principles, findings, recommendations and deliberations set out in document UNEP(DEC)/MED WG.270/7, is submitted to the third meeting of the Working Group for further consideration. The draft text intends to propose to the meeting a full compliance mechanism as has been requested by the 14th Meeting of the Contracting Parties. In elaborating the draft text the structure of already established compliance mechanisms and procedures under other multilateral environmental agreements to which Contracting Parties are parties has been followed. The new text (added to the text already considered by the Working Group at its second meeting and transmitted to the 14th Meeting of the Contracting Parties in document UNEP(DEC)/MED WG.270/7) is set out in **bold** and is underlined.*

I. Objective (of the compliance mechanism)

7. The objective of the compliance mechanism is to facilitate and promote compliance with the commitments under the Barcelona Convention and its Protocols, taking into account also the specific needs of developing countries.

II. Compliance Committee

8. A compliance committee, hereafter referred to as “the Committee”, is hereby established.

9. The Committee shall consist of seven members elected by the meeting of the Contracting Parties. For each member of the Committee, the meeting of the Contracting Parties shall elect an alternate member. The members and the alternates are elected for a term of four years.

10. The Meeting of the Contracting Parties shall at its meeting establishing the compliance mechanism elect three members and three alternates to serve until the end of its next meeting and four members and four alternates for a full time of office. A full term of office commences at the end of the ordinary meeting of the Contracting Parties and runs until the second ordinary meeting of the Contracting Parties thereafter.

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

12. Members of the Committee and their alternates shall serve in their personal/individual capacities.

13. The members and their alternates shall be elected from among candidates nominated by the Contracting Parties. Contracting Parties shall consider the nomination of candidates who are members of the civil society.

14. Candidates nominated shall be persons of high moral character and shall have recognized competence relating to the matters dealt with by the Barcelona Convention and its Protocols as well as in relevant fields such as the scientific, technical, socio-economic or legal fields. Each nomination shall be accompanied by a curriculum vitae (CV) of the candidate not exceeding 600 words and may include supporting material.

15. In electing members and their alternates of the Committee, the Meeting of the Contracting Parties is to be guided by equitable geographic representation and by rotation in order to ensure participation by nominated individuals of all Contracting Parties as members of the Committee within a reasonable period of time as well as balance among scientific, legal and technical expertise.

16. The Committee shall elect its officers – a Chairperson and two Vice-Chairpersons – based on equitable geographic representation and rotation.

17. Members of the Committee may be re-elected for one consecutive term.

IIbis. Meetings of the Committee

18. The Committee shall, unless it decides otherwise, meet at least once a year.

19. **For each meeting a quorum of at least [five] members is required. “Members” means the members or their respective alternates present at the meeting.**

20. **The Committee shall make every effort to reach agreement on its findings and recommendations by consensus. [If all efforts to reach consensus have been exhausted, the Committee shall as a last resort adopt its findings and recommendations by at least a three-fourth majority of the members present and voting. “Members present and voting” means members or their respective alternates present and casting an affirmative or a negative vote.]**

21. **Without prejudice to paragraph 1 above, the Committee may, in appropriate circumstances, undertake some of its activities through electronic communications.**

III. Role of the Committee

22. **The Committee shall:**

- (a) **consider any submissions made in accordance with section IV.1 below:**
- (b) **review, at the request of the Meeting of the Contracting Parties, general issues on compliance with or implementation of the commitments under the Convention and its Protocols, taking into account the information provided in the reports communicated in accordance with Article 26 of the Convention.**

IV. Procedure

1. Submissions

23. Submissions may be made by

- a. a Party in respect of its own situation of compliance;
- b. a Party in respect of another Party's situation of compliance;

Option 1

- c. The Secretariat on the basis of:
 - (i). reports submitted by the parties pursuant to article 26 of the revised convention **[and any other report as requested by the meeting of the Parties;**
 - (ii). **official reports published in the framework of global multilateral environmental agreements relevant to the Mediterranean sea and its coastal region;**

- (iii). assessment reports on the state of marine and coastal environment of the Mediterranean sea published by scientific regional and international bodies, including the UN bodies;
- (iv). assessment reports on the state of Mediterranean sea and its coastal region published by the Secretariat and its Regional Activity Centers at the request of the meeting of the Contracting Parties].

Option 2

- c. The Secretariat on the basis of reports submitted by the Parties pursuant to article 26 of the revised Convention [and any other report as requested by the meeting of the Parties];
- d. Other sources [such as official reports published in the framework of global multilateral environmental agreements relevant to the Barcelona Convention and its Protocols; assessment reports on the state of marine and coastal environment of the Mediterranean sea published by scientific regional and international bodies, including the UN bodies; assessment reports on the state of Mediterranean sea and its coastal region published by the Secretariat and its Regional Activity Centers at the request of the meeting of the Contracting Parties].

Option 3

- c. Other sources [such as official reports published in the framework of global multilateral environmental agreements relevant to the Barcelona Convention and its Protocols; assessment reports on the state of marine and coastal environment of the Mediterranean sea published by scientific regional and international bodies, including the UN bodies; assessment reports on the state of Mediterranean sea and its coastal region published by the Secretariat and its Regional Activity Centers at the request of the meeting of the Contracting Parties].

2. Proceedings

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

25. The Secretariat shall, within two weeks of its receiving a submission, send a copy of that submission to the Party whose compliance is at issue.

26. The Committee may determine not to proceed with a submission that it considers is
- anonymous,
 - de minimis, or
 - manifestly ill founded.

27. The Secretariat shall inform the Party concerned about such findings taken by the Committee within two weeks of the date of the findings.

28. The Party concerned may present information on the issue in question, present responses and/or comments at every step of the proceedings. Upon the invitation of the Party concerned, the Committee may undertake on site appraisals.

29. The Committee may ask the Party concerned to provide further information and may, with the consent of any Party concerned, gather information in the territory of that Party, including on site appraisals.

30. In its deliberations the Committee shall take into account all the available information concerning the issue in question.

31. The Party concerned is entitled to participate in the discussions of the Committee and present its observations. The Party concerned shall not take part in the preparation and adoption of any findings, any measures or any recommendation of the Committee.

32. The Committee shall be guided by the principle of "due process" in order to ensure fairness and transparency.

33. **The Committee, any Party or others involved in its deliberations shall protect the confidentiality of information received in confidence.**

34. **Findings and recommendations of the Committee shall include conclusions and reasons.**

35. **The Committee shall, through the Secretariat, notify the Party concerned of its findings and recommendations, including conclusions and reasons therefore, in writing. The Party concerned shall be given an opportunity to comment in writing on any findings and recommendations, including conclusions and reasons, of the Committee.**

36. **The Secretariat shall make final decisions available to other Parties and to the public.**

IVbis. Committee Reports to the Meetings of the Contracting Parties

37. **The Committee shall report on its activities at each ordinary meeting of the Contracting Parties and make such recommendations as it considers appropriate. Each report shall be finalized by the Committee not later than [twelve] weeks in advance of the Meeting of the Contracting parties at which it is to be considered. Every effort shall be made to adopt the report by consensus. Where this is not possible, the report shall reflect the views of all the Committee members. Committee reports shall be made available to the public.**

V. Measures

38. 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 to comply, in particular developing countries, as well as factors such as the cause, type, degree and frequency of non-compliance:

- a) provide advice or facilitate assistance to the Party concerned, as appropriate;
- b) request or assist, as appropriate, the Party concerned to develop a compliance 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 on the efforts it is making to comply with its obligations under the Barcelona Convention and its Protocols; **or**

- d) make recommendations to the Meeting of the Contracting Parties on cases of non-compliance, if it finds that these cases should be handled by the Meeting of the Contracting Parties.

39. The Meeting of the Contracting Parties may, upon consideration of **[a] [the]** report and any recommendations of the committee, taking into account the capacity of the Party concerned, in particular developing countries, to comply, as well as factors such as the cause, type, degree and frequency of non-compliance, decide upon appropriate measures to bring full compliance with the Convention and its Protocols:

- a) provide advice and facilitate assistance to individual Parties;
- b) make recommendations to the Party concerned;
- c) request the Parties concerned to submit progress reports regarding the achievement of compliance with the Convention and its Protocols;
- d) issue declarations of non-compliance;
- e) issue a caution to the Party concerned; **or**
- f) publish cases of non-compliance.

VI. Review of the procedures and mechanisms

40. The Meeting of the Contracting Parties shall review the effectiveness of these procedures and mechanisms, address repeated cases of non-compliance and take appropriate action.

Vibis. Relationship with Article 28 of the Convention (Settlements of Disputes)

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

VII. Secretariat

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