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17th Meeting of the Compliance Committee of the Barcelona Convention and its Protocols

Teleconference, 10-11 June 2021

Agenda Item 4: Effective Functioning of the Compliance Committee

Outcome of the Intersessional Work of the Compliance Committee Sub-Groups on Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols and Rules of Procedure of the Compliance Committee

Note of the Secretariat

This **document** resubmits document UNEP/MED CC.16/12 as tabled at the 16th Meeting of the Compliance Committee (session 27-28 January 2021) following the conclusion of that meeting to defer in-depth discussion on this subject matter at the 17th Meeting of the Compliance Committee.

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MEDITERRANEAN ACTION PLAN

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

Teleconference, 16-18 June and 27-28 January 2021

Agenda Item 8: Effective Functioning of the Compliance Committee

Outcome of the Intersessional Work of the Compliance Committee Sub-Groups on Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols and Rules of Procedure of the Compliance Committee

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Note by the Secretariat

The Compliance Committee discussed at the first session of its 16th meeting (Teleconference, 16-18 June 2020) how to enhance its effective functioning in order to deliver the 2020-2021 Programme of Work of the Compliance Committee (COP 21 Decision IG.24/1), which identifies the following deliverables for COP 22: (1) “To continue work in order to enhance Compliance Mechanisms’ and Procedures’ effectiveness”; and (2) “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 Mechanisms on Compliance for consideration by COP 22”. Different avenues were explored at the meeting to deliver on the mandate to enhance Compliance Mechanisms’ and Procedures’ effectiveness and to review the Rules of Procedure of the Compliance Committee, on the understanding that a full review of the Procedures and Mechanisms and the Rules of Procedures of the Compliance Committee was not the goal but rather the identification of key areas for improvement of the Procedures and Mechanisms and for the Rules of Procedure.

The first session of the 16th Meeting of the Compliance Committee concluded as follows:

1. The Compliance Committee agreed to establish the two sub-groups below to work intersessionally with Daniela Addis as facilitator, as follows:
 - a. Sub-group: Rules of Procedure. It is composed of Odeta Cato, Samira Hamidi, Evangelos Raftopoulos, Selma Osmanagic-Klico, Orr Karassin, Milena Batakovic and Daniela Addis and will work on the Rules of Procedure by addressing outstanding issues as already identified by the Bureau, the discussions that have taken place in the meetings of the Compliance Committee and any other issues that may merit consideration in order to strengthening the effectiveness of the Compliance Committee; and
 - b. Sub-group: Procedures and Mechanisms. It is composed of Odeta Cato, Xenia Loizidou, Selma Osmanagic-Klico, Ezzedine Jouini-Berzine, Orr Karassin, Daniela Addis and Evangelos Raftopoulos and will produce a set of recommendations identifying which points of the Procedures may need improvement for COP 22 to consider.
 - c. As a point of departure, the Chair of the Compliance Committee supported by the Secretariat will work on the Terms of Reference (ToR) for the two sub-groups to conduct their work.
2. The Compliance Committee also concluded to establish a channel of communication with the Bureau and MAP Focal Points for the Compliance Committee to gather feedback on the follow-up of their recommendations and the modalities to be defined by the Working Group.

Following-up on the conclusions of the first session of the 16th Meeting of the Compliance Committee, relevant documentation to support intersessional work was collected and shared through the INFO/RAC Groupware platform <http://groupware.info-rac.org/compliance-committee>. Furthermore, ToR, as contained in Annex I to this document, were agreed by the 1st Meeting of the two Sub-Groups on Rules of Procedure of the Compliance Committee and on Procedures and Mechanisms on Compliance (Teleconference, 14 July 2020). Three more teleconference meetings followed, on 11 and 23 September 2020 and on 13 November 2020, where under the guidance of Daniela Addis, as Facilitator, the Sub-Groups discussed a number of proposals for amending the Procedures and Mechanisms and the Rules of Procedure. Reports of the four intersessional meetings held by the Compliance Committee Sub-Groups are available at the INFO/RAC Groupware platform.

The result of the intersessional work carried out by the two Sub-Groups is presented in this document in the form of reviewed Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols (Annex II) and reviewed Rules of Procedure of the Compliance Committee (Annex III). The proposed amendments, as contained in Annexes II and III to this

document, come exclusively from the Sub-Groups on Rules of Procedure of the Compliance Committee and on Procedures and Mechanisms on Compliance.

To facilitate the meeting to identify the nature and scope of the proposed amendments to the Procedures and Mechanisms and the Rules of Procedure, amendments are indicated in track changes. In considering the proposed amendments, and in order to optimize decision-making at the Meeting of the Contracting Parties (COP) level, discussion should be framed in terms of whether they contribute to enhancing the effectiveness and functioning of the Compliance Committee. The proposed recommendations for amending key provisions of the Procedures and Mechanisms and associated rules of the Rules of Procedure may lead to COP22, if so decided, to provide a mandate for the amendment of the Procedures and Mechanisms through the most appropriate arrangements, including an *ad hoc* working group composed of the Contracting Parties with participation of MAP partners and observers as appropriate or to assign this task to the Compliance Committee. It is for the COP to decide the most adequate modality. In this context, the Compliance Committee's attention is drawn to the following key areas to improve the effectiveness of the Compliance Committee, as identified by the Sub-Groups on Rules of Procedure of the Compliance Committee and on Procedures and Mechanisms on Compliance at their meeting held on 11 September 2020:

- a. Membership to the Compliance Committee. The proposal is for the Compliance Committee to be made up exclusively of Members, the number of which, within the options of seven, nine or fourteen Members, needs to be determined. This proposal is reflected in paragraph 3 of the reviewed Procedures and Mechanisms and has been carried out throughout the entire text of the Procedures and the reviewed Rules of Procedure, as appropriate. This includes, the provisions on quorum, i.e. paragraph 15 of the reviewed Procedures and Mechanisms and Rule 17 of the reviewed Rules of Procedure;
- b. Nomination and election of candidates to the Compliance Committee. The proposal is to underline the importance of Contracting Parties timely nominating and electing candidates to the Compliance Committee to ensure its renewal at the end of each Ordinary Meeting of the Contracting Parties. This proposal is reflected in paragraph 2 of the reviewed Procedures and Mechanisms and adds to the proposal to ensure the proper functioning of the Compliance Committee by stressing the importance of the active and consistent participation of all members in the work of the Compliance Committee. This proposal is taken in Rule 11 of the reviewed Rules of Procedure; under which the term of office of members shall be deemed to be terminated, if they are absent for two consecutive meetings of the Compliance Committee without providing any reasonable grounds;
- c. Criteria for the selection of candidates to the Compliance Committee. The proposal is (a) to highlight that the background of the members of the Compliance Committee should be in relevant legal, scientific and technical fields and (b) to encourage Contracting Parties to avoid any conflict of interest by the nomination of government officials operating in the framework of the Barcelona Convention. This proposal is reflected in paragraph 9 of the reviewed Procedures and Mechanisms; and
- d. Enhancement of synergies. The proposal is to add a specific provision setting up a structured collaboration between the Compliance Committee and the other bodies of the UNEP/MAP-Barcelona Convention system, by providing for a stable participation of a representative of the Compliance Committee in the meetings of the Bureau, as appropriate and as Bureau's agenda permits, the MAP Focal Points and the MAP components'/Thematic Focal Points, in order to have a continued and reciprocal update and facilitate collaboration. This is reflected in new paragraph 37.bis of the reviewed Procedures and Mechanisms.

The Secretariat also wishes to draw the Compliance Committee's attention to the proposals below, coming from the Sub-Groups on Rules of Procedure of the Compliance Committee and on Procedures and Mechanisms on Compliance. The list below is not exhaustive and as discussion evolves at the meeting, the Secretariat would raise its observations, as appropriate, and may refer the subject matter under discussion to the UNEP Principal Legal Officer, where relevant.

- a. Paragraph 13.c of the reviewed Procedures and Mechanisms. The proposal is to confer on the Compliance Committee the power to admit as observers to its meetings members of the civil society on a case-by-case basis;
- b. Rule 3bis.5 of the reviewed Rules of Procedure. Under Rules 10.2 and 10.3 of the Rules of Procedure, if a member or alternate member resigns or is unable to complete his or her term of office, a procedure is in place for the Contracting Party that nominated that member or alternate member to nominate a replacement to serve for the remainder of that member's or alternate member's mandate, subject to the endorsement of the Bureau. The proposal is to replace Rules 10.2 and 10.3 with Rule 3bis.5 under which the Bureau rather than the concerned Contracting Party is first called to appoint a new member from the list of candidates nominated by the Contracting Parties;
- c. Rule 4.1 of the reviewed Rules of Procedure. Proposal to expand the cases under which the Compliance Committee can hold additional meetings by referring to workload requirements arising from referrals by the Committee on its own initiative, subject to the availability of funds;
- d. Rule 23 of the reviewed Rules of Procedure. Proposal of having English and French as the working languages of the Compliance Committee, though submissions and communications and corroborating information is accepted in any of the four official languages of the meetings and conferences of the Contracting Parties; and
- e. Rule 31.bis of the reviewed Rules of Procedure. Proposal of integrating the Admissibility Criteria (COP20 Decision IG. 23/2) into the Rules of Procedure by adding a new section on procedures for handling communications and amending the Admissibility Criteria building in ongoing experience.

Following-up on the conclusion of the first session of the 16th Meeting of the Compliance Committee to establish a channel of communication with the Bureau and MAP Focal Points for the Compliance Committee to gather feedback on the follow-up of their recommendations, during the intersessional work of the Sub-Groups, the importance of setting up a stable process for the Compliance Committee, through the Chair, Vice-Chair or a delegated member to participate in the meetings of the Bureau and MAP Focal Points was stressed. In this context and in preparation for the next, 91st, Bureau meeting to take place in June 2021, the following points of reflection on how to further strengthening the role of the Compliance Committee are put forward for this resumed session to consider and share with the Bureau for its input on how:

- a. to optimize the capacity of the MAP system, including MAP components, by mobilizing technical and legal capacity, including external expertise as need be, in order to support the work of the Compliance Committee in facilitating and promoting compliance with the obligations under the Barcelona Convention and its Protocols;
- b. to foster closer collaboration with other Multilateral Environmental Agreements (MEAs) compliance procedures and mechanisms in synergistically promoting best practices to achieve an increased impact and effectiveness of the respective programmes of work and the faster attainment of complementary objectives; and
- c. to enhance the visibility of the work of the Compliance Committee through a channel of communication with the Bureau, MAP Focal Points and Thematic Focal Points Meetings.

This adds to the ongoing work in revisiting key provisions of the Procedures and Mechanisms on Compliance aimed at presenting to COP22 a proposal for amending the Procedures for the next biennium as an avenue for enhancing the effectiveness and functioning of the Compliance Committee.

Action requested

The resumed session of the 16th Meeting of the Compliance Committee is expected to examine the information contained in this document and advise on next steps in view of COP 22.

**Outcome of the Intersessional Work of the Compliance Committee Sub-Groups on
Procedures and Mechanisms on Compliance under the Barcelona Convention and its
Protocols and Rules of Procedure of the Compliance Committee**

Annex I

**Terms of Reference for the Intersessional Compliance Committee Sub-Groups on the Rules
of Procedure of the Compliance Committee and the Procedures and Mechanisms on
Compliance**

Background and purpose

1. 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. Two of the activities included in the referred Programme of Work are:
 - (b) under the heading “*Enhancement Activities*”: “*To continue work in order to enhance Compliance Mechanisms’ and Procedures’ effectiveness*”; and
 - (c) under the heading “*Functioning of the Compliance Committee*”: “*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*”.
2. To take forward work as per its 2020-2021 Programme of Work, the 16th Compliance Committee Meeting (Teleconference, 16-18 June 2020) discussed under its Agenda Item 8 actions for enhancing its effective functioning. Under this agenda item, documents UNEP/MED CC.16/9¹ and UNEP/MED CC.16/10² were tabled for the Compliance Committee to consider.

Organization of work

¹ UNEP/MED CC.16/9 “Effective Functioning of the Compliance Committee”. This document presents a proposal from a former Member of the Compliance Committee to amend the Procedures and Mechanisms of Compliance under the Barcelona Convention and its Protocols together with key points identified by the Secretariat for the consideration of the Compliance Committee. The proposal to amend the Procedures and Mechanisms was originally tabled at the 14th Meeting of the Compliance Committee (Athens, Greece, 27-29 June 2018), which agreed to defer it to a later stage due to the heavy workload ahead in preparation of its 15th Meeting and COP 21.

² UNEP/MED CC.16/10 “List of Issues for Legal Interpretation Concerning the Procedures and Mechanisms on Compliance and the Rules of Procedure of the Compliance Committee”. This document presents legal advice provided by the UNEP Principal Legal Officer on a number of issues raised by the 14th Compliance Committee Meeting (Athens, Greece, 27-29 June 2018) and the 86th Meeting of the Bureau (Teleconference, 11 July 2018) on the interpretation of the Procedures and Mechanisms on Compliance and Rules of Procedure of the Compliance Committee. The legal advice provided by the UNEP Principal Legal Officer was tabled at the 15th Meeting of the Compliance Committee (Athens, Greece, 25-26 June 2019), which concluded as follows (UNEP/ MED CC. 15/15 §27):
“with regards to the question posed by the 86th Meeting of the Bureau whether Alternate Members of the Compliance Committee can be elected as Committee officers (i.e. a Chairperson and two Vice-Chairpersons) under Rule 10 of the Procedures and Mechanisms of Compliance under the Barcelona Convention and its Protocols, the Compliance Committee agreed that officers are elected from the membership of the Compliance Committee, i.e. the seven Members; with regards to the question posed by the 86th Meeting of the Bureau whether Rule 7 of the Procedures and Mechanisms exclusively apply to the Members of the Compliance Committee, it is recommended to bring the matter to the attention of the Meeting of the Contracting Parties (COP 21) for a final decision. Should the decision be that Rule 7 applies equally to Members and Alternate Members of the Compliance Committee, it is advisable to revise Rule 7 of the Procedures and Mechanisms”.

Following-up on the conclusion from the 15th Compliance Committee Meeting, the definition of the scope of Rule 7 of the Procedures and Mechanisms was brought to the attention of COP 21. No specific advice was provided.

3. To ensure delivery of its 2020-2021 Programme of Work, the 16th Compliance Committee Meeting agreed to work intersessionally in two Sub-Groups, open to all Members (m.) and Alternate Members (a.m.) of the Compliance Committee and will work in a coordinated manner with Daniela Addis acting as facilitator:

(a) **Sub-group on Rules of Procedure of the Compliance Committee (WG RoP)**, composed of:

1. Daniela Addis (a.m.) - Facilitator
2. Milena Batakovic (a.m.)
3. Odeta Cato (m.)
4. Samira Hamidi (m.)
5. Orr Karassin (a.m.)
6. Selma Osmanagic-Klico (m.)
7. Evangelos Raftopoulos (m.)

(b) **Sub-group on Procedures and Mechanisms on Compliance (WG P&M)**, composed of:

1. Daniela Addis (a.m.)- Facilitator
2. Odeta Cato (m.)
3. Ezzedine Jouini-Berzine (m.)
3. Orr Karassin (a.m.)
4. Xenia Loizidou (a.m.)
5. Selma Osmanagic-Klico (m.)
6. Evangelos Raftopoulos (m.)

4. The two Sub-Groups will conduct their work in English.

Assignment

5. The Sub-Group RoP will aim to review the Rules of Procedure of the Compliance Committee by:

(a) **addressing outstanding issues as already identified by the 86th Meeting of the Bureau.**
This would entail:

- i. considering whether and how to reflect in the Rules of Procedure of the Compliance Committee the agreement by the 15th Meeting of the Compliance Committee that their officers (i.e. a Chairperson and two Vice-Chairpersons) are elected from the membership of the Compliance Committee, i.e. seven Members;
- ii. considering whether the requirement that the Compliance Committee shall not include more than one national of the same State applies to both Members and Alternate Members and whether and how to reflect the position on this matter in the Rules of Procedure of the Compliance Committee; and,
- iii. following the challenges under points (i) and (ii), further considering whether the requirement that the Compliance Committee shall consist of seven Members for each of which is also elected an Alternate Member, should be amended with the provision that the Committee should consist of Members, and whether and how to reflect the position on this matter in the Procedures and Mechanisms and in the Rules of Procedure of the Compliance Committee.

(b) **addressing the points discussed at the 16th Meeting of the Compliance Committee**, including but not limited to the interplay between the Rules of Procedure of the Compliance Committee and the Admissibility Criteria³ and considering whether and how to reflect such points in the Rules of Procedure of the Compliance Committee; and

³ “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).

(c) **addressing any other issues that may merit consideration** in order to strengthening the effectiveness of the Compliance Committee; and considering whether and how to reflect such issues in the Rules of Procedure of the Compliance Committee.

6. On the basis of work undertaken, in preparation for the 17th Meeting of the Compliance Committee (Athens, Greece, 10-11 June 2021), this Sub-Group will present in coordination with the Sub-group P&M a proposal as appropriate for adjusting accordingly the Procedures and Mechanism on Compliance for consideration by COP 22.

7. **The Sub-Group P&M will aim to produce a set of recommendations identifying which points of the Procedures and Mechanisms on Compliance may need improvement for COP 22 to consider by identifying key areas to improve the effectiveness of the Compliance Committee and associated concrete proposals**, based on experience gained so far since the establishment of the Compliance Committee in 2008, as well as practices and working methods of other Compliance Mechanism, as appropriate. This would include following the challenges under points 5 (a) (i) and (ii) above, further considering whether the requirement that the Compliance Committee shall consist of seven Members for each of which is also elected an Alternate Member, should be amended with the provision that the Committee should consist of Members, and whether and how to reflect the position on this matter in the Procedures and Mechanisms and in the Rules of Procedure of the Compliance Committee.

8. In delivering this product in preparation for the 17th Meeting of the Compliance Committee (Athens, Greece, 10-11 June 2021), **the Sub-Group P&M will work in coordination with the Sub-group RoP.**

9. The two Sub-Groups should also work in defining the **modalities for establishing a channel of communication with the Bureau and MAP Focal Points for the Compliance Committee to gather feedback on the follow-up of their recommendations.**

Deadline for submission of the final report

10. Work of the two Sub-Groups referring to the Procedures and Mechanisms and the Rules of Procedure of the Compliance Committee shall be delivered in the form of:

(a) **a draft working document for the Resumed session of the 16th Meeting of the Compliance Committee (Athens, Greece, end of November or beginning of December 2020-tbc), to be finalized by 6 weeks before the opening of the meeting**, which presentation will be resumed and finalised half day before the meeting on plenary session;

(b) **a final working document for the 17th Meeting of the Compliance Committee (Athens, Greece, 10-11 June 2021) to be finalized by the second week of March 2021.**

Annex II

Reviewed Procedures and Mechanisms on Compliance under the Barcelona Convention and its Protocols

Note by the Secretariat: The text below builds on document UNEP/MEDCC.16/9 tabled at the 16th Meeting of the Compliance Committee (Teleconference, 16-18 June 2020) and has been reviewed in light of the intersessional work carried out by the Compliance Committee Sub-Groups on Procedures and Mechanisms on Compliance (P&M) and Rules of Procedure of the Compliance Committee (RoP), in their meetings held on 14 July, 11 and 23 September, and 13 November 2020 by teleconference.

Decision IG.17/2: Procedures and mechanisms on compliance under the Barcelona Convention and its Protocols (Consolidated text)⁴

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, Nature and Principles

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.

1.bis. The compliance procedure shall be facilitative, non-adversarial, dispute-preventing and cooperative in nature and its operation be guided by the principles of transparency, fairness, expedition as well as by equitable principles.

1ter. The compliance procedure shall be conducted by the principles of “due process” and “due diligence” in order to ensure fairness and transparency.

II Compliance Committee

2. A compliance committee, hereinafter referred to as “the Committee”, is hereby established.
3. The Committee shall consist of [seven] **[nine]** **[fourteen]** members elected by the Meeting of the Contracting Parties **before the end of each Ordinary Meeting of the Contracting Parties** from a list of candidates nominated by the Contracting Parties..
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. **For the principle of continuity of functions, the term of office of the Chair and two Vice-Chairs of the Compliance Committee is extended as appropriate until their successors are elected at an Ordinary Meeting of the Compliance Committee.**
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 elect for a full-term new members to replace those whose period of office is about to expire.
6. Members shall not serve on the Committee for more than two consecutive terms.

⁴ The 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.

7. 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.

8. Nominated candidates shall be persons of **high moral character and** recognized competence in the matters dealt with by the Barcelona Convention and its Protocols in relevant **legal**, scientific, **and** technical fields. Each nomination shall be accompanied by the curriculum vitae of the candidate. Contracting Parties **are encouraged to avoid any conflict of interest by nominating government officials operating in the framework of the Barcelona Convention.**

9. In electing members of the Committee, the Meeting of the Contracting Parties shall take into consideration equitable geographical representation, shall ensure rotation in order to secure the 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.

10. The Committee shall elect its officers – a Chairperson and two Vice-Chairpersons – on the basis of equitable geographic representation and rotation **to the extent possible and approve its Rules of Procedure.**

11. Members of the Committee shall serve in their **personal** capacities and shall act **with independence and impartially** in the interests of the Barcelona Convention and its Protocols for the protection of the Mediterranean Sea and its coastal area **avoiding any conflict of interest.**

III Meetings of the Committee

12. 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.

(a) 13. 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: 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;

(b) observers, in accordance with Article 20 of the Convention and the Rules of Procedure for the meetings and conferences of the Contracting Parties; **and**

(c) **on a case-by-case basis, the Committee may grant observer status to members of the civil society.**

~~14.~~

15. For each meeting, a quorum of **[five]** [seven] [ten] members is required.

16. 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. 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) 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 if related to the Compliance Committee mandate and its Programme of Work as adopted by the Ordinary Meeting of the Contracting Parties.**

17.bis In assessing and verifying information provided and the actual situation on the ground, the Committee is assisted by the MAP components responsible for the Barcelona Convention and its Protocols.

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.

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
- 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 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 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 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.

2. 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**.

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 fulfil 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.

28. “”.

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.

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 **and provide the reasoning for its findings, measures and recommendations.**
- (b) As soon as it is adopted, the Committee shall submit the report through the Secretariat **to the Meeting of the Contracting Parties.**

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, 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, 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 **measures**, 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
- (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 Enhancement of synergies

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37. In order to enhance synergies with mechanisms of compliance under other agreements, the Compliance Committee may consult with those mechanisms and invite them to attend its meetings, and report back to the Meeting of the Contracting Parties, including with recommendations as appropriate.

37.bis In order to ensure further improved coordination and cooperation between the Compliance Committee and the governing bodies of the Barcelona Convention and MAP components, a representative of the Compliance Committee shall participate in the meetings of the Bureau, the MAP Focal Points and MAP Components as appropriate, and report back to the Meeting of the Contracting Parties, including with recommendations as appropriate.

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.

Annex III

Reviewed Rules of Procedure of the Compliance Committee

Note by the Secretariat: The text below contained in COP18 Decision IG. 21/1 has been reviewed in light of the intersessional work carried out by the Compliance Committee Sub- Groups on Procedures and Mechanisms on Compliance (P&M) and Rules of Procedure of the Compliance Committee (RoP), in their meetings held on 14 July, 11 and 23 September, and 13 November 2020 by teleconference.

Rules of Procedure of the Compliance Committee

(COP 18, Decision IG.21/1)

Purposes

Rule 1

Within the framework of the implementation of the procedures and mechanisms on compliance under the Barcelona Convention and its Protocols, hereinafter called "compliance procedures and mechanisms", contained in the annex to decision IG 17/2 on compliance procedures and mechanisms, hereinafter called decision IG 17/2, as adopted by the 15th Meeting of the Contracting Parties, these rules of procedure shall apply to any meeting of the Compliance Committee, hereinafter called "the Committee", under the Convention and its related Protocols.

Rule 2

The Rules of Procedure for Meetings and Conferences of the Contracting Parties to the Barcelona Convention and its related Protocols shall apply mutatis mutandis to any meeting of the Committee unless otherwise stipulated in the rules set out herein and in decision IG 17/2, and provided that rules 18 and 19 on representation and credentials of the Rules of Procedure for Meetings and Conferences of the Contracting Parties do not apply.

Definitions

Rule 3

For the purposes of these rules:

1. "Convention and its related Protocols" means the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona Convention) adopted in 1976 and amended in 1995 and its related Protocols: Protocol Concerning Cooperation in Combating Pollution of the Mediterranean Sea by Oil and other Harmful Substances in Cases of Emergency (Emergency Protocol), Barcelona, 1976; Protocol Concerning Cooperation in Preventing Pollution from Ships and, in Cases of Emergency, Combating Pollution of the Mediterranean Sea (Prevention and Emergency Protocol), Malta, 2002; Protocol for the Prevention of Pollution in the Mediterranean Sea by Dumping from Ships and Aircraft (Dumping Protocol), Barcelona, 1976; amendments to the Dumping Protocol, recorded as Protocol for the Prevention and Elimination of Pollution in the Mediterranean Sea by Dumping from Ships and Aircraft or Incineration at Sea, Barcelona, 1995; Protocol for the Protection of the Mediterranean Sea against Pollution from Land- Based Sources (LBS Protocol), Athens, 1980; amendments to the LBS Protocol, recorded as Protocol for the Protection of the Mediterranean Sea against Pollution from Land-Based Sources and Activities, Syracuse, 1996; Protocol concerning Mediterranean Specially

Protected Areas (SPA Protocol), Geneva, 1982; Protocol Concerning Specially Protected Areas and Biological Diversity in the Mediterranean (SPA and Biodiversity Protocol), Barcelona, 1995; Protocol for the Protection of the Mediterranean Sea against Pollution Resulting from Exploration and Exploitation of the Continental Shelf and the Seabed and its Subsoil (Offshore Protocol), Madrid, 1994; Protocol on the Prevention of Pollution of the Mediterranean Sea by Transboundary Movements of Hazardous Wastes and their Disposal (Hazardous Wastes Protocol), Izmir, 1996; Protocol on Integrated Coastal Zone Management in the Mediterranean (ICZM Protocol), Madrid, 2008.

2. “Compliance procedures and mechanisms” means the procedures and mechanisms on compliance under the Barcelona Convention and its related Protocols adopted by the 15th Meeting of the Contracting Parties and set out in the annex to decision IG 17/2.

3. “Contracting Parties” means Contracting Parties to the Convention and its related Protocols, including the amended versions, if any, for which the Convention and the related Protocols and their respective amendments are in force.

4. “Party concerned” means a Party in respect of which a question of compliance is raised as set out in section V of the compliance procedures and mechanisms.

5. “Committee” means the Compliance Committee established by section II, paragraph 2, of the compliance procedures and mechanisms and by decision IG 17/2 of the 15th Meeting of the Contracting Parties.

6. “Member” means a member of the Committee elected under section II, paragraph 3, of the compliance procedures and mechanisms.

7. .

8. “Chairperson” means the Chairperson of the Committee elected in accordance with rule 6 of the present rules of procedure.

9. “Vice-Chairpersons” means the Vice-Chairpersons of the Committee elected in accordance with rule 6 of the present rules of procedure.

10. “Secretariat” means the Coordinating Unit that is designated by the Executive Director of the United Nations Environment Programme (UNEP) as responsible *for* the administration of the Mediterranean Action Plan (MAP), referred to in paragraph 38 of the compliance procedures and mechanisms.

11. “Representative” means a person designated by the Party concerned to represent it during the consideration of a question of non- compliance.

12. “The public” means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organizations or groups.

13. “Bureau” means the Bureau of the Contracting Parties referred to in article 19 of the Convention.

14. “Observers” means the organizations referred to in article 20 of the Convention, those included in the list of MAP partners as approved by the Meeting of the Contracting Parties **and members of the civil society which have been granted the status of observers by the Compliance Committee on a case-by-case basis as per the compliance procedures and mechanisms.**

Membership of the Committee

Rule 3bis

1. Each member of the Committee shall serve in his or her personal capacity and act in an independent and impartial manner in the interest of the Barcelona Convention and its Protocols for the Protection of the Mediterranean Sea and its coastal area and avoid any conflicts of interest.
2. The term of office of a member shall commence at the end of an ordinary Meeting of the Contracting Parties immediately following his or her election and run until the end of the Meeting of the Contracting Parties two or four years thereafter, as applicable⁵
3. Every member serving the Committee shall, before taking up his or her duties, make a solemn declaration in a meeting of the Committee that he or she will perform his or her functions objectively, independently, impartially and conscientiously as provided in Rule 13.
4. Since the Committee members are elected in a strictly personal capacity, an absent Committee member is not entitled to designate a substitute
5. **When a member of the Committee resigns or is otherwise unable to complete the assigned term of office, the Committee shall immediately request the Secretariat to start the replacement procedures. Therefore, the Bureau of the Meeting of the Parties shall appoint a new member from the list of candidates nominated by the Contracting Parties or, subsidiarily, shall request the Party which nominated that member to nominate a replacement to serve for the remainder of the term.**⁶
6. Any other participant in the Committee's meetings shall attend as observer in accordance with paragraph 13 of the Procedures and Mechanisms.⁷

Place, dates and notice of meetings

Rule 4

1. The committee shall normally meet twice per biennium preferably once a year. It may recommend the Secretariat to hold additional meetings subject to workload requirements arising from submissions by concerned Contracting Parties, referrals by the Secretariat and **referrals by the Committee on its own initiative**, subject to availability of funds.
2. Unless it decides otherwise, the Committee shall meet at the seat of the Secretariat. Any additional costs that may arise by changing of the place of the meeting shall be met by the host country.
3. At each meeting, the Committee shall decide in consultation with the Secretariat on the place, dates and duration of its next meeting.

⁵ Note by the Secretariat: proposed Rule 3bis.2 reproduces Rule 10.1 of the Rules of Procedure and amends it by deleting the reference to "alternate members"

⁶ Note by the Secretariat: proposed Rule 3bis.5 replaces Rules 10.2 and 10.3 of the Rules of Procedure

⁷ Note by the Secretariat: proposed Rule 3bis.6 reproduces Rule 11.5 of the Rules of Procedure and amends it by adding the text "in accordance with paragraph 13 of the Procedures and Mechanisms".

Rule 5

Notice of Committee meetings shall be sent by the Secretariat to the members and alternate members and any representative, as the case may be, with a copy to the MAP Focal Points of all Contracting Parties, at least three months before the opening of the meeting.

Officers

Rule 6

The Committee shall elect a Chairperson and two Vice-Chairpersons for a term of two years. No officers shall serve for more than two consecutive terms.

Rule 7

1. In addition to exercising the powers conferred upon him or her elsewhere in these rules, the Chairperson shall:

- (a) Preside over the meeting;
- (b) Declare the opening and closure of the meeting;
- (c) Ensure the observance of these rules;
- (d) Accord the right to speak;
- (e) Put questions to the vote and announce decisions;
- (f) Rule on any points of order;
- (g) Subject to these rules, have complete control over the proceedings and maintain order.

2. The Chairperson may also propose:

- (a) The closure of the list of speakers;
- (b) A limitation on the time to be allowed to speakers and on the number of interventions on an issue;
- (c) The adjournment or closure of debate on an issue;
- (d) The suspension or adjournment of the meeting.

Agenda

Rule 8

1. In agreement with the Chairperson, the Secretariat shall draft the provisional agenda for each meeting of the Committee. The agenda of the Committee shall include items arising from its functions as specified in section IV of the compliance procedures and mechanisms and other matters related thereto.

2. The Committee, when adopting its agenda, may decide to add urgent and important items and to delete, defer or amend items.

Rule 9

The provisional agenda and the annotated agenda for each meeting, the draft report of the previous meeting and other working and supporting documents shall be circulated by the Secretariat to members at least six weeks before the opening of the Committee's meeting.

- ~~1.~~ ⁸
~~2.~~
~~3.~~ ⁹.

Rule 11

- ~~5.~~ ¹⁰

When a member is absent for two consecutive meetings without providing any reasonable grounds, the term of office of the member concerned expires and new election proceeds, according to the provisions of Rule 3bis.5

Rule 12

1. Each member of the Committee shall, with respect to any matter that is under consideration by the Committee, avoid direct or indirect conflicts of interest. Any matter that may constitute a conflict of interest shall be brought as soon as possible to the attention of the Secretariat, which shall forthwith notify the members of the Committee. The concerned member shall not participate in the elaboration and adoption of findings, measures and recommendations of the Committee in relation to such a matter.

2. If the Committee considers that a material violation of the requirements of independence and impartiality expected of a member of the Committee has occurred, it may decide to recommend, through the Secretariat to the Bureau of the Meeting of the Contracting Parties, to revoke the membership of any member concerned, after having given the member the opportunity to be heard.

3. All decisions of the Committee taken under this rule shall be noted in the annual report of the Committee to the Meeting of the Contracting Parties.

Rule 13

Each member of the Committee shall take the following written oath:

“I solemnly declare that I shall perform my duties as member of the Committee objectively, independently and impartially, acting in the interest of the Barcelona Convention, and shall not disclose any confidential information coming to my knowledge by reason of my duties in the Committee, and I shall disclose to the Committee any personal interest in any matter submitted to the Committee for consideration which may constitute a conflict of interest.”

Distribution and consideration of information

Rule 14

⁸ Note by the Secretariat: Rule 10.1 has been moved up as Rule 3bis.2 and amended by deleting the reference to “alternate member”.

⁹ Note by the Secretariat: Rules 10.2 and 10.3 have been replaced with Rule 3bis.5.

¹⁰ Note by the Secretariat: Rule 11.5 has been moved up as Rule 3bis. 6 and amended by adding the text “in accordance with paragraph 13 of the Procedures and Mechanisms”.

1. The information received in accordance with paragraphs 18-19 of section V on Procedure shall be distributed by the Secretariat to the members of the Committee.
2. Any submission received in accordance with paragraph 18(a) of section V of the compliance procedures and mechanisms shall be transmitted by the Secretariat to the members of the Committee as soon as possible but no later than thirty days of receipt of the submission.
3. A submission received in accordance with paragraph 18(b) of the compliance procedures and mechanisms and any issues raised by the Secretariat as provided for in paragraph 23 of the compliance procedures and mechanisms shall be transmitted by the Secretariat to the members of the Committee as soon as possible but no later than 30 days after the six-month time frames provided for in the above-mentioned paragraphs have expired.
4. Any information to be considered by the Committee shall, as soon as possible but no later than two weeks after receipt, be made available to the Party concerned.

Public access to documents and information

Rule 15

The provisional agenda, reports of meetings, official documents and, subject to rule 14 above and paragraph 30 of section V of the compliance procedures and mechanisms, any other non-confidential information documents shall be made available to the public.

Participation in proceedings of the Committee

Rule 16

1. Unless the Committee or the Party whose compliance is in question decides otherwise, the meetings of the Committee will be open to other Contracting Parties and to observers as provided for under paragraph 13 of the compliance procedures and mechanisms. **The Committee may grant the observer status on a case-by-case basis to members of the civil society. Observers shall be entitled to receive copies of publicly distributed documents, submit written comments and make oral statements at meetings. The Committee reserves the right to give the floor to the attending public, upon request, if it deems useful.**
2. In accordance with the provisions of paragraphs 18, 27 and 29 of the compliance procedures and mechanisms, the Party concerned is entitled to participate in the Committee's proceedings and make comments thereon. It may furthermore, in accordance with the criteria adopted by the Committee and at the request of the latter, take part in the preparation of its findings, measures and recommendations. The Party concerned shall be given an opportunity to comment in writing on the findings, measures and recommendations of the Committee. Any such comments shall be forwarded with the report of the Committee to the Meeting of the Contracting Parties.
3. The Committee may invite experts to provide expert advice through the Secretariat. In that case it shall:
 - (a) Define the question on which expert opinion is sought;
 - (b) Identify the expert(s) to be consulted, on the basis of a roster of experts prepared and regularly updated by the Secretariat;
 - (c) Lay down the procedures to be followed.
4. Experts may also be invited by the Committee to be present during the formulation of its

findings, measures or recommendations.

5. Secretariat officials may be also invited by the Committee to attend the Committee's deliberations in order to assist in the drafting of its findings, measures or recommendations.

Conduct of business

Rule 17

In conformity with rule 11, **[five]** **[seven]** **[ten]** members of the Committee shall constitute a quorum

Rule 18

1. With respect to a notification or document sent by the Secretariat to a Contracting Party, the date of receipt shall be deemed to be the date indicated in a written confirmation from the Party or the date indicated in a written confirmation of receipt by the expedited delivery courier, whichever comes first.
2. With respect to a submission, request or other document intended for the Committee, the date of receipt by the Committee shall be deemed to be the first business day after receipt by the Secretariat.

Rule 19

1. Electronic means of communication may be used by the members of the Committee for the purpose of conducting informal consultations on issues under consideration and decision-making on matters of procedure. Electronic means of communication shall not be used for making decisions on matters of substance related in particular to the preparation of findings, measures and recommendations by the Committee.
2. The Committee may use electronic means of communication for the transmission, dissemination and storage of documentation, without prejudice to normal means of circulation of the documentation, as the case may be.

Voting

Rule 20

Each member of the Committee shall have one vote.

Rule 21

1. 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 six members present and voting.
2. For the purpose of these rules, "members present and voting" means members present at the session at which voting takes place and casting an affirmative or negative vote. Members who abstain from voting shall be considered as not voting.

Secretariat

Rule 22

1. The Secretariat shall make all necessary arrangements for meetings of the Committee and provide it with services as required.
2. In addition, and subject to availability of technical and financial means, the Secretariat shall perform any other function assigned to it by the Committee with respect to the work of the Committee.

Languages

Rule 23

English and French shall be the working languages of the Committee. However, the Committee will accept communications or submissions, as well as corroborating information in any of the four official languages of the meetings and conferences of the Contracting Parties.

Rule 24

1. The submissions from the Party concerned, the response and the information referred to in section V of the compliance procedures and mechanisms shall be provided in one of the four official languages of the Meetings of the Conference of the Contracting Parties to the Convention and its related Protocols. The Secretariat shall make arrangements to translate them into English and/or French if they are submitted in the other official languages of the Meeting of the Contracting Parties to the Convention and its related Protocols.
2. Any representative taking part in the Committee proceedings and/or meetings may speak in a language other than the working languages of the Committee if the Party provides for interpretation.
3. Final findings, measures and recommendations shall be made available in all official languages of the Meetings of the Contracting Parties to the Convention and its related Protocols.\

General procedures for submissions

Rule 25

The time frame for submissions is as follows:

1. For cases concerning a submission by a Contracting Party in respect of its own actual or potential situation of non-compliance: at the latest six (6) weeks before the opening of the ordinary meeting of the Committee.
2. For cases concerning a submission by a Contracting Party in respect of another Party's situation of non-compliance: at the latest four (4) months before the opening of the ordinary meeting of the Committee allowing the Contracting Party whose compliance is in question at least three months to consider and prepare its response.
3. The time frames for cases concerning a submission by a Contracting Party in respect of another Contracting Party's situation of non-compliance also apply to issues raised by the Secretariat.
4. All the above time frames are indicative and may be extended according to the necessities

warranted by the circumstances of the matter at hand and in accordance with the Committee's rules of procedure and due process. In this respect, Contracting Parties may submit additional documentation, comments and written observations to be considered by the Committee.

Rule 26

1. A submission by any Contracting Party raising a question of non-compliance with respect to itself shall set out:

- (a) The name of the Contracting Party making the submission;
- (b) A statement identifying the question of non-compliance, supported by substantiating information setting out the matter of concern relating to the question of non-compliance;
- (c) Its legal basis and the relevant provisions of the Barcelona Convention and its related Protocols and decision IG 17/2 that form the basis for raising the question of non-compliance;
- (d) Any provisions of the decisions of the Meeting of the Contracting Parties and the reports of the Secretariat that are applicable to the question of non-compliance.

2. The submission shall also include the list of all documents annexed to the submission.

Rule 27

1. A submission by any Contracting Party raising a question of non-compliance with respect to another Party shall set out:

- (a) The name of the Contracting Party making the submission;
- (b) A statement identifying the question of non-compliance, supported by substantiating information setting out the matter of concern relating to the question of non-compliance;
- (c) The name of the Party concerned;
- (d) Its legal basis and the relevant provisions of the Barcelona Convention and its related Protocols and decision IG 17/2 that form the basis for raising the question of non-compliance;
- (e) Any provisions of the decisions of the meetings of the Contracting Parties and the reports of the Secretariat that are applicable to the question of non-compliance.

2. The submission should also include the list of all documents annexed to the submission.

Rule 28

The Secretariat shall make the submission and any supporting information, submitted under rule 15 above, including any expertise reports, available to the representative designated by the concerned Party.

Rule 29

Within the framework of general procedures for submissions as provided for under rule 26 above, comments and written observations by the Party concerned in accordance with the provisions of section V of the compliance procedures and mechanisms on the Committee's preliminary and final findings, measures and recommendations shall include:

- (a) A statement of the position of the Party concerned on the information, findings, measures and recommendations or question of non-compliance under

- consideration;
- (b) An identification of any information provided by the Party that it requests should not be made available to the public in accordance with paragraph 30 of section V of the compliance procedures and mechanisms;
- (c) A list of all documents annexed to the submission or comment.

Rule 30

1. Any submission, comment and/or written observations under rules 13 and 29 above shall be signed by the MAP Focal Point or the representative of the Contracting Party and be delivered to the Secretariat in hard copy and by electronic means of communication.
2. Any relevant documents in support of the submission, comment or written observations shall be annexed to it.

Rule 31

1. Findings, measures or recommendations shall contain, mutatis mutandis:
 - (a) The name of the Party concerned;
 - (b) A statement identifying the question of non-compliance addressed;
 - (c) The legal basis and the relevant provisions of the Barcelona Convention and its related Protocols and decision IG 17/2 and other relevant decisions of the Meetings of the Contracting Parties that form the basis of the preliminary findings, measures and recommendations and their final versions;
 - (d) A description of the information considered in the deliberations and confirmation that gives the Party concerned an opportunity to comment in writing on all information considered;
 - (e) A summary of the proceedings, including an indication of whether its preliminary finding or any part of it as specified is confirmed;
 - (f) The substantive decision on the question of non-compliance, including the consequences applied, if any;
 - (g) The background, conclusions and reasons for the findings, measures and recommendations;
 - (h) The place and date of the findings, measures and recommendations;
 - (i) The names of the members who participated in the consideration of the question of non-compliance and in the elaboration and adoption of the findings, measures and recommendations.
2. Written comments on the findings, measures and recommendations submitted within 45 days of their receipt by the Party concerned shall be circulated by the Secretariat to the members and alternate members of Committee and shall be included in the Committee's biennial report to the Meeting of the Contracting Parties.

Rule 31 bis: Procedures for handling communications¹¹

A. Admissibility criteria under paragraph 23 bis of the Procedures and Mechanisms

1. **Communications addressed to the Committee under paragraph 23 bis of the Procedures and Mechanisms shall be in writing or electronic form through the Secretariat. The communications shall be supported by substantiating documentation.**

¹¹ Note by the Secretariat: Proposed Rule 31 bis integrates the Admissibility Criteria (COP17 Decision IG. 23/2) into the Rules of Procedure and proposes a set of amendments to the Admissibility Criteria as highlighted in grey.

2. When determining admissibility the Compliance Committee **shall** consider whether the communication is:

- (a) anonymous;
- (b) de minimis;
- (c) manifestly ill founded;
- (d) incompatible with the provisions of this compliance procedure or with the Barcelona Convention and its Protocols

3. The Committee should, at all relevant stages, take into account any available domestic remedy unless the application of the remedy is unreasonable prolonged or obviously does not provide an effective and sufficient means of redress.

4. With respect to communications by any member of the public and observers submitted to the Compliance in the context of paragraph 23.bis of the Procedures and Mechanisms on Compliance, the following procedures shall apply:

B. Handling and Circulation of Communications

1. Communications **shall** be in writing or in electronic form through the Secretariat and as concise and concrete as possible. It is preferable that the communication **shall** not be more than twelve pages in total. Visual means are also welcomed.

2. The minimum requirements to be included in any such communication are:

- (a) name and contact details of the communicant, whether this is a natural or legal person, the communication should be signed and be accompanied by a brief statement of the purpose of the communication. The Compliance Committee will not consider anonymous submission, but it will however respect any request of confidentiality by the communicant;
- (b) clear identification of the Party or Parties concerned;
- (c) one to two-page summary with the main facts of the case;
- (d) a document presenting the facts of the alleged non-compliance, and clearly stating how the facts presented constitute a case of non-compliance with the Barcelona Convention and/or its Protocols;
- (e) indication of whether steps have been taken to use the remedies available at national and/or international level.

3. Communications **shall** be addressed to the Compliance Committee through the UNEP/MAP Coordinating Unit. Upon receipt of a communication the Secretariat **shall register it**, send an acknowledgement of the receipt and transmit the communication to the Party concerned and to the Compliance Committee within two weeks from the receipt clarifying that, at the present stage, it has not been deemed admissible by the Compliance Committee. Communications forwarded by the Secretariat will be considered by the Committee at its next meeting for the Committee to take a decision whether to enter into their preliminary admissibility.

C. Preliminary Determination of Admissibility

4. Upon circulation of a communication, the Compliance Committee **shall** consider the preliminary admissibility of communications addressed to it. To that end the Chair of the Compliance Committee in consultation with the Compliance Committee shall appoint from among its members a Rapporteur for each communication. **The Rapporteur shall not be a citizen of the Party concerned.**

5. If translation of substantiating material is required, the Committee shall decide on the extent to which more material, other than that which is already available in English, should be

translated, taking into account both the costs of translation and the delay involved. The Committee may also request the communicant to provide an English translation of certain materials⁶.

If the Compliance Committee determines that the communication is inadmissible, it shall inform the Party concerned and the communicant accordingly, through the Secretariat and close the file. Such determination shall be final.

7. If the Compliance Committee determines that the communication is admissible on a preliminary basis, it opens a file, and shall notify the Party concerned and the communicant accordingly, through the Secretariat. The Committee should in principle consider preliminary determination of a communication not later than at its second meeting following the receipt of the communication.

8. The Compliance Committee may after making a positive decision on admissibility present the questions raised with the Party concerned, if any, when forwarding the communication. Such questions will be transmitted to the Party concerned by letter from the Secretariat, together with the confirmation of preliminary admissibility.

9. The Compliance Committee may also address any questions to the communicant it might find necessary to clarify the facts of the communication. Such questions will be transmitted to the communicant by letter from the Secretariat, together with the confirmation of preliminary admissibility.

10. The Party concerned should, as soon as possible but no later than two months from the date of the Secretariat's letter, submit written explanations or statements on the matter.

11. When forwarding a communication to the Party concerned on behalf of the Committee, the Secretariat will prepare a cover letter with: (a) a request to the Party concerned to acknowledge receipt of the communication; (b) a reminder of its obligation under paragraph 12 to submit as soon as possible, but not later than two months after the communication has been brought to its attention, written explanations or statements clarifying the matter and describing any response that it may have made; (c) a reference to the determination of preliminary admissibility with the request to inform the Committee as soon as possible if it intends to comment on admissibility issues; (d) specific points of discussion and questions to be addressed in the response, as identified by the Committee.

12. If the Party concerned contests the admissibility of the communication, the Compliance Committee will consider this and the communicant will be given an opportunity to comment and/or provide additional information.

13. If the Compliance Committee confirms the admissibility of the communication, it will proceed to the examination of the substance of it. Otherwise, the Compliance Committee will reverse its preliminary decision. The non-admissibility of the communication by the Committee is final. The Compliance Committee will inform the Party concerned and the communicant through the Secretariat.

14. The Compliance Committee should start the formal discussion on all particular communications at the first meeting that takes place following either the receipt of a response

to the communication from the Party concerned or within the deadline of two months if no response has been received by then.

15. When the Compliance Committee discuss the substance of any communication at a particular meeting, the Secretariat will notify the Party concerned and the communicant that the communication will be discussed following mutatis mutandis the proceedings established in paragraphs 24 to 30 of the Procedures and Mechanisms on Compliance.

Amendments to the rules of procedure

Rule 32

Any amendment to these rules of procedure is adopted by consensus by the Committee and submitted for consideration and adoption by the Bureau, subject to endorsement by the Meeting of the Contracting Parties.

Overriding authority of the Convention and its related protocols and decision IG 17/2

Rule 33

In the event of a conflict between any provision in these rules and any provision in the Convention and its related Protocols or decision IG 17/2, the provisions of the Convention and its Protocols or, as the case may be, decision IG 17/2 shall prevail.