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Fourth Meeting of the Working Group on Implementation
and Compliance under the Barcelona Convention

Istanbul, Turkey, 23-25 May 2007

REPORT OF THE FIRST MEETING OF THE WORKING GROUP ON IMPLEMENTATION AND COMPLIANCE UNDER THE BARCELONA CONVENTION



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First Meeting of the Working Group on
Implementation and Compliance
under the Barcelona Convention

Athens (Greece), 8 and 9 November 2004

REPORT OF THE FIRST MEETING OF THE WORKING GROUP ON IMPLEMENTATION AND COMPLIANCE UNDER THE BARCELONA CONVENTION

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Introduction

1. At their Thirteenth Ordinary Meeting (Catania, Italy, 11–14 November 2003), the Contracting Parties to the Barcelona Convention recommended the establishment of a Working Group composed of six legal and technical experts, respecting geographical distribution, and a representative of MAP partners, in order to elaborate a “platform” to promote the implementation of and compliance with the Barcelona Convention.

2. Pursuant to the recommendation and after the Parties had appointed their representatives to the Group, the Secretariat convened the first meeting, which was held at Athens on 8 and 9 November 2004 in the premises of the MAP Coordinating Unit.

Participation

3. Experts representing the following Contracting Parties to the Barcelona Convention took part in the meeting: Croatia, European Community, France, Greece, Israel, and Slovenia; the WWF represented MAP partners.

4. Two MAP consultants and two invited experts representing the Bern Convention and the United Nations Economic Commission for Europe (UN/ECE) also took part in the meeting. The Secretariat, represented by the Coordinator, officers from the Coordinating Unit and an expert from the SPA/RAC in Tunis, acted as the Secretariat of the meeting.

5. The full list of participants is attached as **Annex I** to the present report.

Agenda item 1: Opening of the meeting

6. Mr. Paul Mifsud, MAP Coordinator, welcomed participants to the Coordinating Unit. He recalled the circumstances under which the Contracting Parties, at their meeting in Catania in 2003, had decided to set up a Working Group to prepare a “platform” for a possible body or mechanism to be responsible for ensuring compliance with obligations arising out of the Barcelona system. At present, according to the revised Convention of 1995, which had now entered into force, it was the responsibility of the Parties alone to assess whether or not they had complied with the Barcelona Convention and its Protocols on the basis of regular reports which they were bound to send to the Secretariat. Article 27 of the Convention, however, also provided that the Parties “*recommend, when appropriate, the necessary steps to bring about full compliance with the Convention and the Protocols*”, without mentioning any specific body or mechanism. The Bureau did not have any authority to assess compliance with obligations. The task of the Working Group was therefore to explore options in that respect and to adopt a position. The first question to which it would have to respond was whether or not such a body or mechanism was needed. If the answer was in the affirmative, the Group would have to make proposals on the body’s composition, terms of reference, rules of procedure and the measures it could be empowered to take against Parties in a situation of non-compliance, if it was decided to give it the necessary powers. The Working Group would also have to decide what type of document would constitute the result of its work and be submitted to the next Meeting of the Parties in 2005 so that the latter could consider it and decide on the follow-up: whether it should be a general proposal or a more detailed text setting out aspects of the mechanism envisaged. Participants had before them a working document prepared by the Secretariat, to be used as a basis for their work, and three information documents concerning the example of the OSPAR Convention, a comparative study on reporting systems, and a paper on non-compliance regimes in multilateral environmental agreements.

Agenda item 2: Rules of procedure and election of officers

7. The meeting agreed that the rules of procedure for meetings and conferences of the Contracting Parties should apply to its proceedings. Consequently, in accordance with Article 24 of the aforesaid rules of procedure, it elected its officers, namely, Mr. Alexandre Lascaratos (Greece) as Chair, and Mr. Ljubomir Jeftić (Croatia) as Vice-Chair.

Agenda item 3: Adoption of the agenda and organization of work

8. The meeting adopted the agenda proposed in document UNEP(DEC)/MED WG.260/1, which is attached as **Annex II** to the present report. It was agreed that, to ensure consistency, the item "Conclusions and recommendations" should be considered before the item "Any other business", which would deal with the follow-up to the Group's work; therefore, the two agenda items were renumbered as 7 and 8 respectively.

Agenda item 4: Implementation and compliance mechanism under the Barcelona Convention

Introductory discussion

9. Mr. Gerhard Loibl, MAP Consultant, introduced the document on setting up an implementation and compliance mechanism under the Barcelona Convention and its Protocols (UNEP(DEC)/MED WG.260/3), which was before the meeting to serve as a basis for its discussions. He summarized the main elements of the document: a road map for the elaboration of a compliance mechanism; a review of the legal basis; the functions and rules of procedure of the mechanism; and options. He drew the participants' attention to paragraph 9, which proposed two main types of possible mechanism: (1) a reporting and assessment system, based on regular reporting, in order to assess the overall implementation of the legal instrument concerned, resulting in recommendations addressed jointly to the Parties on ways of enhancing compliance with their obligations; or (2) a specific mechanism that could deal with concrete examples of non-compliance by countries on an individual basis and leading to decisions on the measures to be taken against countries in a situation of non-compliance, for example, recommendations, warnings or the loss of certain rights. It was also possible to combine both options in a number of ways. Attention was also drawn to paragraph 22 of the document, which covered the question of the legal basis in the Barcelona Convention for the establishment of such a mechanism, namely, Article 18, paragraph 2, and Article 27. He then referred to several international environmental agreements such as the Kyoto and Cartagena Protocols, the Aarhus, Basel, Long-Range Transboundary Air Pollution (LRTAP), Alpine, and Espoo Conventions, which provided various legal formulas and bases to remedy shortcomings in implementation. Lastly, the latter part of the document on options should be considered a synthesis of the document's conclusions, which the Group might wish to use in order to propose to the Contracting Parties the formula or formulas they deemed the most appropriate.

10. All the participants thanked the MAP Consultant for his presentation of the document and expressed appreciation of its extremely comprehensive nature, which provided a solid and rational basis for launching and conducting the discussions. At the Chair's invitation, a first round of discussion took place.

11. In the view of Ms. Rachelle Adam (Israel), the Barcelona Convention, with its limited composition of 22 Contracting Parties, constituted a Mediterranean family that could quite easily sit round a table to discuss any problems of implementation and resolve them by consensus. The more general the provisions of a convention such as the Barcelona Convention, the more general should be the procedure established to ensure compliance. In that connection, referring to the example of other multilateral environmental agreements with

detailed and complex provisions such as the Kyoto Protocol was irrelevant. Moreover, legal problems could arise concerning Article 27 of the Convention because obviously, at the most, it expressed the determination of the Parties to “recommend, when appropriate, the necessary steps” but remained silent on the question of the need for a body or mechanism.

12. Mr. Veit Koester (UN/ECE) laid emphasis on the one aspect that did not appear in the Secretariat’s document, which was nevertheless extremely comprehensive and detailed, namely the question of cost. If, as occurred in the majority of cases, it was decided to set up a Committee to ensure compliance composed of independent experts nominated by the Parties in a personal capacity, the Committee had to be given the financial resources to meet and undertake investigations, otherwise it would have to seek financing from governments of countries to which its members belonged and would lose its independence, or it would not have the material possibility of meeting and taking action.

13. Ms. Anna Bobo-Remijn (European Commission) spoke in favour of the position taken within the EU, notably following the accession of new members: creation of a mechanism able to act effectively in cases of non-compliance with a limited number of members elected by the Conference of the Parties in a personal capacity in order to maintain their independence and prevent politicization of the cases. In conventions bringing together some 80 Parties, there were committees of 10 to 15 members. The same proportion should be kept for the Barcelona Convention, with a maximum of five to seven members. On that hypothesis, the question of cost would no longer be an obstacle.

14. Ms. Lobna ben Nakhla (SPA/RAC) described the experience, albeit more limited, of the Tunis Centre concerning the implementation of the SPA and Biodiversity Protocol. Even at that level, there were several cases of non-compliance and a mechanism such as that envisaged would make it easier to identify them and respond, where possible going beyond straightforward recommendations and envisaging binding procedures. That could even be done by amending the existing Protocols.

15. Mr. Ljubomir Jeftić (Croatia) considered that, almost 30 years after the creation of the MAP and the Barcelona process, it was high time to envisage a compliance procedure. Since 1985, a large number of common anti-pollution measures had been taken within the MED POL framework or by other components of the MAP and they were, for the most part, still ignored. It was time to move ahead if the Convention was to be an effective text. There was already a financial provision that provided for restricting voting rights when a Party did not pay its contribution and cases of non-compliance could be dealt with in the same way.

16. Mr. Mitja Bricelj (Slovenia) was also in favour of an effective compliance mechanism, although he would like it to focus on the effective implementation of the Protocols, which, for the most part, imposed specific and strict rules and standards, as was the case for the highly important “prevention and emergency situations” Protocol on accidental marine pollution by ships. The REMPEC, the body responsible for implementing the Protocol, adopted IMO/UNEP standards and established binding provisions with subregional emergency plans such as that in the Adriatic, which brought together Italy, Croatia and Slovenia and was a model of cooperation.

17. Mr. Didier Guiffault (France) fully supported the position of the European Commission regarding a Committee with limited membership appointed in a personal capacity because it was the only way of conserving true independence. Regarding the measures that could be taken by the Committee envisaged in cases of non-compliance, the document referred in particular to notifications and recommendations for assistance to Parties in a situation of non-compliance. In that connection, experience had shown that such measures were ineffective and that there needed to be stricter provisions if it was hoped to achieve results.

18. Ms. Adam (Israel), referring once more to the limited membership if it was decided to set up a compliance body, expressed the view that for “small” conventions with few Parties, such as the Barcelona Convention, the meeting could consider enlarging such a body by including members from non-Mediterranean States Parties to other conventions, which would ensure greater transparency. Lastly, she underlined once again the need to read Article 27 very carefully because, according to her interpretation, it did not appear that the Parties which had drafted and adopted it wished to go beyond simple “recommendations”.

19. Mr. Francesco Saverio Civili (MED POL Coordinator) pointed out that, as far as monitoring implementation was concerned, MAP already had a well-established and organized reporting system on implementation of the Convention and the Protocols, for example, reports on dumping operations, measures taken to combat land-based and marine pollution, etc. All that remained was to enlarge the system and make it fully operational. The one thing that had been noticeably absent for a long time could be summed up in one question: what should be done in cases where implementation was unsatisfactory? The MAP had never seriously tackled the issue, which raised sensitive political issues. On the other hand, the experience gained with the Mediterranean Commission on Sustainable Development (MCSD) over the years provided an example of what should not be done, a mistake that should not be repeated, in other words, entrusting Contracting Parties with representing themselves directly and giving themselves advice within the same body, because it was doomed to fail. The members of the future Committee should be fully independent without any direct links with governments and should also, if possible, comprise representatives of NGOs.

20. Mr. Fouad Abousamra (MED POL Programme Administrator) drew the meeting’s attention to a distinction that he believed was important according to whether one was referring to the Barcelona Convention or its Protocols: the former contained provisions of a general nature and consequently called for recommendations of a general nature as well, whereas the Protocols, each within their own well-defined scope, prescribed specific standards and objectives. In practice, and depending on the cases brought before it, the Committee would have to take that difference into account in its work.

21. Mr. Alexandre Lascaratos (Greece), taking the floor as a representative of Greece rather than as Chair of the meeting, said that the MAP and the Barcelona Convention would shortly be celebrating their 30th anniversary, and if a mechanism such as the one being discussed had already been in place, it would no doubt be surprising to see that not one single Contracting Party had respected several of the provisions, measures and decisions taken over the years. In the first instance, therefore, it was necessary to ascertain what had been implemented and what had not been implemented by the countries and, based on that assessment, to aid those countries that showed the most shortcomings in compliance. Only at the second stage, if the shortcomings continued, should stronger measures be envisaged, although they should not be “binding” as proposed by previous speakers.

22. Mr. Paolo Guglielmi (WWF)* considered that, irrespective of the option adopted regarding the Committee’s terms of reference, they would to a large extent depend on its composition. If the experts were appointed in a personal capacity and not by Parties, it would be difficult for them to have the necessary authority to address recommendations to the Parties or to be heeded by them, whereas if members were appointed by countries, they could more easily ensure that the Parties accepted their recommendations or special procedures. It was a question of pragmatism if it was hoped that the body to be proposed by the Group would come into being.

* Mr. Guglielmi had been unable to attend the beginning of the meeting and this statement was given at a subsequent stage.

23. The MAP Coordinator summarized the main points of view that had been expressed, declaring that an initial conclusion could already be drawn: there had been almost unanimous agreement on the need to establish a mechanism and only one member of the Group had spoken in favour of more general recommendations which, however, did not appear to be a satisfactory guarantee of effectiveness. He then suggested that the Bureau, elected by the Parties at each of their meetings in order to provide the Secretariat with guidance over the two-year period and composed of a limited number of members, whose cost was covered under MAP's regular budget, could perhaps be given an additional task relating to non-compliance. In any event, he considered that it was extremely positive that a majority of speakers had proposed that members be appointed in a personal capacity but added that, when deciding on the composition of the body envisaged, it had to be borne in mind that one of the special features of Mediterranean countries was their wide variety of political, economic and social circumstances.

24. Mr. Jeftić (Croatia) did not agree with the distinction drawn between "large" and "small" conventions in respect of the number of Parties, which amounted to assimilating international and regional conventions. As a regional convention, Barcelona was a "large" convention. Regarding the first stage of implementation assessment, in his view the reporting system used to date by all countries within the MAP framework allowed an assessment to be made by providing a significant amount of information. He expressed disagreement with the formula of simple general recommendations: for 15 to 20 years, the MED POL had had common standards that had been widely disseminated, countries had been helped to implement them and yet the result was poor. What more could be done? If no effective mechanism was set up, it would be fruitless to discuss the question further and compliance with commitments would remain a dead letter.

25. Mr. Koester (UN/ECE) highlighted the extremely important role that civil society could play in the mechanism. NGOs could nominate experts, from among whom the Parties would elect members of the body, whose discussions would be open to the public, in the spirit of the Aarhus Convention, to which many of the Parties to the Barcelona Convention had acceded, and which contained a commitment to promote its provisions when implementing other conventions.

26. Ms. Tatjana Hema (MED Unit Programme Administrator) gave further details concerning the MAP reporting system and the pilot project implemented from 2000 to 2003. The Catania meeting had decided that all Parties should start to apply Article 26 of the Convention on reporting and that the Secretariat would draw up a regional report on implementation of the Convention covering the period 2002–2003 for the meeting of the Parties in 2005. All the necessary information was therefore available, together with a general framework. In the case of NGOs, their role within the MAP had been placed on an official basis by drawing up a list of partners founded on specific criteria. They could attend meetings, take the floor and make proposals, and the presence of a representative of the WWF at the present meeting of the Working Group bore witness to their role. The MAP was therefore very open to civil society and the 1995 Convention contained new basic provisions on participation and public access. If the Group proposed that NGOs should be given a role in the mechanism, the Contracting Parties would have to take the decision in the last instance.

27. The Chair summarized the main elements emerging from the initial discussion. Some points had been agreed: there was almost general agreement on the creation of a Committee, with a clear majority in favour of a limited number of members appointed in a personal capacity, and participation of civil society, but opinions were almost equally divided on effectiveness, with three of the six Parties in the Group speaking in favour of binding measures, whereas two were reluctant to see such measures imposed and were in favour of a facilitation approach while another preferred effectiveness that focused on the Protocols

and the subregional level. Regarding the example of sanctions applied by the European Union, mentioned by speakers, he noted that the situation was in no way comparable to implementation of the Barcelona Convention because the Brussels Commission allocated significant amounts of money to implementation and undertook proceedings in the European Court of Justice when a member failed to respect its commitments. Obviously, the MAP did not have such financial resources to require compliance by its member countries.

28. At the proposal of a member of the Group, it was decided to examine in detail various aspects of the Committee to be set up on the basis of the working document, but in reverse order to that originally proposed and to deal in succession with the legal basis, the options for the mechanism, its composition and rules of procedure.

Review of the legal basis

29. The Working Group considered paragraphs 15 to 21, and also paragraph 22, of the Secretariat's document, namely the legal basis provided by Articles 18(2) and 27 of the Convention, regarding which one member once again expressed his opposition to any non-literal interpretation. Other members considered that, on the contrary, those were general provisions that lent themselves to a broad interpretation and that, in addition, the decision taken by the Parties in Catania on setting up the Working Group with the task of providing a "platform" should be added to the legal basis. The meeting agreed with the view expressed by the MAP Consultant and considered that, if it was a question of establishing a non-confrontational, non-judicial and transparent process with a satisfactory cost-effectiveness ratio and focusing on facilitation by first helping countries to comply with their commitments, the legal basis afforded by the Articles in question was quite sufficient.

Review of the options for the mechanism

30. Turning to the options for the mechanism set out in paragraphs 9 to 11 of the document, the meeting held a lengthy discussion that, for the main part, echoed the points already discussed regarding "dissuasive measures", "sanctions", "binding nature", by seeking a compromise between the options in the two subparagraphs of paragraph 9 and those in the four subparagraphs of paragraph 10 of the working document. The same difference of opinion between participants remained: (1) either the need for a flexible process focusing on recommendations and facilitation on the basis of the reporting system, or (2) a much more stringent process with submissions and referrals to the Committee, forwarding of cases, disclosure of the names of the countries in non-compliance, loss of certain rights, etc. Political reasons were cited in favour of facilitation (likely refusal of any sanctions by the Meeting of the Parties and the problem, in terms of image, if countries were specifically designated as a result of their failure to comply and appeared on a kind of "black list"), together with institutional (wide disparity among countries), scientific (in the case of transboundary pollution, for example), and economic problems (in the absence of financing, for example, to build sewage plants, could full compliance be required of a developing country?). Participants in favour of coercive measures referred mainly to reasons of effectiveness, without which the Convention might remain a dead letter in many areas and the Working Group become pointless. One member of the Group in favour of a preventive approach nevertheless explained that, in his view, the Committee could address recommendations directly to the country concerned during the facilitation phase, but if that phase failed and the Committee decided on binding measures, they should be referred to the Conference of the Parties, which was the only body empowered to take a final decision.

31. Mr. Koester (UN/ECE) presented what he called the "principle of proportionality": any sanctions should only come at the conclusion of a serious, gradual and sustained facilitation process when it had become obvious that a Contracting Party did not show any determination to comply with its obligations; the process should of course be non-

confrontational, but in such cases it was the Party itself that was seeking confrontation. Participants then raised the question of the "grace period" to be given to a Party at fault: would it be necessary to await the next meeting of the Parties before imposing the recommended measures against the Party or, in cases of urgency, should the Committee be convened immediately and empowered to take a decision without further delay? In the end, that would depend on who would have responsibility for the recommendations: either the Parties, in which case it would be necessary to await their biennial meeting, or the Committee, in which case it could deal with the matter at any time. In the view of the Chair, considering the important work facing the Committee in verifying information, conducting on the spot investigations, etc., two years between the meetings of the Parties would not be excessive. Without taking a decision on the question of the grace period, the meeting agreed that, in the first instance, a recommendation should be addressed to any Party at fault calling on it to improve its implementation and that, subsequently, at the expiry of a period to be specified, any Party that failed to meet its obligations could be the subject of a procedure with a guarantee of due process, based on reports, relevant information, submission or referral to the Committee or information transmitted to the latter, provided that the said Party was given a hearing, was able to defend itself by putting forward its arguments when information and complaints concerning it were considered, except at the time of drafting and adopting the findings and recommendations that concluded the procedure. One speaker recalled that meetings of compliance committees under other conventions and protocols were usually open to the other Parties in addition to the Party concerned, and sometimes even to the public, which helped to ensure transparency. Another participant proposed that, on the basis of the regional report on implementation to be drawn up by the Secretariat, any shortcomings should be listed and that the EC help to remedy them through financing within the framework of the Euro-Med Partnership. Lastly, two members of the Group pointed out that the final decision, irrespective of the platform to be put before the Meeting of the Parties in 2005, would lie with the Parties and it was preferable to seek effectiveness even if the Parties abridged the scope of the Group's proposals.

Composition of the Committee

32. Regarding the composition of the Committee to be set up, the meeting agreed on a few basic principles, some of which had already been agreed at the beginning of the meeting: limited number of members appointed in a personal capacity, independence, balance among members' legal, scientific and technical expertise and competence in order to cover the wide variety of cases that might be brought before the Committee, equitable geographical distribution, rotating system of nomination, and participation of NGOs according to procedures to be specified. The question of whether the President or a member of the Bureau should attend the Committee was mentioned but rejected as it would be contrary to the principle of independence. For the same reason, a proposal that the Committee should comprise representatives of Parties and independent experts was also rejected. A number of compromise proposals were put forward regarding the appointment of members: drawing of lots, selection by the Parties on the basis of a pool of experts proposed by the Secretariat and by civil society (reputed NGOs or networks of Mediterranean NGOs), mandate to be given to the Bureau for that purpose, body parallel to the Bureau dealing solely with compliance, independent members elected after nomination by the Parties at their biennial meeting on the basis of criteria to be adopted by the Conference of the Parties. Finally, the Group preferred the latter formula. Regarding participation by civil society, one participant said that civil society could nominate experts to be elected by the Meeting of the Parties, but it was inconceivable that NGOs or other actors should represent any particular interests when that possibility had been rejected in the case of countries in order to maintain the Committee's independence.

Role of the Secretariat

33. Before embarking upon the discussion on the rules of procedure, the Chair proposed that the role of the Secretariat (MED Unit) be considered in relation to the creation and operation of the Compliance Committee. All the participants agreed that that role was already defined, as was the case for other groups or bodies set up within the MAP framework (Bureau, MCS D, MCS D Steering Committee, etc.): to provide logistic support, to compile, prepare and circulate information, documentation and case files, to organize meetings and any on-the-spot investigations. The Coordinator emphasized that the Secretariat already played that important role but it would not go any further. In other words, the Secretariat would under no circumstances intervene in the procedures for the drawing up of recommendations and measures. There were divergent views concerning whether or not the Secretariat could initiate proceedings and the Secretariat itself considered that that was not one of its responsibilities and it should confine itself to passing on information in order to allow proceedings to be initiated.

Review of the rules of procedure

34. Regarding paragraph 29 and the series of questions in paragraph 30 of the working document relating to the rules of procedure of the proposed Committee, participants pointed out that there should be guarantee clauses such as the confidentiality of certain information, appeals procedures, verifying the substance of information relating to submissions or referrals or transmission of files. As far as additional information required by the Committee was concerned, it was generally agreed that an investigation on-the-spot could only take place with the agreement of the Party concerned and that any Party that was the subject of proceedings or simply of information relating to failure to comply with its commitments should be notified in writing by the Committee without delay. One speaker added that, in certain committees set up under other agreements, not only was the Party concerned informed immediately but it was in contact with the Committee in order to be associated in the preparation of recommendations to be addressed to the Parties or the Bureau and, where necessary, to negotiate the achievement of compliance. In the case of recommendations to be addressed to a country by the Committee, some participants were in favour of direct notification to the country without going through the Meeting of the Parties, whereas others preferred notification prior to a Meeting of the Parties or the Bureau and its agreement to notify the country, while other participants wished to see a mandate given to the Committee by the Meeting of the Parties authorizing it to act directly, and the meeting did not decide clearly in favour of any of the three solutions initiated, unless of course the Contracting Parties decide otherwise.

Role of the Committee in implementing its recommendations

35. The above point in the rules of procedure was the subject of a lengthy exchange of views. The Committee's role in following up its recommendations was highlighted by two participants, together with information to be given to the Committee by the Party concerned. Mr. Koester (UN/ECE) said that, in other conventions, the practice was that only the Meeting of the Parties decided on the implementation of recommendations and, where applicable, gave instructions to the Committee accordingly. Participants considered that it was the responsibility of MAP as a whole to facilitate implementation by taking the prescribed action to achieve compliance and possibly granting the country financing or trying to obtain it from competent institutions. Other participants warned against turning the Compliance Committee into a financing mechanism in view of the large number of issues covered by the Convention and Protocols. That would be tantamount to opening Pandora's Box and it was up to the Party concerned to seek financing itself. Other participants referred to the Danube and Black Sea Convention and mentioned the possibility afforded by the GEF Strategic Partnership, which was being prepared for the Mediterranean and would in the future finance

the implementation of the “land-based sources” and “SPA and biological diversity” Protocols within the framework of SAP MED and SAP BIO. The Secretariat would have to establish the relationship between the recommendations and measures emerging from the Committee, the findings of its regional report on implementation, and different forms of financing available to the Programme’s various components under the regular programme budget and special partnerships.

36. The Chair indicated that the major part of the work on proposals for the compliance mechanism had been concluded and that the Secretariat, in cooperation with the Consultant and participants who so wished, would draw up draft recommendations based on the main points agreed to date. The draft would be submitted to them at the meeting the following day.

Agenda item 5: Sharing of experience related to the set up of the compliance mechanisms under the UN/ECE and Bern Conventions

37. Mr. Veit Koester (UN/ECE) presented tables showing the compliance regimes in four instruments adopted under the auspices of the UN/ECE: the Convention on Long-Range Transboundary Air Pollution (1979), the Espoo Convention (1991), the Aarhus Convention (1998), the Protocol on Water and Health under the Convention on the Protection of Transboundary Water Courses and International Lakes (1999). He described in detail the committee’s scope and composition, the requirements for initiating proceedings, compilation of information, safeguard clauses, the powers of the committee, the measures taken, the involvement of the public, the number of meetings and submissions or referrals or filing of cases for each of those instruments.

38. Mr. Koester said that his participation in the present meeting was no doubt due to several of his past or present functions: he was currently Chair of the Compliance Committee under the Aarhus Convention and a member of similar committees for the Basel Convention and the Biosafety Protocol. Although the mechanisms he had mentioned had been established within the same context, they were very different; each one had had to be adapted to the legal instrument to which it related and the same logic did not underpin all the provisions.

39. Following the presentation, several participants raised questions on aspects of the mechanisms. Mr. Koester (UN/ECE) explained that, in the case of the Aarhus Convention, it was not necessary to be a national of a country but only a resident in order to require information, bring a case before the committee or make a complaint. The Convention’s website showed how to proceed. Regarding the relationship between the Protocol on Water and Health and the EU framework directive on water, he said that the two systems were not mutually exclusive and could be initiated at the same time, although the EU could block any recommendation that was not in conformity with Community provisions and could put forward its own opinion on the question.

40. Ms. Clare Shine, member of the IUCN Commission on Environmental Law and legal consultant to the Council of Europe, described the compliance mechanisms under the Bern Convention, mentioning that she was a member of the Convention’s on-the-spot investigating group. She outlined several features and procedures under the Convention, which focused on the conservation of habitats and species and comprised 45 Contracting Parties from a geographical area that covered in part the area of the Barcelona Convention.

41. She said that in cases of non-compliance there was no specific body or punitive procedure but the focus was on facilitation through a “case file” mechanism: the decision to open (or close) a file lay with the Standing Committee, equivalent to the Conference of the

Parties, subject to a complaint by a Party, NGO or individuals set out on a standard form sent to the Standing Committee or to the Convention Secretariat, which was notified to the Party concerned. The latter had a period of around four months to respond and the complaint was followed by various procedures involving recommendations, negotiations, on-the-spot investigations, monitoring, until a final solution was reached or the case was forwarded by the Standing Committee to the Committee of Ministers of the Council of Europe, or, in the most serious cases, there was an arbitration procedure. The approach of the Bern Convention was therefore to act as an “honest broker” between governments and civil society in conflictual situations and to reach an informal political solution in non-conflictual situations. She cited the most difficult case, that of turtles on the island of Zakynthos (Greece), which had not been resolved in 14 years; the case had been closed in 1999, when the EC had taken it up under its “habitats” directive and had brought Greece before the European Court of Justice, which found against it in July 2002. In total, over the period 1982–2000, 400 complaints had been made, 46 case files opened, almost half of which had been closed after two years.

42. With regard to the possibility of financing to help in resolving problems, Ms. Shine said that the Convention did not cover the “grey area” in which a country could take advantage of a case in order to obtain funds because that would open the way to abuse and misuse. She also referred to the cooperation being established between the MAP’s SPA/RAC and Accobams. Participants were given copies of the information forms needed to initiate proceedings.

Agenda item 6: Progress made by the Secretariat and the Contracting Parties on reporting under MAP

43. Ms. Hema (MED Unit Programme Administrator) briefly presented the information document entitled “Initial report on the comparative legal study for the MAP reporting system” (UNEP(DEC)/MED WG.260/Inf.2), which comprised an analysis of reporting systems under other international environmental agreements, international and regional conventions, and EU directives, in order to draw lessons for the purpose of improving the MAP reporting system.

44. She recalled that, at the beginning of the meeting, she had referred to the pilot reporting exercise undertaken with volunteer countries, and the progress in national implementation reports to be submitted to the Secretariat by the end of January 2005 with a view to preparing the regional report, which could be used by the Group if it was decided to continue its work and to hold a second meeting.

Agenda item 7: Conclusions and recommendations

45. The meeting considered the draft conclusions prepared by the Secretariat based on its deliberations. The draft was considered paragraph by paragraph and the discussion was reopened on some aspects of the proposed mechanism that had not been sufficiently clearly defined. They were subsequently clarified and certain wording was modified, leading to a revision of the text.

46. The meeting adopted the draft conclusions, as amended, and requested the Secretariat, where necessary, to make editing changes. The text of the findings and conclusions of the meeting is attached as **Annex III** to the present report.

Agenda item 8: Any other business

47. In accordance with the annotated agenda for the meeting, Ms. Hema called on the Group to consider the follow-up to its work before the Meeting of the Parties in

November 2005, which would consider the proposed platform. A first option would be to hold no further meetings and to go to the meeting of MAP National Focal Points in September 2005 with the report of the present meeting, the pre-session document and all the recommendations that had just been adopted, to be used by the National Focal Points as a working document that could be amended where necessary and approved. A second option would be to resume negotiations on the text from the beginning in order to put forward new draft recommendations, which would show that the Group had found it difficult to agree on practical proposals but would also have financial implications. In any event, should there be a second meeting or should the text continue to be prepared using electronic means? What was the opinion of the meeting?

48. The meeting carefully reviewed the possibilities open to it, which went beyond the Secretariat's proposal because there was also the question of the list of criteria for the selection of members of the future Committee by the Contracting Parties, as well as the draft rules of procedure to be submitted, leaving open certain options. It should also be borne in mind that the Working Group not only had to consider the compliance mechanism but also implementation, which meant awaiting the preparation of the regional report – or at least a summary of it – which would not be ready before the Spring of 2005 but would be indispensable for reviewing the Group's proposal and continuing the work. If those additional elements were not put before the Meeting of the Parties so that they could consider them and take a decision, that would mean postponing for another two years – until 2007 – the formulation of a detailed mechanism, resulting in considerable delay. Did that not mean, however, going beyond the terms of reference given to the Group by the Parties, which simply referred to a "platform"? The Secretariat considered that the question should be put to the forthcoming meeting of the Bureau, to be held in Cairo within the next two weeks.

49. The importance of not putting forward several distinct elements such as "recommendations for the mechanism", "criteria", "rules of procedure", was emphasized because it was an indivisible ensemble. In the view of two participants, however, putting forward a global and comprehensive preliminary draft could convey the wrong message by giving the Parties the impression that the Group had misinterpreted its terms of reference. It would be preferable to refer to a "document containing elements", giving options to the Parties for aspects that had not been agreed, taking into account the fact that rules of procedure or several of their provisions were often the responsibility of compliance committees once they had been set up.

50. The meeting finally agreed to the latter solution, subject to the Bureau's approval, and decided to meet again towards the end of Spring 2005 once the regional report or a summary thereof became available in order to review various aspects of its proposal on a Committee - leaving options open on some points – as well as the criteria to be used by Parties when proposing experts and the working document, submitted to the first meeting of the Group as revised by the Secretariat on the basis of the conclusions adopted by the Group and any new developments. All the documents mentioned would be submitted to the National Focal Points in September 2005, revised in the light of comments made by the Focal Points and, subsequently, submitted to the Contracting Parties for final adoption and follow-up at their meeting in November 2005.

Agenda item 9: Closure of the meeting

51. Following the customary exchange of courtesies, the Chair declared the meeting closed on Tuesday, 9 November, at 1.30 p.m.

Annex I

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ANNEX II

AGENDA OF THE MEETING

1. Opening of the meeting
2. Rules of procedure and election of officers
3. Adoption of the Provisional Agenda and organization of work
4. Implementation and compliance mechanism under the Barcelona Convention
 - Analysis of the structure and content of the Barcelona Convention and its Protocols *vis a vis* a possible compliance mechanism and a non compliance procedure: main objectives; advantages and constraints;
 - Description, comparison and analysis of compliance mechanisms and non compliance procedures of a number of MEAs;
 - Road map for the setting up of a compliance mechanism and non compliance procedure under the Barcelona Convention
5. Sharing of experience related to the set up of the compliance mechanisms under the UNECE and Bern Conventions (to be confirmed)
6. Progress made by the Secretariat and the Contracting Parties on Reporting under MAP
7. Any other business
8. Conclusions and recommendations
9. Closure of the meeting

ANNEX III

FINDINGS AND CONCLUSIONS OF THE FIRST MEETING OF THE WORKING GROUP ON IMPLEMENTATION AND COMPLIANCE

The Working Group on Implementation and Compliance that met in Athens on 8-9 November 2004 agreed on the following conclusions:

1) Setting up of an implementation and compliance mechanism

Legal basis

The meeting discussed and agreed that Articles 27 and 18(2) of the Barcelona Convention as well as certain decisions of the CPs, form the basis to establish a compliance mechanism for the Convention and its Protocols which is to be non confrontational, non judicial, transparent, cost effective and preventive in nature, simple, flexible, and oriented in the direction of helping parties to comply with and implement the provisions of the Convention, its protocols and decisions of the meetings of the CPs.

Possible compliance mechanism

1. The meeting favored the establishment of a specific mechanism that will address general issues of implementation and compliance as well individual cases of non-compliance based on Parties' reports and relevant information from other sources. The meeting agreed that any procedure under the compliance mechanism would be subject to the principle of due process that includes the right of the party concerned to be heard.
2. The Compliance Committee should make recommendations concerning an individual party in order to assist it to improve its implementation and compliance. Such recommendations are to be of a facilitative nature. In case facilitation does not lead to the improvement of implementation and compliance, other necessary measures may be recommended by the Compliance Committee.
3. The findings and the recommendations of the Compliance Committee should either be transmitted to the party concerned through the meeting of the Parties and/or another existing body under the Convention or Protocols.

Size and composition of the Compliance Committee

1. The meeting agreed that a limited number of members of the Compliance Committee would ensure efficiency.
2. Candidates for the Compliance Committee are proposed/suggested by the CPs. In proposing candidates, full consideration should be given by the CPs to include members of the civil society. The members of the Compliance Committee should be elected at the meeting of the CPs and they should serve in their personal capacity. In nominating candidates, CPs have to apply the criteria adopted by the meeting of the Contracting parties.

3. In selecting the members of the Compliance Committee, the meeting of the CPs is to be guided by equitable geographical representation, rotation as well as balance among scientific, legal and technical expertise.

Elements of rules of procedures

1. The Coordinating Unit will act as secretariat of the Compliance Committee.
2. The participation of the Party concerned in the procedure of the Compliance Committee is to be based on the principle of due process. However the party concerned should be excluded from the elaboration and adoption of any findings and recommendations.
3. Before the compliance proceedings are initiated by the Compliance Committee, the party concerned is informed.
4. Concerning the request for further information by the Compliance Committee, the meeting agreed that such a right should be given to the Compliance Committee. Spot appraisal, if need be, can be organized only in agreement with the party concerned.
5. The party concerned should provide to the Compliance Committee information on measures and actions taken to implement the recommendations.

2) Follow up action

The meeting also requested the Secretariat to prepare

- a draft paper on the main elements for a possible compliance mechanism on the basis of its findings and conclusions.
- draft criteria to be applied by the CPs in proposing candidates for membership in the Compliance Committee
- regional report on the Implementation of the Barcelona Convention and its Protocols
- and to complete the pre-session working document submitted by the Secretariat to the first meeting of the Working Group on Implementation and Compliance on the basis of the above findings and conclusions.

With a view to address the above documents, a second meeting of the Working Group is envisaged to be held in late spring next year.