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Naples, Italy, 2-5 December 2019

Agenda Item 3: Thematic Decisions

Inputs received by the Host Countries of the Regional Activity Centres on the proposed Minimum Common Provisions for Host Country Agreements

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UNEP/MAP
Athens, 2019

Note by the Secretariat

To facilitate discussion at the MAP Focal Points Meeting (Athens, Greece, 10-13 September 2019) of the Minimum Common Provisions of Host Country Agreements for Regional Activity Centres (UNEP/MED WG. 468/5, Annex X), the Secretariat prepared an “Aid to negotiation”.

The “Aid to negotiation” was circulated intersessionally among Host Country Governments for comments, so that upon receipt of them, the Secretariat would prepare an information document for the 21st Meeting of the Contracting Parties (COP 21) (Naples, Italy, 2-5 December 2019) to provide input into discussions on a mandate for further work on the issue during the intersessional period between the 21st and the 22nd meetings of the Contracting Parties, so that a related proposal could be made for consideration at the latter meeting (UNEP/MED WG. 468/21, §21). At the time of writing, comments were received by Croatia, France, Italy, Tunisia and Spain.

All comments received on the “Aid to negotiation” by Host Country Governments are compiled and consolidated in Annex I for easy overview. The points below summarize the state of affairs as understood by the Secretariat upon the reading of the comments received and are presented for the sake of facilitating discussions.

- **Legal Status of RACs.** It seems to be that the point of departure for three Host Country Governments would be to accord RACs legal personality. As to the legal nature of RACs, divergence views still persist. For two Host Country Governments the key matter is RACs being public entities. Indeed, one of them points out that it is no so much a matter whether RACs are national or international entities, but rather a matter of RACs being public entities. In the view of another Host Country Government, the regional mandate of RACs calls for according RACs the status of international or intergovernmental entities, or non-resident institutions, rather than the status of national entities. As national entities, RACs would be subject to the national laws of the Host Country Government in matters such as finance, governance and management, making it difficult the delivery of its regional mandate. On the contrary, from the perspective of another Host Country Government, the scenario under which to operate is RACs being national entities not international. To do otherwise would entail entering into international negotiations, as the power to accord a RAC the status of international entity does not reside exclusively on the Host Country Government concerned.
- **Financial Resources.** It appears that common ground would be to list RACs financial resources describing the source of funding, including the contribution of the Host Country Government. Two Host Country Governments also favor reference to the national legal frameworks governing the funding of RACs. As to the transfers to RACs from the Mediterranean Trust Fund (MTF), it seems that there is common understanding that the share of MTF transfers to RACs is a decision which rests with COP. In this context, a Host Country Government points out the need to ensure that MTF transfers meet RACs administrative needs linked to the efficient delivery of UNEP/MAP Programme of Work. Another Host Country Government raises the point of having an equal share of MTF budget among RACs as a common basis to ensure the minimum and effective functioning of each RAC.
- **Property, Funds and Assets of RACs.** Different views are expressed on whether a special regime taking inspiration from the Convention on the Privileges and Immunities of the United Nations, 13 February 1946 (General Convention) could be granted to those funds transferred to the RACs via the MTF or other sources for the delivery of UNEP/MAP Programme of Work. A Host Country Government has no objection to establish such a regime, keeping in mind the legal status of RACs and to the extent permissible under national laws. The remaining two raise legal and practical concerns about establishing a special regime inspired in the General Convention to govern property, funds and assets of RACs, as RACs are not UN driven or administered. From this perspective, they favor the option of no special regime.
- **Personnel of RACs, including the Director.** Whether a special regime taking elements of the General Convention could be accorded to personnel of RACs, including the Director, three Host Country Governments do not favor this course of action, and the remaining would consider the

establishment of such a regime under the condition of RACs holding the status of international or intergovernmental entities and to the extent permissible under national laws. As regards the election of the Director, for two Host Country Governments the key point is transparency. One of them refer to processes that should be standardized and aligned to the main UN criteria and procedure and another to the need to consult MAP NFP on the Director recruitment process, final national preference and salary.

- **Meetings and Conferences convened by RACs.** Rendering equivalent privileges and immunities to representatives of the Contracting Parties to the Barcelona Convention participating in meetings convened by RACs is not a viable option for two Host Country Governments and for the remaining one only under condition that RACs have the status of international or intergovernmental entities, all Contracting Parties to the Barcelona Convention so agreed and to the extent permissible under national laws.
- **Projects and Partnerships.** It appears that there is no consensus on this matter. Three Host Country Governments favour the inclusion of a provision in the potential host country agreements making sure that activities of the RACs which are not related to its regional role do not interfere or affect the UNEP/MAP mandate. Another Host Country Government is of the view that activities which are not related to the regional mandate of the RACs necessarily interfere with the UNEP/MAP mandate and cannot be taken into consideration.
- **MOUs.** It seems that the common position is not to include standard procedures and criteria dealing with the conclusion of MOUs in the potential host country agreements.
- **Steering Committee:** The establishment of a Steering Committee following up on the implementation of the potential host country agreements, composed by the Director of the RAC, one representative of the Host Country Government and the UNEP/MAP Coordinating Unit is not supported by two Host Country Governments, though as noted by one of them, if so agreed its structure should be simplified to the maximum to ensure the efficient management of RACs. For the remaining Host Country Government, what it is important is to ensure transparency in the decision making.

To sum up, from the perspective of the Secretariat, consensus to build-on and open issues to further advance have emerged from the comments on the “Aid to negotiation” as shown below. They are presented for easy overview.

Points of consensus identified by the Secretariat

- (1) **Identification of the Parties entering into the HCA:** The potential HCA text would identify the parties entering into the the Host Country Agreement, which are the United Nations Environment Programme (UNEP) and the designated representative of the Host Country Government.
- (2) **Purpose for entering into the HCA:** The potential HCA text would set out the terms and conditions under which RACs will deliver their regional mandate pursuant to the Barcelona Convention and its Protocols and related decisions of the Meeting of the Contracting Parties to the Barcelona Convention and its Protocols.
- (3) **Regional Role of RACs:** The potential HCA text would set out the regional role for the relevant RAC as per COP 16 Decision IG 19/5 on Mandate of the Components of MAPs.
- (4) **Financial Resources:**
 - The potential HCA text would make provisions establishing the separate management and accounting of MTF transfers and would refer to the requested reporting and audit requirements in line with Project Cooperation Agreements or any other legal instruments signed between UNEP and RACs for the transfer of financial resources.
 - The potential HCA text would describe the source of funding including the contribution of the Host Country Government.
 - The share of MTF transfers to RACs is a decision which rests with COP.
- (5) **Contribution of the Host Country Government:** The potential HCA text would address the contribution of the Host Country Government (financial and in-kind), including specification whether the RAC premises are provided at no cost.

(6) **Personnel of RACs, including the Director:** Establishing a special regime taking elements of the General Convention for the personnel of RACs, including the Director does not seem to be an option, unless, as in the view of a Host Country Government, RACs are accorded the status of international or intergovernmental entities and to the extent permissible under national laws.

(7) **Meetings and Conferences convened by RACs:** Rendering equivalent privileges and immunities to representatives of the Contracting Parties to the Barcelona Convention participating in meetings convened by RACs is not a viable option unless, as in the view of a Host Country Government, RACs are accorded the status of international or intergovernmental entities and to the extent permissible under national laws.

(8) **MOUs:** It seems that including standard procedures and criteria dealing with the conclusion of MOUs in the potential host country agreements is not advisable.

(9) **Final Standard Clauses:** The potential HCA text would address the Settlement of Disputes/Entry into Force/Duration/ Amendment provisions

Open issues identified by the Secretariat

(1) **Legal Status of RACs:** Further discussion is needed on the legal nature of RACs: (1) whether RACs should be national or international entities or (2) public entities, either national or international; as well as on whether RACs should be accorded legal personality.

(2) **Financial Resources:** Further discussions are required on whether to include in the potential HCA text reference to the national legal frameworks governing the funding of RACs. Also, discussion is needed on the proposal for an equal core share of MTF among RACs.

(3) **Property, Funds and Assets of RACs:** Further discussion is needed on whether to the extent permissible under national laws, a special regime taking elements from the General Convention could be accorded to those funds transferred to the RACs via MTF or other sources for the delivery of UNEP/MAP PoW.

(4) **Projects and Partnerships:** Further discussion is needed whether the potential HCA text would include a provision requesting Host Country Governments and RACs to ensure that activities of the RACs which are not related to its regional role do not interfere or affect the UNEP/MAP mandate of RACs.

(5) **Steering Committee:** Further discussion is needed on the need of establishing a Steering Committee given the practical and legal concerns raised, but also on the other hand keeping in mind the importance of ensuring transparency in the decision making.

Annex I

**Comments on the Aid to negotiation of the Minimum Common Provisions of Host
Country Agreements of Regional Activity Centres**

Comments on the Aid to negotiation of the Minimum Common Provisions of Host Country Agreements of Regional Activity Centres¹

This aid to negotiation of the Minimum Common Provisions of Host Country Agreements of Regional Activity Centres (RACs) has been prepared by the Secretariat following the comments received from Host Country Governments. It identifies in Section A those minimum common provisions that generated convergence among Host Country Governments, and in Section B those ones on which there is divergence of views.

The scenarios provided below in Section B give specific expression to the comments received by Host Country Governments on the legal status of RACs. The order in which appear should not be construed as indicating a suggested order of priority, nor should it be taken as an indication of the level of support for any particular scenario. Furthermore, the scenarios listed below are not intended to be exhaustive and do not preclude consideration of other scenarios not included in this document.

This document is for reference purposes only and is without prejudice to the positions of Contracting Parties during the negotiations at MAP Focal Points Meeting and COP 21. Furthermore, the structure of this document is without prejudice to the structure of the potential Host Country Agreements (HCAs) of Regional Activity Centres (RACs) between UNEP and Host Country Governments.

Section A:	Comments
Minimum common provisions that generated convergence among Host Country Government	(1) Comment by Croatia “HR agrees with the description of MCP set in Section A”
I Identification of the Parties entering into the HCA <i>UNEP-Host Country Government</i>	
II Purpose for entering into the HCA <i>Delivery of regional mandate</i>	
III Regional Roles of RACs <i>As per COP 16 Decision IG 19/5 on Mandate of the Components of MAPs</i>	(1) Comment by Croatia “Considering the MCP III on the Regional Role of RACs we support the reference to the COP 16 Decision IG 19/5 on Mandate of the Components of MAP”
IV Financial Resources <i>Separate management and accounting of MFT transfers</i> <i>Reporting and audit requirements</i>	
V Contribution of the Host Country Government	(1) Comment by Croatia “In addition to the MCP V Contribution of the Host Country Government, beside information on provision of premises at no cost, other specified contributions (in kind, cash or service) could be mentioned too, such as furnishing and maintenance of premises, covering the usual costs for running the office, in cash counterpart contribution for the general operation of RAC etc.”
VI Final standard clauses <i>Settlement of Disputes/Entry into Force/Duration/ Amendment</i>	

¹ Comment by France: “The document ‘aid to negotiation’ reflects well the points of convergence and divergence between the Parties on Host country agreement minimum common provisions’.

Section B: Minimum common provisions where there is divergence of views	Comments
<p>I Legal status of RACs</p> <p><i>Scenario 01: The RAC is a national entity</i></p> <p><i>Option (a): The RAC is accorded legal personality</i></p> <p><i>Option (b): The RAC does not have legal personality</i></p> <p><i>Scenario 02: The RAC is an international entity</i></p>	<p>(1) Comment by Croatia</p> <p>“HR agrees with the considerations pointed out regarding the Common Provision (CP) I “Legal status of RACs” and we support the agreement of Contracting Parties and Secretariat on Scenario 01 (the RAC is a national entity). Having in mind the specific features of PAP/RAC in Croatia which is a Public Institution, for Croatia Option (a) (the RAC is accorded legal personality) is acceptable. Nevertheless, having in mind the specific features of each RAC, other possible options under Scenario 01 should be agreed between the host country and UNEP/MAP.”</p> <p>“HR has to express concern about this scenario [Scenario 02], because under our understanding the rules for declaring a particular organisation as international are very strict and do not depend only on the host country, but, as suggested by our Ministry of foreign affairs, require general alignment between contracting parties that are host countries.”</p> <p>(2) Comment by Italy</p> <p>“During the meeting in Athens, this point [The RAC is a public entity] was considered crucial by participants. Therefore, it should be included at least in Section B.”</p> <p>(3) Comment by Spain</p> <p>“Our preference is a public entity that is national or international preferably with legal personality”</p> <p>(4) Comment by Tunisia</p> <p>“Before talking about the RAC entity, whether it is a national or international entity, it is important to stress the importance of the RAC being granted legal personality so that it can have the capacity to enter into contracts, to initiate legal proceedings, to buy, to pay, etc.</p> <p>This represents a very important part of the activities that it is called to implement within the framework of its mission, if not it will be blocked.</p> <p>With respect to its national or international entity, we are more in favor of the RAC entity being international or intergovernmental or, if not possible, a non-resident organization (if this status exists in the concerned host country), so that it is in coherence with its regional mission and its Barcelona Convention Regional Activity Centre mandate. Indeed, with a national entity, the RAC will have to fulfill Host Country national rules in terms of finances (fiscal regime, monetary rules, currency transactions and others), of governance, of management, etc., to which are subject national institutions. Which is not adequate with RAC regional mission and vocation and, in anyway, will not facilitate the implementation of</p>

	<p>its activities covering 21 riparian countries of the Mediterranean.</p> <p>In addition to this, as a national body, the RAC cannot benefit from the fiscal and financial privileges (taxes, customs duties or consumer rights, etc.) specified in Article 11 of the draft Host Country Agreement (HCA) and the privileges and benefits specified in Article 12 concerning RAC staff members”.</p>
<p>II Financial Resources</p> <p><i>Scenario 01: Listing of sources of funding</i></p> <p><i>Scenario 02: Reference to national legal frameworks governing funding of RAC</i></p> <p><i>Share of MTF transfers among RACS - decision rests with COP</i></p>	<p>(1) Comment by Croatia</p> <p>“HR considers that description of all sources of funding provided to RACs Scenario 1 + Scenario 2 should be described by the HCA”</p> <p>“Having in mind the Decision IG. 19/5 adopted on COP 16, we strongly support the part of explanation which states that sharing of MTF funding among RACs is a decision which rests with COP.”</p> <p>(2) Comment by Italy</p> <p>“The proposal to have an equal core share of MTF budget is not linked to the Contribution of the HC Government. Indeed, it would represent a common basis to ensure the minimum and effective functioning of each RAC while the rest of the budget allocated to each RAC should depend on their mandates, on the POW requirements, on the external funds, etc. Therefore, this scenario should be moved in the general para on Financial Resources.”</p> <p>(3) Comment by Spain</p> <p>“We prefer a combination of the two scenarios to ensure transparency”</p> <p>“We agree that MAP should go in the direction of ensuring a share of MTF transfer among RAC’s on the basis of the RAC administrative needs linked to the requirements to the RAC’s of MAP Work Program and their efficiency delivering.”</p> <p>(4) Comment by Tunisia</p> <p>“It is important to mention, in the Host Country Agreement (HCA), the CAR’s financial resources and their origin. This is particularly important because the creation of some RACs has been conditioned or motivated, inter alia in the COP's Decision related to its creation, by the sources of its funding.”</p> <p>“In particular, it is necessary to specify the stable resources (MTF, Host country contribution) which will enable the RAC to fulfill its mission within the framework of the Barcelona Convention.”</p>
<p>III Property, Funds and Assets of RACs</p> <p><i>Scenario 01: Special regime Elements of the General Convention (Article II) taken as inspiration, where appropriate, keeping in mind the legal</i></p>	<p>(1) Comment by Croatia</p> <p>“Having in mind the national settings in Croatia defined by the national legal framework, privileges and immunity regimes and the exemption from taxation regime apply only to international organizations. In the case of PAP/RAC in Croatia, legislative framework governing its legal status as a public institution, defines the manner</p>

<p><i>status of the RAC, and as long as the national legal framework allows</i></p> <p><u>Scenario 02</u>: No special regime</p>	<p>of financing, national financial contributions, fees as well as possibilities to receive donations from various sources. Therefore, HR supports Scenario 02 (no special regime).”</p> <p>(2) Comment by Spain</p> <p>“We do not think scenario 01 is adjusted to the needs of the RACs unless they are UN driven or administered. We prefer scenario 02”</p> <p>(3) Comment by Tunisia</p> <p>“We have no objection to the text of the agreement with the host country clarifying the special regime granted to the RAC for funds transferred to the RAC in the form of a grant by the MTF and other sources of funding for implementation of the UNEP/MAP Programme of Work (PoW). The scope of application of the special regime could, of course, be inspired from the United Nations Convention on the Privileges and Immunities of 13 February 1946 (General Convention) (Article II), while keeping in mind the spirit of the legal status of the RAC, to the extent that the national legal framework allows.”</p>
<p>IV Personnel of RACs</p> <p><u>Scenario 01</u>: Special regime</p> <p><i>Elements of the General Convention (Articles V and VI) taken as inspiration where appropriate, keeping in mind the legal status of the RAC, and as long as the national legal framework allows</i></p> <p><u>Scenario 02</u>: No special regime</p> <p><i>Attachment of RAC personnel to the institution hosting the RAC</i></p>	<p>(1) Comment by Croatia</p> <p>“Following the already stated position regarding application of privileges and immunities equivalent to those provided in Convention on the Privileges and Immunities of the UN, Croatia supports scenarios proposing no special regime in relation to CP IV “Personnel of RACs”, CP V “Meeting and Conferences convened by RACs” and CP VI “Director”. Furthermore, with regard to the provisions related to conveying meetings and conferences in a host country and the accompanying application of privileges and immunities, we would like to point out again that organization of these types of events is carried out in line with the existing legislation that governs foreign and EU affairs and cannot be regulated by the HCA.”</p> <p>(2) Comment by Spain</p> <p>“We think the staffing of the RAC’s should be nationally driven as we prefer RAC’s being public entities but also we think transparency should be ensured by informing MAP about the staff recruitment and salaries”</p> <p>(3) Comment by Tunisia</p> <p>“In the event that the RAC entity is international or intergovernmental, we have no objection to the text of the agreement with the host country specifying the special regime granted to the staff of the RAC. The General Convention (Articles V and VI) could be used as a source of inspiration, where appropriate, while keeping in mind the legal status of the RAC, and to the extent that the national legal framework allows.”</p>
<p>V Meetings and Conferences convened by RACs</p> <p><i>According equivalent privileges and immunities as those in the General Convention (Article IV) to the</i></p>	<p>(1) Comment by Croatia</p> <p>“Following the already stated position regarding application of privileges and immunities equivalent to those provided in Convention on the Privileges and Immunities of the UN, Croatia supports scenarios</p>

<p><i>Representatives of the Parties to the Barcelona Convention</i></p>	<p>proposing no special regime in relation to CP IV “Personnel of RACs”, CP V “Meeting and Conferences convened by RACs” and CP VI “Director”. Furthermore, with regard to the provisions related to conveying meetings and conferences in a host country and the accompanying application of privileges and immunities, we would like to point out again that organization of these types of events is carried out in line with the existing legislation that governs foreign and EU affairs and cannot be regulated by the HCA.”</p> <p>(2) Comment by Spain “We do not agree with this article as it is, as RAC’s are not UN entities. It is not necessary.”</p> <p>(3) Comment by Tunisia “ In the event that the RAC entity is international or intergovernmental and all the Contracting Parties to the Barcelona Convention agree on its necessity, we see no objection to granting the representatives of the Contracting Parties to the Convention, participating in meetings organized by the RACs in the context of the implementation of the UNEP PoW, privileges and immunities equivalent to those listed in Article IV of the General Convention, as appropriate, while taking into account the legal status of the RAC and to the extent permitted by the national legal framework.”</p>
<p>VI Director <i>Scenario 01: Special status to RAC Director</i> <i>Elements of the General Convention (Articles V) taken as inspiration where appropriate, keeping in mind the legal status of the RAC, and as long as the national legal framework allows</i></p> <p><i>Scenario 02: Non-Special status to RAC Director</i> <i>Attachment of the Director to the institution hosting the RAC and election by the Host Country Government in consultation with CU</i></p>	<p>(1) Comment by Croatia “Following the already stated position regarding application of privileges and immunities equivalent to those provided in Convention on the Privileges and Immunities of the UN, Croatia supports scenarios proposing no special regime in relation to CP IV “Personnel of RACs”, CP V “Meeting and Conferences convened by RACs” and CP VI “Director”. Furthermore, with regard to the provisions related to conveying meetings and conferences in a host country and the accompanying application of privileges and immunities, we would like to point out again that organization of these types of events is carried out in line with the existing legislation that governs foreign and EU affairs and cannot be regulated by the HCA.”</p> <p>(2) Comment by Italy “Scenario 03: Non-special status to RAC Director selected through a transparent and predictable recruitment process that should be standardized and aligned to the main UN criteria and procedures.”</p> <p>(3) Comment by Spain “We think the nomination of the Director should be nationally driven as we prefer RAC’s being public entities but also we think transparency should be ensured by consulting with MAP NFP about the director recruitment process and final national preference and salary.”</p> <p>(4) Comment by Tunisia “In the event that the RAC entity is international or intergovernmental, we have no objection to the text of</p>

	<p>the agreement with the host country clarifying special regime status of the Director of the RAC. The General Convention (Article V) could be used as a source of inspiration, where appropriate, while keeping in mind the legal status of the RAC, and to the extent permitted by the national legal framework.”</p>
<p>VII Projects and Partnerships <u>Scenario 01: Inclusion of standards and criteria in HCA-To be annexed to the HCA</u> <u>Scenario 02: Inter-play provision</u> <i>Provision ensuring that activities of the RAC which are not related to its regional role do not interfere or affect the UNEP/MAP mandate.</i></p>	<p>(1) Comment by Croatia “HR supports Scenario 2” (2) Comment by Italy “Activities not related to the regional mandates of the RACs necessarily interfere with the UNEP/MAP mandate and cannot be taken into consideration. As mentioned above, RACs mandates are identified through COP 16 Decision IG 19/5. Therefore, their activities should be strictly aimed to the fulfillment of their mandates in the frame of the Barcelona Convention system.” (3) Comment by Spain “We favor scenario 02” (4) Comment by Tunisia “In this regard, it is suggested, , to envisage the inclusion of a provision in the text of agreements with potential host countries requesting the relevant Host Country Governments and RACs to ensure that the activities of the RACs which are not related to its regional role, do not interfere with, or affect, the mandate of the RACs under UNEP/MAP.”</p>
<p>VIII MOUs <u>Scenario 01: Framework for concluding MOUs by RACs to be included in HCA</u> <i>Standard procedures and criteria to be annexed to the HCA</i> <u>Scenario 02: No inclusion</u> <i>Framework for consultation among Regional Activity Centers (RACs), the Coordinating Unit and the Bureau as regards the development and conclusion of Memoranda of Understanding (MOUs) and other legal instruments alike in place among all RACs</i></p>	<p>(1) Comment by Croatia “HR supports Scenario 2” (2) Comment by Spain “We strongly support an approach close to scenario 01 but not the second part ‘Standard procedures and criteria to be annexed to the HCA’” (3) Comment by Tunisia “It is suggested to not include such provision in the host country agreement text.”</p>
<p>IX Steering Committee <u>Scenario 01: Establishment of Steering Committee</u> <u>Scenario 02: No Steering Committee</u></p>	<p>(1) Comment by Croatia “Taking into consideration the specific national legislations for establishment of public institutions, representative of foreign/international institutions cannot be appointed to the governing bodies of national institutions established by national Governments (as it is case in Croatia).” (2) Comment by Spain “We do not have strong feelings about this but the important concept for us is to ensure transparency in decision making” (3) Comment by Tunisia</p>

	“It is suggested in this context not to overburden and further complicate management within the RACs. Even if the creation of a steering committee should be decided, it should be simplified to the maximum and it should not complicate the management of the RACs.”
VI Final standard clauses <i>Settlement of Disputes/Entry into Force/Duration/ Amendment</i>	

Section A

I Identification of the Parties entering into the HCA

The potential HCA text would identify the parties entering into the Host Country Agreement, which are the United Nations Environment Programme (UNEP) and the designated representative of the Host Country Government.

II Purpose for entering into the HCA

The potential HCA text would set out the terms and conditions under which RACs will deliver their regional mandate pursuant to the Barcelona Convention and its Protocols and related decisions of the Meeting of the Contracting Parties to the Barcelona Convention and its Protocols.

III Regional Role of RACs

The potential HCA text would set out the regional role for the relevant RAC as per COP 16 Decision IG 19/5 on Mandate of the Components of MAPs.

IV Financial Resources

The potential HCA text would make provisions establishing the separate management and accounting of MTF and the requested reporting and audit requirements.

V Contribution of the Host Country Government

The potential HCA text would address the contribution of the Host Country Government, including specification whether the RAC premises are provided at no cost.

VI Final standard clauses

The potential HCA text would address the Settlement of Disputes/Entry into Force/Duration/ Amendment provisions

Section B²

I Legal status of RACs

On the legal status of RACs, further discussions are required on whether the potential HCA text should include a provision addressing the legal status of the concerned RAC.

The following considerations should be kept in mind as to the determination of the legal status of RACs:

- (1) the current legal status of RACs varies from RAC to RAC depending on its constitutive instrument;
- (2) the necessary functional autonomy of RACs in performing their regional role must be ensured; and
- (3) the commonality throughout the potential HCAs would reside on the fact that all of them would include a provision addressing the legal status of RACs.

² Comment by Italy: “This section should be amended to reflect the changes in the table above”

- **Scenario 01: The RAC is a national entity**

The potential HCA text could state that the concerned RAC is a national entity. The text could specify the particular type of entity, e.g. foundation, agency, research center, trustee, etc. The text may contain references to the constitutive instrument of the concerned RAC and any other relevant national legislation. The organizational structure of the host institution should be sufficiently flexible to allow the entity to function as RAC. The RAC may or not hold legal personality, this is up to the Host Country Government to the extent permissible under national laws.

- **Option (a): The RAC is accorded legal personality**

The potential HCA text could state that the concerned RAC has legal personality and could specify on the capacity of the RAC under the national laws to contract, institute legal procedures and acquire and dispose property.

- **Option (b): The RAC does not have legal personality**

- **Scenario 02: The RAC is an international entity**

The potential HCA text could state that the concerned RAC is an international entity. The text could specify the particular type of entity and may contain references to the constitutive instrument of the concerned RAC and any other relevant piece of legislation.

II Financial Resources

- **Scenario 1: Listing of sources of funding**

The potential HCA text could describe the composition of the financial resources of the RAC, including contributions. For indicative purposes, possible sources of funding could include the following. The list is not exhaustive:

- Funds transferred from the MTF;
- Voluntary contributions from Contracting Parties;
- Funds from donors other than Contracting Parties.

- **Scenario 2: Reference to national legal frameworks governing the funding of RAC**

The potential HCA text could make a reference to the relevant national legislation governing the financing of the RAC and describe the financial resources of and contributions to the RAC, where appropriate. The sharing of MTF funding among RACs is a decision which rests with COP.

III Property, Funds and Assets of RACs

On the status of property, funds and assets of RACs, further discussions are required on whether to the extent permissible under national laws, a special regime could be accorded to those funds transferred to the RACs via MTF or other sources for the delivery of UNEP/MAP PoW.

- **Scenario 1: Special regime**

The potential HCA text could elaborate on the special regime accorded to the RAC regarding the funds transferred to it from the MTF and other sources of funding for the delivery of the PoW of UNEP/MAP. The scope of the special regime could take elements of the Convention on the Privileges and Immunities of the United Nations, 13 February 1946 (General Convention) (Article II) as inspiration, where appropriate, keeping in mind the legal status of the RAC, and to the extent permissible under national laws.

- **Scenario 2: No special regime**

IV Personnel of RACs

Further discussions are required on whether to the extent permissible under national laws a special regime could be accorded to the personnel of RACs. Regardless the scenario, indication should be given of the status of the personnel of RACs.

- **Scenario 1: Special regime**

The potential HCA text could elaborate on the special regime accorded to the RAC personnel. The General Convention (Articles V and VI) may be taken as inspiration, where appropriate, keeping in mind the legal status of the RAC, and to the extent permissible under national laws.

- **Scenario 2: No special regime**

The potential HCA text could address the attachment of RAC personnel to the institution hosting the RAC, in accordance with the rules of that organization and relevant national legislation.

V Meetings and Conferences convened by RACs

Further discussions are required on whether representatives of the Contracting Parties to the Barcelona Convention participating in meetings convened by RACS in delivering the UNEP PoW could be accorded equivalent privileges and immunities as those listed in Article IV of the General Convention, where appropriate, given the legal status of the RAC, and to the extent permissible under national laws.

VI Director

Further discussions are required on whether special status should be given to RAC Directors. The scenarios ahead are:

- **Scenario 1: Special status to RAC Director**

The potential HCA text could elaborate on the special regime status to the RAC Director. The General Convention (Article V) may be taken as inspiration, where appropriate, keeping in mind the legal status of the RAC, and to the extent permissible under national laws.

- **Scenario 2: Non- Special status to RAC Director**

The potential HCA text could address the attachment of RAC personnel, including the Director, to the institution hosting the RAC, in accordance with the rules of that organization and relevant national legislation. The director of a RAC would normally be selected by the Host Country Government in consultation with the Coordinating Unit (CU)

VII Projects and Partnerships

Scenario 01: Inclusion of standards and criteria in HCA

The potential HCA text could annex standard procedures and criteria for the participation of RACs in projects and partnerships that are not included in the UNEP/MAP PoW.

Scenario 02: Inter play provision

Instead of including the standards and criteria referred above, a point made by the Secretariat in this regard is considering to include a provision in the text of the potential HCAs requesting concerned Host Country Governments and RACs to ensure that activities of the RAC which are not related to its regional role do not interfere or affect the UNEP/MAP mandate of RACs.

VIII MOUs

Scenario 01: Framework for concluding MOUs by RACs annexed to HCA

The potential HCA could annex standard procedures and criteria for the conclusion of MOUs by RACs.

Scenario 02: No inclusion

Following BUREAU conclusions, a Framework for consultation among Regional Activity Centers (RACs), the Coordinating Unit and the Bureau as regards the development and conclusion of Memoranda of Understanding (MOUs) and other legal instruments alike was prepared by the Secretariat. The Framework was subject to consultation with and agreement of MAP Components and was circulated among all RACS.

IX Steering Committee

Further discussion is needed on whether to establish a Steering Committee.