

Compliance Procedures and Mechanisms under the Barcelona Convention and its Protocols

Why a Compliance Committee?

Following adoption of Decision IG.17/2 on Compliance Procedures and Mechanisms by the 15th Meeting of the Contracting Parties and the creation of the Compliance Committee (the Committee) in July 2008, as well as Decision IG.19/1 containing the Rules of Procedure adopted by the 16th Meeting of the Contracting Parties in November 2009, the Committee became an official subsidiary body of the Convention and its Protocols and of the Meeting of the Contracting Parties. The procedures and mechanisms on compliance are a set of tools aimed to allow for the better implementation of the provisions of the Convention and its Protocols. The role of the Committee is to provide advice and assistance to Contracting Parties to assist them comply with their obligations under the Barcelona Convention and its Protocols and to generally facilitate, promote, monitor and secure such compliance.

Main features of the Compliance mechanism procedures

The procedure:

- is non-adversarial, transparent, effective, preventive in nature and oriented in the direction of “helping” Parties to implement the Convention;
- has a facilitating orientation, the Committee providing advice and help to Contracting Parties facing problems in implementing the Barcelona Convention and its Protocols;
- takes into account the specific situation of each Contracting Party.

Who are the members of the Committee?

An independent Committee: The members of the Committee are elected in their personal capacity by meetings of the Contracting Parties and act independently in order to serve the interests of the Barcelona Convention and its Protocols.

An operational Committee: The Committee is composed of seven regular members and seven alternate members, broadly representative of the geographic spread of the countries in the region.

A competent Committee: Members and alternates are persons with recognized competence regarding the issues covered in the Barcelona Convention and its Protocols, particularly in scientific, technical, socio-economic, and legal expertise.

How does the Committee intervene?

According to Decision IG 17/2, the Committee may consider an issue after a matter has been referred to it by the Contracting Parties or may likewise examine an issue brought before it by the Secretariat. It may also examine all general questions of non-compliance or any problems in implementing the Barcelona Convention and its Protocols on the basis of the reports submitted by the Contracting Parties under Article 26 of the Barcelona Convention. It may also address any other non-compliance issues transmitted to it by meetings of the Contracting Parties.

The Committee's guiding rule is to spare no effort to reach conclusions on substantive issues by consensus. However, if consensus is not possible, the Committee's conclusions, measures and recommendations may be adopted by at least six members present and voting.

Why refer a matter to the Committee?

1st case (Self-trigger): A Contracting Party may bring its own actual or potential situation of non-compliance to the Committee's attention if it considers that, despite all its efforts, it is or will be unable to comply fully or to meet its obligations under the Convention and its Protocols.

2nd case (Party to Party trigger): A Contracting Party may refer to the Committee any situation of non-compliance by another Contracting Party. Such a case may be envisaged when a Contracting Party is concerned or affected by a situation in which another Party fails to comply with its obligations under the Convention and its Protocols.

3rd case (Secretariat trigger): The Secretariat, after contacting the Contracting Party concerned, where the difficulties faced cannot be overcome, may refer to the Committee any such problem or difficulties being encountered by the Contracting Party in complying with its obligations under the Barcelona Convention and its Protocols.

A transparent and participatory procedure.

- Submissions 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;
- Unless the Committee and the Contracting Party whose compliance is at issue decide otherwise, meetings to examine matters referred to the Committee are open to other Contracting Parties and to observers;
- The Contracting Party whose compliance is at issue is invited to take part in the Committee's consideration of the matter. The Party, other Parties and

observers do not, however, participate in the preparation and adoption of the Committee's findings, measures and recommendations;

- The Contracting Party whose compliance is at issue may submit replies and/or comments at any stage of the proceedings, in accordance with the Committee's rules of procedure, in particular the principle of due process. It may also submit comments on the Committee's findings, measures and recommendations; the Committee will include these comments in the report it submits to the Contracting Parties or the Secretariat as the case may be.

What measures can the Committee take?

The purpose of any measure that may be taken by the Committee is to help the Contracting Party concerned comply with its commitments under the Barcelona Convention and its Protocols and to examine any potential cases of non-compliance, taking into account the capacity of the Party concerned and the cause, nature, level and frequency of the non-compliance issue.

These measures are of an incentive and gradual nature:

- the Committee may give advice and, if necessary, facilitate the provision of assistance; this assistance could be through recommendations on the interpretation of legal texts or on technical or administrative methodology;
- depending on the case, the Committee may invite and / or assist the Contracting Party concerned to draw up a plan of action to bring the Party into compliance within a period to be agreed between the Committee and the Party concerned;
- the Committee may invite the Contracting Party concerned to submit progress reports on its efforts to bring it into compliance with its obligations under the Barcelona Convention and its Protocols; d. the Committee may make recommendations to meetings of the Contracting Parties on cases of non-compliance, if it considers that such cases should be handled by the meeting of the Contracting Parties.

What measures can the meetings of the Contracting Parties take?

The meeting of the Contracting Parties may decide to act as follows, in cases of non-compliance, basing itself on the recommendations set out in the report submitted to it by the Committee:

- assist a particular Party to comply with the Committee's recommendations and provide assistance, including capacity-building, where appropriate;
- make recommendations to the Contracting Party concerned;

- request the Party concerned to submit progress reports on compliance with its obligations under the Barcelona Convention and its Protocols;
- as a last resort, publish cases of non-compliance.

In the event of a serious, on-going or repeated situations of non-compliance by a Party, the meeting of the Contracting Parties may either issue a caution or publish a report on non-compliance by the Party concerned or, lastly, take any additional action necessary in order to achieve the objectives of the Convention and its Protocols.

Measures taken by meetings of the Contracting Parties must in all cases take into account the capacity of the Contracting Party concerned, as well as other factors such as the cause, type and degree of non-compliance.

How does the Secretariat provide support to the Committee?

Compliance Committee meetings are held once a year. According to Rule 11 of Decision IG.17/2, the Secretariat makes all necessary arrangements for the organization and smooth running of the meeting by providing the necessary services. The Secretariat sends notice of meetings to Compliance Committee members and alternate members, drafts the provisional agenda, prepares and provides the working and reference documents for each Compliance Committee meeting within the required deadlines. It also acts as rapporteur to the meeting, recording the deliberations of the Compliance Committee and preparing the meeting report. Lastly, the Secretariat performs other functions assigned to it by the Compliance Committee, with respect to its work.

The Committee: Making proposals for improvement

The Committee transmits to each meeting of the Contracting Parties a report in which it makes the necessary recommendations and proposals, to facilitate and improve the implementation of the Barcelona Convention and its Protocols. It is up to the meeting of the Parties, based on these recommendations and proposals, to examine the effectiveness of the compliance mechanism and to take any appropriate measures needed.

