

Introduction

1. Based on the findings and conclusions of the first meeting of the Working Group on Implementation and Compliance under the Barcelona Convention, the Coordinating Unit was asked to elaborate a draft paper on the main elements for a possible compliance mechanism. The draft paper draws upon the experience of international and regional international agreements addressing environmental issues, which have established compliance mechanisms and procedures. Attention was focused on international agreements to which Parties to the Barcelona Convention and its Protocols are parties. In particular, the compliance mechanisms and procedures established under the Montreal Protocol on Substances that Deplete the Ozone Layer, the Basel Convention on Transboundary Movement of Hazardous Wastes and Their Disposal, the Cartagena Protocol on Biological Safety and the Kyoto Protocol to the United Nations Framework Convention on Climate Change served as sources for the elaboration of elements for a compliance mechanism under the Barcelona Convention and its Protocol. Furthermore, implementation and compliance procedures established under the Berne Convention for the Conservation of European Wildlife and Natural Habitats, the Convention on Long-Range Transboundary Air Pollution, the Espoo Convention, the Aarhus Convention, the Protocol on Water and Health under the Convention on the Protection of Transboundary Water Courses and International Lakes and the OSPAR Convention were taken into consideration.

Main elements

2. The following elements for a compliance mechanism, based on the findings and conclusions of the first meeting of the Working Party on Implementation and Compliance under the Barcelona Convention, are submitted for further consideration. The elements set out below follow the structure of already established compliance mechanisms and procedures under other multilateral environmental agreements.

I. Objective (of the compliance mechanism)

The objective of the compliance mechanism is to facilitate and promote compliance with the commitments under the Barcelona Convention and its Protocols.

II. Compliance Committee

1. A compliance committee, hereafter referred to as "the Committee", is hereby established.
2. The Committee shall consist of [five] [seven] [X] members elected by the meeting of the Contracting Parties. [For each member of the Committee, the meeting of the Contracting Parties shall elect an alternate member.] The members [and the alternates] are elected for a term of [four] years.

Comment

Another option might be to allow the meeting of the Parties to elect 5 members plus two alternate. A question might be raised. Should be given to the meeting of the CPs an opportunity to appoint half of the committee at each meeting? One solution might be that at the first election some members are appointed for a term of two years and others for four years. Another solution might be to stipulate that members mandate is four years with an exception for the first phase where two or three members (drawn by lots) will be renewable at the next meeting of the CPs.

3. The members of the Committee shall be nationals of the Parties to the Barcelona Convention. The Committee may not include more than one national of the same State.
4. Members of the Committee [and their alternates] shall serve in their personal/individual capacities. [Members of the Committee will accomplish their mandate free of charge. Their travel expenses will be covered based on UN rules.]
5. The members [and their alternates] shall be elected from among candidates nominated by the Contracting Parties. Contracting Parties shall give full consideration to nominate candidates who are members of the civil society.
6. Candidates nominated shall be persons of high moral character and shall have recognized competence relating to the matters dealt with by the Barcelona Convention and its Protocols as well as in relevant fields such as the scientific, technical, socio-economic or legal fields. [More detailed criteria may be adopted by the meeting of the Contracting Parties.] Each nomination shall be accompanied by a curriculum vitae (CV) of the candidate [not exceeding 600 words] and may include supporting material.
7. In electing members [and their alternates] of the Committee, the meeting of the Contracting Parties is to be guided by equitable geographic representation, rotation as well as balance among scientific, legal and technical expertise.
8. The Committee shall elect its officers – a Chair and a Vice-Chair – based on equitable geographic representation and rotation. [The officers of the Committee – a Chair and a Vice-Chair are to be elected by the meeting of the Parties based on equitable geographic representation and rotation].
9. Members of the Committee may be re-elected for one consecutive term.
10. [If a member of the Committee can no longer perform her or his duties as member of the Committee for any reason, the Bureau of the Contracting Parties shall appoint another member fulfilling the criteria in this chapter to serve the remainder of the term, subject to the approval of the Committee.]

Comment

These provisions on the compliance committee in regard to membership and size follow the example of other compliance and implementation committees, which have been established under other agreements, which address environmental issues. The criteria for members of the Committee listed in the above provisions are similar to those of other compliance procedures and mechanisms. Further consideration may be given to the involvement of “civil society” in the nomination procedure.

As regards replacement of members of the Committee which are no longer in a position to perform their duties two options are to be taken into account: either the meeting of the Contracting Parties elect alternates at the same time members are elected or the Bureau is authorised to appoint a “member” if this becomes necessary. Examples for both options are found in compliance mechanisms and procedures. Under the Kyoto Protocol alternates are elected, whereas under the Aarhus Convention the Bureau is authorised to appoint “new members” if necessary. Which of the options is chosen will very much depend whether the Bureau meets frequently to fulfil this mandate when necessary.

III. Meetings

The Committee shall, unless it decides otherwise, meet at least once a year. The secretariat shall arrange for and service the meetings of the Committee.

Comment

Such a provision is found in all other compliance mechanisms and procedures. By establishing the Committee shall meet at least once a year, it is to be ensured that the Committee will be able to establish working procedures as soon as possible, even if no "cases" are submitted to the Compliance Committee.

IV. Procedure

1. Submissions concerning the alleged non-compliance of a Party might be addressed in writing to the Committee. [To the Secretariat to be handed to the Committee]. [They are to be accompanied by corroborating information setting out the matter of concern and the relevant provisions of the Barcelona Convention and its Protocols.]
2. The Secretariat shall, within two weeks of its receiving a submission, send a copy of that submission to the Party whose compliance is at issue.
3. The Committee may determine not to proceed with a submission that it considers is
 - anonymous,
 - de minimis, or
 - manifestly ill founded.The Secretariat shall inform the Party concerned about such [a determination] [findings] taken by the Committee within two weeks of the date of [the determination] [the findings].
4. The Party concerned may present information on the issue in question, present responses and/or comments at every step of the proceedings [described in this decision]. Upon invitation of the Party the Committee may undertake on spot appraisals.
5. The Committee may ask the Party concerned to provide further information and may, with the consent of any Party concerned, may gather information in the territory of that Party.
6. In its deliberations the Committee shall take into account all the information available to it concerning the issue in question.
7. The Party concerned is entitled to participate in the discussions of the Committee and present its observations. The Party concerned shall not take part in the preparation and adoption of any findings, any measures or any recommendation of the Committee.
8. The Committee shall consider any submission with a view to determining the facts and root causes of the matter of concern and, assist its resolution. As part of this process, the Committee may provide a Party, [after consultations with that Party concerned,] with advice and information how to address the matter of concern and facilitate assistance.
9. The meeting of the Contracting Parties may, upon consideration of a report and any recommendations of the Committee, decide upon appropriate measures to bring full compliance with the Convention and its protocols. The meeting of the Contracting

Parties may, depending on the particular questions before it and taking into account the cause, degree and frequency of the non-compliance, decide upon one or more of the following measures:
[.....]

10. Party concerned shall provide to the Compliance Committee information on measures and actions taken to further the implementation of and compliance with the Barcelona Convention and its protocols.

Comment

The procedure set out above elaborates the findings and conclusions of the first meeting of the Working Group on Implementation and Compliance under the Barcelona Convention on "the rules of procedure" and puts it into "legal language".

The above paragraphs contain the main elements of the procedure to be applied in case questions are raised concerning a Party's compliance with the Barcelona Convention and its protocols.

The elements set out provide that submissions are to be considered by the Compliance Committee. The Committee may determine that a submission is not to be considered if it does not meet certain criteria.

The Party concerned is to be informed at all stages of the proceedings and may participate in the discussions of the Committee and provide further information, but the Party concerned may not take part in the preparation and adoption of any findings, measures or recommendations.

As regards "consequences" concerning a Party found in non-compliance a two stage approach is suggested: the Committee may give advice and information to the Party concerned, more "stringent consequences" may be suggested by the Committee to the meeting of the Contracting Parties which would then take a decision.

In the further elaboration of the "rules of procedure" consideration is to be given, inter alia, to the question who may make submissions and to the question of confidentiality as well as the transparency of the proceedings.

IV. Secretariat

The Coordinating Unit shall serve as the Secretariat of the Compliance Committee.

Comment

The first meeting of the Working Group on Implementation and Compliance under the Barcelona Convention discussed the question which institution should serve as the "Secretariat" of the Compliance Committee and came to the conclusion that the Coordinating Unit shall fulfil this function.