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COMPLIANCE COMMITTEE UNDER THE NAGOYA PROTOCOL

First meeting
Montreal, Canada, 6-8 April 2016
Item 5 of the provisional agenda*

FUTURE WORK OF THE COMPLIANCE COMMITTEE FOR 2017-2018

INTRODUCTION

1. In decision NP-1/4, the Conference of the Parties serving as the meeting of the Parties (COP-MOP) to the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization requested that at least one meeting of the Compliance Committee be held prior to COP-MOP 2 and specified the purposes for the meeting. Beyond these immediate considerations, however, there is no pre-determined work plan for the Committee. Accordingly, and with a view to assisting in the planning of and preparations for meetings of the Committee in the next biennium, this document has been prepared to assist the Committee in considering the work it may wish to undertake.

2. In light of similarities between the compliance procedures and mechanisms of the Cartagena Protocol on Biosafety and the Nagoya Protocol, section I of the document summarizes the experience from the Compliance Committee of the Biosafety Protocol and the work it has done since its establishment in 2004. Section II of the document indicates activities and processes to be undertaken under the Nagoya Protocol in the biennium 2017-2018 (i.e. in the intersessional period between COP-MOP 2 and COP-MOP 3) where the Compliance Committee may have a role to play. Section III offers some concluding remarks.

I. EXPERIENCE FROM THE COMPLIANCE COMMITTEE OF THE CARTAGENA PROTOCOL ON BIOSAFETY

3. Article 34 of the Cartagena Protocol on Biosafety addresses compliance. It required the first meeting of the COP-MOP to the Biosafety Protocol to consider and approve cooperative procedures and institutional mechanisms to promote compliance with the provisions of the Protocol and to address cases of non-compliance. COP-MOP 1 was held in 2004 and it adopted decision BS-I/7 on “establishment of procedures and mechanisms on compliance under the Cartagena Protocol on Biosafety”. In the decision, the COP-MOP adopted procedures and mechanisms on compliance and established a Compliance Committee.

* UNEP/CBD/ABS/CC/1/1.

4. The Compliance Committee under the Biosafety Protocol has met thirteen times since its establishment, most recently from 24 to 26 February 2016. It has not received a submission that would trigger the compliance procedures. Early work of the Committee focused on developing the rules of procedure for its meetings, the issue of measures in cases of repeated non-compliance (which had been left open for further consideration in the compliance procedures and mechanisms) and general issues of compliance, particularly as identified through analyses of the national reports and the completeness of information on the Biosafety Clearing-House (BCH). At its fifth meeting, the Committee agreed to have a standing agenda item on “review of general issues of compliance” at its subsequent meetings.

5. As a result of this work, the Committee made a number of recommendations to the meetings of the COP-MOP. In the context of reviewing general issues of compliance, these recommendations included suggesting that COP-MOP: request Parties to fulfil their reporting obligation; request Parties to make necessary information available on the BCH; call on Parties to give attention to the development of national biosafety frameworks and urge Parties with completed frameworks to take measures necessary to make these frameworks effective; and requesting the Global Environment Facility to expedite support to eligible Parties for the implementation of their national biosafety frameworks. In general, recommendations from the Compliance Committee have been well received by the COP-MOP and incorporated into the relevant decisions adopted by the meeting.

6. The Committee also contributed to the review of the effectiveness of the procedures and mechanisms on compliance foreseen in section VII of the compliance procedures and mechanisms and as part of the assessment and review required by Article 35 of the Biosafety Protocol. This resulted in discussions on how the supportive role of the Committee could be improved and led to the adoption by COP-MOP 5 in 2010 of decision BS-V/1. The decision included an expanded mandate for the Committee enabling it to consider “a situation where a Party fails to submit its national report, or information has been received through a national report or the Secretariat, based on information from the Biosafety Clearing-House that shows that the Party concerned is faced with difficulties complying with its obligations under the Protocol” (para. 1(b)).

7. More recent work of the Committee has focused on implementation of its supportive role as modified by decision BS-V/1. The Committee developed an approach and an organization of work to guide its functions in the context of the decision. Under the approach to guide its functions in the context of decision BS-V/1, the Secretariat, in order to identify any possible difficulty hindering the compliance of a Party, is to review national reports and information in the BCH and informally contact a Party concerned unless the issue is found to be *de minimis*. If no response is received, the Secretariat will refer the issue to the Compliance Committee for its consideration. If a response is received and the issue is resolved or found to be *de minimis*, no further action will be necessary. If the issue is not resolved, it will be forwarded to the Committee. Members agreed that any consideration of an issue by the Committee would be undertaken with the cooperation of the Party concerned, as provided for in paragraph 2 of decision BS-V/1.

8. The organization of work is based on the four year reporting cycle that the Parties have agreed to under the Biosafety Protocol as well as two meetings of the Committee being convened per biennium. The organization of work foresees the Committee reviewing compliance with the obligation to submit national reports and whether the reports are complete; reviewing compliance with different obligations on the basis of information in the national reports and focusing on priority issues identified by COP-MOP; reviewing consistency between the information in national reports and the BCH; and reviewing compliance on the basis of information in the BCH.

9. Following this approach and the organization of work, the Secretariat has contacted Parties that have not submitted the required national report or that have submitted an incomplete national report as well as Parties that were experiencing difficulties putting in place legal, administrative or other measures

necessary for the implementation of the Protocol. The Chair of the Committee has also sent letters to Parties to follow-up communications from the Secretariat. The Committee has also addressed the case of three Parties that have not submitted any report to date (either interim, first, second or third). At its most recent meeting in February 2016, the Committee recommended that COP-MOP 8 decide to issue a caution to these three Parties.¹

10. The Committee has also considered other aspects related to monitoring and reporting. The Committee was instrumental in the development of the recommendation to the Global Environment Facility, urging it to make funds available to eligible Parties to assist them in preparing their second and third national reports under the Protocol. This contributed to a high rate of reporting for the second national reports in particular. The Committee also provided input for the format of the third national reports.

11. In addition to these aspects, COP-MOP 7 (2014) requested the Committee to provide input to the third assessment and review of the Protocol and the mid-term evaluation of the Strategic Plan for the Cartagena Protocol on Biosafety for the Period 2011-2020 in the form of an evaluation of the status of implementation of the Protocol in meeting its objectives. The Committee considered this matter at its twelfth (2015) and thirteenth (2016) meetings.

12. In undertaking its work, the Committee has always emphasized its supportive role and endeavoured to build confidence in the compliance procedures and mechanisms among the Parties with a view to improving the Committee's ability to assist Parties to comply with their obligations under the Protocol.

13. For more information on the work undertaken to date by the Compliance Committee under the Biosafety Protocol, particularly regarding the assistance provided by the Committee, see "Review of the assistance provided by the Compliance Committee to Parties in its work to date" (UNEP/CBD/BS/CC/13/INF/1) prepared for the most recent meeting of the Compliance Committee under the Biosafety Protocol, held in February 2016.

II. ACTIVITIES AND PROCESSES FORESEEN UNDER THE NAGOYA PROTOCOL FOR 2017-2018 OF POTENTIAL RELEVANCE TO THE FUTURE WORK OF THE COMPLIANCE COMMITTEE

14. The Nagoya Protocol includes a number of similar processes and mechanisms to those of the Cartagena Protocol on Biosafety. The Nagoya Protocol obliges each Party to submit periodic reports to the COP-MOP on the measures it has taken to implement the Protocol. The Protocol requires an evaluation of its effectiveness (an assessment and review). The Protocol also establishes the Access and Benefit-sharing (ABS) Clearing-House and Parties are obliged to share certain categories of information through the ABS Clearing-House.

15. There are also similarities in the mandates of the Compliance Committee under the Biosafety Protocol and the Compliance Committee under the Nagoya Protocol. The compliance procedures and mechanisms for both Protocols mandate each Committee to consider general issues of compliance – "systemic issues of general non-compliance" in the language of section D, paragraph 10 of the compliance procedures and mechanisms for the Nagoya Protocol. In developing the compliance procedures and mechanisms for the Nagoya Protocol, the COP-MOP had the benefit of learning from experience under the Biosafety Protocol and as a result, the Compliance Committee of the Nagoya

¹ For more information, see the report of the meeting, document UNEP/CBD/BS/CC/13/6, which will be available online: <https://www.cbd.int/doc/?meeting=BSCC-13>.

Protocol also has the mandate to examine a situation where a Party fails to submit its national report or where information indicates that the Party concerned is faced with difficulties complying with its obligations under the Protocol. Such information may be received from, *inter alia*, a national report or the ABS Clearing-House.

16. One current difference between the two Committees is that the Compliance Committee of the Biosafety Protocol currently meets twice per biennium (once per year) and funds are provided to this end in the core budget for the Protocol. COP-MOP 1 of the Nagoya Protocol requested the Executive Secretary to arrange for at least one meeting of the Committee to be held prior to COP-MOP 2 and funds for one meeting of the Committee were provided for in the core budget of the Protocol.

17. Another distinction is that the Nagoya Protocol is at a different stage in its history. By the time of the first meeting of the Compliance Committee, the Nagoya Protocol will have been in force for approximately 18 months. In contrast, the Biosafety Protocol has been in force for approximately 12 and a half years. The Parties to the Biosafety Protocol have had a great deal of time to implement their obligations and extensive guidance to assist in implementation has been developed over seven meetings of the COP-MOP. In contrast, the Parties to the Nagoya Protocol have had relatively little time to implement and gain experience with the Protocol and the first meeting of the COP-MOP to the Protocol was largely focused on establishing the necessary processes and mechanisms to make the Protocol operational. In this light, the role of the Compliance Committee under the Nagoya Protocol may increase with time and as experience with implementation grows.

18. The following subsections provide information on different processes and mechanisms under the Protocol where the Committee may wish to consider the role it could play.

A. Monitoring and reporting: national reports

19. Article 29 of the Protocol addresses monitoring and reporting and requires each Party, at intervals and in the format to be determined by the COP-MOP, to report to the COP-MOP on the measures it has taken to implement the Protocol. COP-MOP 1 adopted decision NP-1/3 in which the Parties agreed to the guidelines and format for the interim national report on the implementation of the Protocol, requested Parties to submit an interim national report twelve months prior to COP-MOP 3 and requested the Executive Secretary to consolidate information contained in the interim national reports of Parties received and information published in the ABS Clearing-House for the consideration of COP-MOP 3, as a contribution to the assessment and review of the effectiveness of the Protocol, pursuant to Article 31, as well as to make submissions by non-Parties available for the information of COP-MOP 3. Furthermore, the Parties also decided to consider the intervals for reporting at their third meeting and to keep the format of the national report under review, based on feedback received from Parties and the experience gained.

20. It is expected that COP-MOP 3 will be held in the fourth quarter of 2018, which would mean that the interim national reports would be due in the fourth quarter of 2017.

21. As described above, the Compliance Committee may examine systemic issues of general non-compliance that come to its attention. Such issues may be identified through the information provided in national reports. The Committee may also examine a situation where information received through a national report indicates that a Party is faced with difficulties complying with its obligations under the Protocol.

22. The Committee may wish to discuss whether and how it may consider compliance issues following the submission of the interim national reports. In this context, it may wish to bear in mind the time needed to receive the interim national reports and analyse them and the consolidated information that the Executive Secretary is to prepare pursuant to decision NP-1/3 (see para. 19 above).

B. Assessment and review

23. Article 31 of the Protocol addresses assessment and review and requires the COP-MOP to undertake, four years after the entry into force of the Protocol and thereafter at intervals determined by the COP-MOP, an evaluation of the effectiveness of the Protocol.² The compliance procedures and mechanisms also provide that the COP-MOP will review the effectiveness of the compliance procedures and mechanisms as part of the assessment and review process and take appropriate action (section G).

24. Assessment and review has been included on the agenda for COP-MOP 2 and the intention is for COP-MOP 2 to consider and adopt a decision on the methodology and way forward for conducting the first evaluation of the effectiveness of the Protocol.

25. The Compliance Committee may wish to discuss what contribution it may provide to the assessment and review process.

C. ABS Clearing-House

26. As described above, the Compliance Committee may examine systemic issues of general non-compliance that come to its attention. Such issues may be identified on the basis of an analysis of information available – or not available – in the ABS Clearing-House. The Committee may also examine a situation where information from the ABS Clearing-House indicates that a Party is faced with difficulties complying with its obligations under the Protocol.

27. The Committee may wish to discuss whether and how it may consider compliance issues related to the ABS Clearing-House in its future work.

III. CONCLUSION

28. Consideration of work by the Committee in any of the areas described above would, of course, be without prejudice to any submissions that may be made that would trigger the compliance procedures and require the Committee's attention and any specific tasks that the Committee may be assigned by the COP-MOP.

29. Furthermore, the extent of the work to be undertaken by the Committee in the next biennium may also depend on the number of times the Committee is able to meet and/or the length of its meetings, in light of the budget provided for this purpose by COP-MOP 2.

30. The Committee may wish to consider the work it could undertake in the 2017-2018 biennium as well as any recommendations to COP-MOP 2.

² This is slightly different from the equivalent provision of the Biosafety Protocol (Article 35), which requires the COP-MOP to undertake, five years after the entry into force of the Protocol and at least every five years thereafter, an evaluation of the effectiveness of the Protocol.