

COOPERATIVE PROCEDURES AND INSTITUTIONAL MECHANISMS
TO PROMOTE COMPLIANCE WITH THE NAGOYA PROTOCOL AND TO
ADDRESS CASES OF NON-COMPLIANCE
(JAPAN'S COMMENTS)

1. Objectives, nature and underlying principles

(1) The NAGOYA Protocol (hereinafter referred to as the "Protocol"), in its Article 30, stipulates: "The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, consider and approve cooperative procedures and institutional mechanisms to promote compliance with the provisions of this Protocol and to address cases of non-compliance."

(2) As Article 30 of the Protocol clearly stipulates, Japan considers that procedures and institutional mechanisms to be considered and approved hereafter should aim at "promoting" the implementation of obligations under the Protocol, as well as "cooperating" with other Parties to address cases of non-compliance by a Party. From the above-mentioned viewpoints, Japan places a particular importance on such phrases in Article 30 of the Protocol as (i) "to promote compliance" and (ii) "cooperative" procedures and institutional mechanisms to address cases of non-compliance.

(3) Moreover, Japan considers that these procedures and institutional mechanisms are supposed to be non-judicial. Reasons are following (a) to (c).

(a) Article 30 of the Protocol stipulates: "They (i.e. procedures and institutional mechanisms) shall be separate from, and without prejudice to, the dispute settlement procedures and mechanisms under Article 27 of the Convention (i.e. the Convention on Biological Diversity)". Article 27 of the Convention, especially paragraph 3. and 4., stipulates judicial procedures and mechanisms for the "settlement of disputes" in case the Parties concerned cannot reach the settlement by negotiation. Based on these provisions, procedures and institutional mechanisms of Article 30 of the Protocol seem to be separate from judicial measures for the settlement of disputes.

(b) Article 30 of the Protocol also stipulates that these procedures and mechanisms shall include provisions to offer "advice or assistance," where appropriate. Considering the language of this Article, it is appropriate to understand that the cooperative spirit (i.e. addressing cases of non-compliance through cooperation by other Parties) underlies this Article.

In this respect, the purpose of Article 30 of the Protocol seems to be different from that of Article 27 of the Convention.

(c) Furthermore, Article 30 of the Protocol stipulates: “The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, consider and approve cooperative procedures and insitutional mechcanisms.” Thus, details of procedures and insitutional mechcanisms are to be decided in the future. If Article 30 of the Protocol were supposed to include judicial measures in procedures and institutional mechanisms, similar measures as stipulated in Article 27 of the Convention should have been properly stipulated in the Protocol .

(d) Based on above-mentioned reasons, it is appropriate to understand that procedures and institutional mechanisms to promote compliance stipulated in Article 30 of the Protocol are supposed to be non-judicial. Thus, these procedures and insitutional mechcanisms are required to be flexible and cooperatively implemented by Parties.

2. Institutional mechanisms

The points of discussion for the institutional mechanisms seem to be: the establishment of a standing or ad hoc body, its size, nomination of members, status of members, selection criteria of members, selection procedure, periodicity of meetings, reporting and its rules of procedure. Comments of Japan on major issues are as follows:

(1) With reference to the qualifications of members, a point of discussion is whether they are selected as representatives of Parties or in their personal and individual capacity. In order to operate the mechanisms in a flexible and cooperative manner, Japan considers that it is preferable to select members in their personal and individual capacity, while taking geographical balance into consideration.

(2) Since issues such as the size of mechanisms, their form (e.g. a standing or ad hoc body) and the periodicity of meetings may carry budgetary implications, it is appropriate for the mechanisms to have flexible formalities, such as convening meetings based on the budget availability.

3. Funictons of the Compliance body

In order to review certain cases of non-compliance, the compliance body is required, as its functions, to review the reports submitted by Parties, which

include a situation of compliance of Parties and measures taken by Parties for that purpose in accordance with Article 29, and to compile analysis reports on them. Furthermore, following a precedence of the Cartagena Protocol, it is acceptable that the compliance body may take other promotive measures for the compliance.

4. Procedures

With respect to the reports on cases of non-compliance of other Parties, it is necessary to identify who will be entitled to submit such reports (e.g., Parties, the Secretariat, the compliance body, the governing body, members of public including NGOs, experts). Japan is of the view that these procedures should not be used for surveillance over a specific Party, nor should they be intentionally misused. Japan deems it appropriate to build on the procedures of ITPGR according to which it is allowed only to a Party or the Conference of the Parties to submit such reports.

5. Measures to promote compliance and address cases of non-compliance

It is necessary that the purpose of the measures to promote compliance and address cases of non-compliance should be preventive and cooperative in nature in the decision of such measures. The Note by the Executive Secretary, UNEP/CBD/ICNP/1/6/Rev. 1, in its paragraph 73, enumerates (i) incentives, (ii) assistance and/or (iii) sanctions.

Considering preventive and cooperative nature of the measures, and, in the view of addressing cases of non-compliance caused by a Party with insufficient capacity for the implementation, Parties should attach importance to the solution of cases of non-compliance through (i) incentives and/or (ii) assistance within available resources (Japan is of the view that (iii) sanctions cannot be a feasible solution, given the purpose of these measures.). In this respect, options from (d) to (i) in paragraph 73 of the Note should be excluded for the considerations.