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ACCESS TO GENETIC RESOURCES AND THE  
FAIR AND EQUITABLE SHARING OF BENEFITS  
ARISING FROM THEIR UTILIZATION

First meeting

Montreal, 5-10 June 2011

Item 6 of the provisional agenda\*

**COOPERATIVE PROCEDURES AND INSTITUTIONAL MECHANISMS TO PROMOTE  
COMPLIANCE WITH THE PROTOCOL AND TO ADDRESS CASES OF NON-COMPLIANCE**

*Note by the Executive Secretary*

### **I. BACKGROUND**

1. The Conference of the Parties at its tenth meeting in October 2010 mandated the Intergovernmental Committee for the Nagoya Protocol (ICNP) to consider, at its first meeting, cooperative procedures and institutional mechanisms to promote compliance with the Protocol and to address cases of non-compliance, including procedures and mechanisms to offer advice or assistance, where appropriate (decision X/1, annex II, section A, item 4).

2. By notifications 2010-216 and 2010-217 (SCBD/ABS/VN/SG/74553), of December 2010, Parties, international organizations, indigenous and local communities, and relevant stakeholders were invited to submit views on cooperative procedures and institutional mechanisms to promote compliance with the Protocol and to address cases of non-compliance, including procedures and mechanisms to offer advice or assistance.

3. As of 1 April 2011 views were received on this issue from the following Parties: Argentina, Australia, Ecuador, European Union, Nigeria, Sri Lanka and Togo. Additional views were received from: the Deutsche Forschungsgemeinschaft (DFG), the World Intellectual Property Organization (WIPO), the Amazon Cooperation Network, the Assembly of First Nations (AFN) and the joint submission from the Maritime Aboriginal Peoples Council and IKANAWTIKET Environmental Incorporated, the Native Council of Nova Scotia, the Native Council of Prince Edward Island, the New Brunswick Aboriginal Peoples Council and the Congress of Aboriginal People. All submission are available at <https://www.cbd.int/icnp1/submissions/>.

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4. The present document has been prepared to assist the Intergovernmental Committee in its consideration of the issues. The information presented takes into account and should be read in conjunction with the overview of compliance procedures and mechanisms under other multilateral environmental agreements (MEAs) (UNEP/CBD/ICNP/1/INF/1). Section II introduces the concept of compliance as well as compliance procedures and mechanisms within the framework of Article 30 of the Nagoya Protocol. Section III provides elements and options for procedures and mechanisms on compliance under the Nagoya Protocol, drawing from the experiences of other fora. Section IV suggests options to advance the work of the Intergovernmental Committee on this issue.

## II. INTRODUCTION

5. Article 30 of the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity (Nagoya Protocol) states that the Conference of the Parties serving as the meeting of the Parties to this Protocol (COP-MOP) shall, at its first meeting, consider and approve cooperative procedures and institutional mechanisms to promote compliance with the provisions of the Protocol and to address cases of non-compliance. These procedures and mechanisms shall include provisions to offer advice or assistance, where appropriate. They shall be separate from, and without prejudice to, the dispute settlement procedures and mechanisms under Article 27 of the Convention.

6. The term “compliance” is part of a range of terminology used to describe patterns of conformity with legal norms.<sup>1</sup> In the context of Article 30 of the Nagoya Protocol, compliance means “the fulfilment by the contracting Parties of their obligations under a multilateral environmental agreement and any amendments to the multilateral environmental agreement”.<sup>2</sup>

7. The UNEP Guidelines on Compliance with and Enforcement of Multilateral Environment Agreements (UNEP Compliance Guidelines) define “implementation” as “*inter alia*, all relevant laws, regulations, policies, and other measures and initiatives that contracting Parties adopt and/or take to meet their obligations under a multilateral environmental agreement...”<sup>3</sup> The mere fact that an implementation measure is taken does not mean that it is adequate to meet a treaty obligation or that the State is necessarily in compliance with its treaty obligations. Implementation is understood to occur in three phases: first, by adopting national legal, policy and administrative measures or actions; second, by enforcing them; and third, by reporting on implementation measures to the governing body of a MEA.<sup>4</sup>

8. MEA compliance regimes have typically included requiring Parties to report on implementation and the provision of dispute settlement mechanisms to be used in the context of a breach of the treaty. These have had limited efficacy in the first instance and very limited use in the second.<sup>5</sup> As a result, new approaches for compliance regimes have evolved. These have been based on recognizing the collective nature of the interests of the Parties in the successful implementation of MEAs, while recognizing, as

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<sup>1</sup>See the section on definitions in UNEP, “Compliance Mechanisms under Selected Multilateral Environmental Agreements (UNEP Compliance Mechanisms) pp. 19-22.

<sup>2</sup> UNEP, Guidelines on Compliance with and Enforcement of Multilateral Environment Agreements, Nairobi, 2002, paragraph 9 (a) (UNEP Compliance Guidelines).

<sup>3</sup> UNEP Compliance Guidelines, paragraph 9 (b).

<sup>4</sup> UNEP Compliance Mechanisms.

<sup>5</sup> Beyerlin, Ulrich, Stoll, Peter-Tobias, Wolfrum, Rüdiger, “Conclusions drawn from the Conference on Ensuring Compliance with MEAs: A dialogue between Practitioners and the Academia”, 2006.

well, that the typical reason for a party's non-compliance is not so often intentional disregard of its obligations, but rather a lack of capacity, awareness or resources to comply with them.<sup>6</sup>

9. The adoption of the compliance procedure under the Montreal Protocol on Substances that Deplete the Ozone Layer in 1990 provided the first example of a new approach towards compliance characterized by the development of procedures and mechanisms premised on cooperation and partnership rather than confrontation "with the view to assisting Parties having compliance problems and addressing individual cases of non-compliance".<sup>7</sup> A preventive dimension was therefore emphasized providing a vehicle for identifying non-compliance at an early stage.

10. The approach of the Montreal Protocol has been recognized and further elaborated by other MEAs in a relatively short period of time. Valuable practical experience has been gained as these procedures and mechanisms have been created and operationalized in other fora.

11. The latest example is provided by the procedures and operational mechanisms to promote compliance and address issues of non-compliance adopted in March 2011 under the International Treaty on Plant Genetic Resources for Food and Agriculture. The procedures include some innovative features and represent a further evolution of compliance issues, with a stronger emphasis on promoting compliance and the facilitative aspects of the procedures.

## **II. ELEMENTS AND OPTIONS FOR PROCEDURES AND MECHANISMS ON COMPLIANCE**

12. This section draws upon the overview of existing procedures and mechanisms on compliance developed under other MEAs described in document UNEP/CBD/ICNP/1/INF/1. Those examined are from: the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention);<sup>8</sup> the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel Convention);<sup>9</sup> the Cartagena Protocol on Biosafety to the Convention on Biological Diversity (Cartagena Protocol);<sup>10</sup> the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);<sup>11</sup> the Espoo Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention);<sup>12</sup> the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA);<sup>13</sup> the Kyoto Protocol to the United Nations Framework Convention on Climate Change (Kyoto Protocol);<sup>14</sup> the Protocol to the London Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter (London Protocol);<sup>15</sup> the UNECE Convention on Long-Range Transboundary Air Pollution (LRTAP);<sup>16</sup> the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol);<sup>17</sup>

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<sup>6</sup> UNEP, "Manual on Compliance with and Enforcement of Multilateral Environmental Agreements" UNEP Division of Environmental Conventions (2006) (UNEP Compliance Manual), p. 144.

<sup>7</sup> UNEP Compliance Guidelines, paragraph 14 (d).

<sup>8</sup> Aarhus Convention: COP decision I/7, Annex. Doc. ECE/MP.PP/Add.8 (2004).

<sup>9</sup> Basel Convention: COP decision VI/12, Appendix. Doc. UNEP/CHW.6/40 (2003).

<sup>10</sup> Cartagena Protocol: MOP decision BS-I/7, Annex. Doc UNEP/CBD/BS/COP-MOP/1/15 (2004).

<sup>11</sup> CITES: As reflected in COP resolution Conf. 14.3. "Guide to CITES Compliance Procedures", Annex, (2007).

<sup>12</sup> Espoo Convention: COP decision III/2, Appendix. Doc. MP.EIA/2004/3 (2004).

<sup>13</sup> ITPGRFA: GB Resolution 2/2011 (2011).

<sup>14</sup> Kyoto Protocol: CMP decision 27/CMP.1, Annex. Doc. FCCC/KP/CMP/2005/8/Add.3 (2005).

<sup>15</sup> London Protocol: LC 29/17, Annex 7 (2007).

<sup>16</sup> LRTAP: As reviewed by EB decision 2006/2. Doc ECE/EB. AIR/2006/2 (2006).

and the Protocol on Water and Health to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (the Water and Health Protocol).<sup>18</sup>

13. Many of the procedures and mechanisms on compliance analysed have similar elements and structure as well as many common features, though there are also some substantial differences among them depending on the characteristics of the MEA and the nature of its obligations. They commonly provide for (i) objectives, nature and underlying principles, (ii) institutional mechanisms, (iii) functions of the compliance body, (iv) procedures, (v) information and consultation, (vi) measures to promote compliance and address cases of non-compliance, and (vii) review of the procedures and mechanisms.

14. The remainder of this section is structured according to these broad elements. Some questions are provided at the end of each section to facilitate further consideration of the elements and options by the Intergovernmental Committee. A brief summary of lessons learned is provided at the end of the section.

#### *A. Objectives, nature and underlying principles*

15. *Objectives.* Article 30 of the Nagoya Protocol indicates that the objective of the compliance procedure is "...to promote compliance with the provisions of this Protocol and to address cases of non-compliance. These procedures and mechanisms shall include provisions to offer advice or assistance, where appropriate...". Like the Cartagena Protocol, the Nagoya Protocol emphasizes two facets of the procedures and mechanisms to be developed. The first is to promote compliance with the Protocol. The second is to address cases of non-compliance. These two facets are not always explicitly differentiated in the procedures and mechanisms of other MEAs, and in practice the compliance bodies are normally triggered to address cases of non-compliance and not so often to promote compliance.

16. The compliance procedure under the Kyoto Protocol makes clear the distinction between these two objectives through the creation of two different branches to its Compliance Committee: the facilitative branch and the enforcement branch. The facilitative branch provides technical advice and assistance to Parties with difficulties in meeting the Protocol obligations. It is responsible for addressing questions of implementation, promoting compliance, and providing early warning of potential non-compliance. The enforcement branch deals with issues of non-compliance.

17. In comparison with other compliance procedures, those adopted under the ITPGRFA rely more on promoting compliance by linking the Committee's functions to the implementation of the treaty.

18. *Nature.* The nature of the procedures and mechanisms is not always textually reflected.<sup>19</sup> Instead, those examined are described as "simple", "facilitative", "non-adversarial", "cooperative", "cost-effective", "non-judicial", "supportive", "non-confrontational", "transparent", "preventive", "flexible" and "legally non-binding".

19. *Principles.* Under the Cartagena Protocol and the Protocol on Water and Health the operation of the compliance procedure is guided by the principles of transparency, fairness, expedition and predictability. The procedures under the ITPGRFA add the principles of accountability, good faith and reasonableness. CITES compliance procedures state that compliance matters are to be considered in a fair, consistent and transparent manner.

<sup>17</sup> Montreal Protocol: Report of the Tenth Meeting of the Parties, Annex II. Doc UNEP/OzL.Pro.10/9 (1998), and in the report of the Fourth Meeting of the Parties, Annex V. Doc. UNEP/OzL.Pro.4/15 (1992).

<sup>18</sup> Water and Health Protocol: MOP decision I/2, Annex. Doc. ECE/MP.WH/2/Add.3 (2007).

<sup>19</sup> Explicit reference can be found in the compliance mechanisms under the Basel Convention, Cartagena Protocol, CITES, the ITPGRFA and the Water and Health Protocol.

20. Applying the principles of transparency, predictability and consistency in compliance procedures can prevent possible accusations of partiality and arbitrariness. Fairness is guaranteed through due process, enabling Parties to present information regarding submissions against them and to engage fully in the process. To ensure measures taken to address non-compliance are reasonable, some instruments require their compliance body to take into account certain considerations when examining submissions (see paragraph 72).

21. For instance, the compliance procedure under the Cartagena Protocol states that the operation of the procedure “shall pay particular attention to the special needs of developing country Parties, in particular the least developed and small island developing States among them, and Parties with economies in transition, and take into full consideration the difficulties they face in the implementation of the Protocol”.<sup>20</sup>

22. The recognition of the special needs of developing countries and countries with economies in transition was one of the main issues under discussion in the negotiations of the compliance procedures under the ITPGRFA. Some Parties argued that compliance obligations apply equally to all Parties, and that this consideration could only be drawn when it comes to applying measures to address non-compliance. Other Parties insisted that the principle of common but differentiated responsibilities applies to compliance. The adopted text is based on the compliance procedures of Basel Convention and it is reflected in the section related to principles: “The operation of the compliance procedures and mechanisms...shall pay particular attention to the special needs of Contracting Parties that are developing countries and Contracting Parties with economies in transition”.<sup>21</sup>

23. *Questions.* Assuming Article 30 already specifies the objectives of the compliance procedure and mechanisms, what should be the nature of the compliance regime established? What principles should underpin the operation of the compliance procedure? How can these objectives be achieved?

## ***B. Institutional mechanisms***

24. *Establishment of a standing or ad hoc body.* All the regimes analysed establish a standing body to administer the compliance regime. The functions assigned to it may vary from case to case (see sub-section C below).

25. *Size.* The number of members of the compliance bodies examined ranges from 8 (the Aarhus and the Espoo Conventions) to 15 members (the Cartagena Protocol and the Basel Convention).

26. *Nomination of members.* In most instances members are only nominated by Parties and elected by the MEA’s governing body with the exception of the Aarhus Convention, where Committee members can also be nominated by signatories and NGOs.<sup>22</sup>

27. *Status of members.* In the early compliance procedures, such as the Montreal Protocol and LRTAP, members were selected as representatives of Parties<sup>23</sup>. More recent practice, as reflected for

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<sup>20</sup> COP-MOP decision BS-I/7, Annex. Doc UNEP/CBD/BS/COP-MOP/1/15 (2004), Section I, paragraph 3. Similar wording can be found under the Basel Convention and the Water and Health Protocol.

<sup>21</sup> GB Resolution 2/2011, Section II, paragraph 2.

<sup>22</sup> The Water and Health Protocol establishes that members are nominated by Parties but taking into consideration any proposal for candidates made by signatories and NGOs qualified or having an interest in the field (decision I/2, annex I, paragraph 5).

<sup>23</sup> This is also the case under the Espoo Convention. “The Committee consists of eight Parties to the Convention. Each of the eight Parties shall appoint a member of the Committee” (Decision III/2, paragraph 1).

example in the Cartagena Protocol or the ITPGRFA, suggests members serve on compliance bodies in their personal and individual capacity.

28. *Selection criteria.* Members are elected based on their competence in the relevant field and on their legal, scientific and/or technical expertise, as appropriate.<sup>24</sup> Equitable geographical representation is a common criterion for determining the composition of the body.

29. *Selection procedure.* Under the Cartagena Protocol members are elected by the Conference of the Parties serving as the Meeting of the Parties of the Protocol (COP-MOP) for a period of four years. At its first meeting, five members were elected, one from each region, for half a term, and ten members were elected for a full term. Each time thereafter, members are elected for a full term to replace those whose term has expired. Members do not serve for more than two consecutive terms.<sup>25</sup> Similar arrangements can be found under other MEAs.

30. *Periodicity of meetings.* Generally, the compliance bodies analysed meet once<sup>26</sup> or twice<sup>27</sup> a year, unless otherwise decided. Some fora recognize the need for flexibility in the sequence of meetings to be able to better adapt to the circumstances and submissions received. This flexibility can be created by a decision of the compliance body itself<sup>28</sup> or by a decision of the governing body.<sup>29</sup> The procedures under the ITPGRFA provides for further flexibility by stating that the “Committee shall hold meetings as necessary...and subject to the availability of financial resources...”<sup>30</sup> In some procedures the meetings of the compliance body take place in conjunction with other meetings.

31. *Reporting.* Normally, the compliance bodies submit their reports and recommendations to the governing body for consideration.

32. *Rules of procedure.* The compliance body normally develops its own rules of procedure and additional rules that may be needed (such as rules on confidentiality, decision-making conflict of interest, etc.).<sup>31</sup> These are recommended to the MEA’s governing body and adopted.<sup>32</sup>

33. A review of experience indicates some practical problems have arisen regarding the composition and selection procedures of the members of the compliance body,<sup>33</sup> namely in relation to:

- (a) Attendance-related problems and subsequent lack of quorum to take decisions;

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<sup>24</sup> This is also envisaged in the mechanisms under the Aarhus Convention, the Basel Convention, the ITPGRFA, the London Protocol and the Water and Health Protocol. Furthermore, under the Aarhus Convention and the Water and Health Protocol nominations are to be accompanied by CVs.

<sup>25</sup> COP-MOP decision BS-I/7, Annex. doc. UNEP/CBD/BS/COP-MOP/1/15 (2004), paragraph 4.

<sup>26</sup> For example under the Aarhus and Basel Conventions and the London Protocol.

<sup>27</sup> For example under the Cartagena and Kyoto Protocols and the LRTAP.

<sup>28</sup> For example, under the Espoo Convention, the LRTAP, the Montreal Protocol and the Protocol on Water and Health.

<sup>29</sup> For example under the Cartagena and the London Protocols.

<sup>30</sup> IT/GB-4/11/7 (2011), at Section III, paragraph 5.

<sup>31</sup> Compliance procedures under the ITPGRFA add that the Compliance Committee shall develop rules on electronic decision-making and replacement of Committee Members.

<sup>32</sup> With the exception of the Compliance Committee under the Aarhus Convention that has the capacity to adopt its own rules of procedure.

<sup>33</sup> The Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol in its fourth meeting called upon regional groups to consider and apply mechanisms to ensure that nominees are willing and able to attend and fully participate in meetings and to replace them in an expeditious manner in cases of non-completion of their term (paragraph 2 of decision BS-IV/1). Regarding the Kyoto Protocol see also Doelle, Meinhard: “Early experience with the Kyoto Compliance System: Possible lessons from MEA compliance system design” (2010).

- (b) Delays replacing members who resign inter-sessionally;<sup>34</sup> and
- (c) The level of expertise and engagement of members appears to vary and lack of expertise is often solved by making use of external experts.

34. *Questions.* Should the compliance body be a standing or an ad hoc body? What should its size and composition be? In what capacity should members serve? What expertise should be represented in the membership of the body? What procedure should be used to select members? Should the procedure foresee a system for replacing members? How often should the compliance body meet?

### *C. Functions of the compliance body*

35. Article 30 of the Nagoya Protocol points to the objectives of the compliance procedures and mechanisms to be adopted. Therefore, the functions of the compliance body would be elaborated with a view to promoting compliance with the Protocol and addressing cases of non-compliance.

36. The functions of the compliance bodies under other MEAs include:

- (a) Receiving submissions regarding compliance;
- (b) Offer advice and/or facilitate assistance on matters relating to compliance.
- (c) Seeking and considering information related to the submissions;
- (d) Identifying the facts and possible causes of non-compliance;
- (e) Undertaking, upon invitation, information gathering in the territory;
- (f) Reviewing general issues of compliance by Parties with their obligations under the MEA,<sup>35</sup>
- (g) Taking measures or make recommendations to the governing body, as appropriate;
- (h) Seeking the service of experts, as appropriate;<sup>36</sup>
- (i) Preparing reports on compliance;
- (j) Reporting to the governing body; and
- (k) Carrying out any other functions as may be assigned by the governing body.

37. In relation to the function under paragraph (f) above, under the Cartagena Protocol, it is specified that this review will take into account the information provided in the national reports submitted in accordance with Article 33 of the Cartagena Protocol on monitoring and also through the Biosafety-Clearing House Mechanism. The compliance procedures under the ITPGRFA further build on this function. The Compliance Committee is to assist the Governing Body in monitoring the ITPGRFA implementation on the basis of the reports submitted by Parties according to a standard reporting format to be developed by the Committee. For this purpose, the Committee is tasked by the procedures to

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<sup>34</sup> Some procedures provide for the nomination of alternates. For example under the Kyoto Protocol, for each member of the Committee, the Meeting of the Parties to the Protocol elects an alternate member. This has also become the practice under the Cartagena Protocol. Under the ITPGRFA the Committee is tasked to submit to the next session of the Governing Body the rules of replacement of Committee members for its consideration and approval.

<sup>35</sup> The LRTAP Implementation Committee has the mandate to undertake periodic reviews of compliance with reporting obligations only.

<sup>36</sup> The LRTAP includes among the functions of its Implementation Committee to satisfy, when it deems necessary, that the quality of data reported by a Party regarding a submission or referral has been evaluated by a relevant technical body or by an expert nominated by the Bureau. Other compliance mechanisms are more flexible regarding the source of expertise.

provide a synthesis of the reports along with an analysis addressing any priorities set by the Governing Body, which may include recommendations to the Governing Body resulting from the analyses.

38. The Compliance Committee established under the ITPGRFA has the additional function of promoting compliance by addressing statements and questions concerning ITPGRFA implementation. The questions can be referred to the Committee by a Party regarding its own implementation or by a decision of the Governing Body. The scope and nature of this function is subject to further rules to be developed by the Committee for approval of the Governing Body at its fifth session.<sup>37</sup>

39. The procedure under the London Protocol foresees that upon request of a non-Party, the compliance body is to provide advice and guidance to facilitate its becoming a Party to the Protocol.

40. *Questions.* What functions should be assigned to the compliance body? Should this include the review of the monitoring and reporting of the implementation of the Nagoya Protocol under Article 29?

#### ***D. Procedures***

41. The compliance regimes reviewed establish procedures for the operation of their respective processes. These include (i) how the procedure is initiated or triggered, (ii) how the submission triggering the procedure is subsequently processed and (iii) the ability of the party who is the subject of a submission to participate in the deliberations of the respective compliance body.

##### ***1. Triggering the procedure***

42. The compliance procedures under the different MEAs reviewed include a range of triggers to initiate the respective processes. These include submissions by (i) a party with respect to itself; (ii) a party regarding the compliance of another party; (iii) the Secretariat; (iv) the compliance body;<sup>38</sup> (v) the governing body of the MEA;<sup>39</sup> (vi) members of the public;<sup>40</sup> or (vii) experts.<sup>41</sup>

43. Many of the compliance procedures that have been created do not receive as many submissions as expected. For example, so far, no eligible submission has been received under the Cartagena Protocol, the Basel Convention, the London Protocol or the Water and Health Protocol. The lack of submissions hinders the achievement of the objectives of the compliance procedures. Consequently, review processes and discussions have been initiated in several fora to improve the performance of the compliance procedures. Most of the issues raised and shortcomings highlighted are related to the trigger of the compliance procedure. Practice shows that relying only on the initiative of Parties to initiate the compliance procedures may not be sufficient to make the procedure effective.

44. *Submission by a party with respect to itself.* Self-submissions by Parties are an essential feature of the facilitative facet of compliance procedures. But even though it is broadly recognized that Parties have problems and constraints in complying with their treaty obligations, it is very rare that a party triggers the procedure with respect to itself.<sup>42</sup> This shortcoming has been highlighted under several MEAs, and some possible incentives for self-submission have been identified.

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<sup>37</sup> *Ibid.*, Section IX.

<sup>38</sup> Option reflected in Espoo Convention's mechanism.

<sup>39</sup> Option reflected under the ITPGRFA and the London Protocol.

<sup>40</sup> This is a possibility under the Aarhus Convention and the Water and Health Protocol.

<sup>41</sup> The expert review teams established under Article 8 of the Protocol can trigger the Kyoto Protocol's compliance procedure.

<sup>42</sup> Five submissions under the LRTAP.



45. The fourth meeting of the Parties to the Cartagena Protocol in decision BS-IV/1 (paragraph 6) invited Parties to submit views on how the supportive role of the Compliance Committee could be improved. It asked the Executive Secretary to compile them and make them available to the next meeting of the Parties to the Protocol.<sup>43</sup> Subsequently, Parties to the Biosafety Protocol, at their fifth meeting, decided that in the event of a submission relating to compliance by a Party with respect to itself, the Compliance Committee would only consider taking those measures relating to advice or assistance and/or to the provision of financial and technical assistance, technology transfer, training and other capacity-building measures.<sup>44</sup>

46. A possible incentive for self-submissions involves the allocation of funds to promote compliance. For example, under the Montreal Protocol developing countries' compliance is supported through the Multilateral Fund and the executing agencies (United Nations Industrial Development Organization, United Nations Environmental Programme and United Nations Development Programme) that review and adapt their technical and financial assistance according to the relevant decisions of the meeting of the Parties. For Parties with economies in transition the assistance under the Montreal Protocol has been so far provided through the Global Environmental Facility (GEF).

47. Following the example of the Montreal Protocol, the Compliance Committee under the Basel Convention recognized that there was a need to promote a better understanding of the facilitative nature of the mechanism<sup>45</sup> and that an important incentive to encourage submissions was the availability of resources to assist Parties to remedy their implementation difficulties. The Committee requested the ninth meeting of the Conference of the Parties to create a budget line, the funds from which could be accessed to assist Parties in overcoming the difficulties that they bring to the Committee.<sup>46</sup> The Conference of the Parties decided to enlarge the scope of the Technical Cooperation Trust Fund by establishing an implementation fund.<sup>47</sup>

48. It is also worth mentioning that the possible measures on compliance that the Kyoto Protocol's facilitative branch can take includes facilitating "technical and financial assistance to any Party concerned, including technology transfer and capacity-building from other sources than those established under the Convention and the Protocol for the developing countries".<sup>48</sup>

49. Taking into account that most cases of non-compliance do not result from intentional disregard for treaty obligations, but rather from a lack of awareness, capacity or resources,<sup>49</sup> promoting self-submission by Parties with difficulties to comply is essential if the nature of the compliance procedure is to be facilitative and preventive.

50. *Submission by a party regarding the compliance of another party.* Parties, so far, have been reluctant to make use of this trigger.<sup>50</sup> The reasons for this are unclear. The very nature of compliance

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<sup>43</sup> See doc. UNEP/CBD/BS/COP-MOP/5/2/Add.1.

<sup>44</sup> Decision BS-V/1, paragraph 1(b).

<sup>45</sup> Report of the Committee for Administering the Mechanism for Promoting Implementation and Compliance of the Basel Convention and proposed work programme for the Committee for the period 2009–2010. UNEP/CHW.9/3, paragraph 26.

<sup>46</sup> Report of the sixth session of the Basel Convention Implementation and Compliance Committee (Geneva, 28-29 February 2008), UNEP/CHW/CC/6/7, paragraph 18.

<sup>47</sup> Decision IX/2: Work programme for the Committee for Administering the Mechanism for Promoting Implementation and Compliance of the Basel Convention for the period 2009–2011.

<sup>48</sup> CMP decision 27/CMP.1, Annex, FCCC/KP/CMP/2005/8/Add.3 (2005), section XIV (a).

<sup>49</sup> UNEP Compliance Manual at p. 144.

<sup>50</sup> One submission under the Aarhus Convention, three under the Espoo Convention and one under the facilitative branch of the Kyoto Protocol.

procedures - cooperative and non-adversarial - could hinder the use of this trigger. Furthermore, a party could be concerned that it will be singled out for retaliation for initiating proceedings against another party.<sup>51</sup> A possible way to facilitate this trigger's use is by providing the possibility for a group of Parties to make a submission.<sup>52</sup>

51. The issue of submissions by a group of Parties was raised under the Kyoto Protocol where the facilitative branch of its Compliance Committee received a submission by South Africa in its capacity as chair of the G-77 and China regarding 15 other countries' compliance. As the compliance procedure did not include the possibility of submissions by one or more Parties, the branch could not agree on whether the submission by a group could be considered properly filed, and it was not able to make a preliminary decision to proceed or not.<sup>53</sup>

52. *Referrals by the Secretariat.* In some compliance regimes examined in this paper, the Secretariat is given the possibility of triggering the procedure through referrals to the compliance body, such as the regimes under the Aarhus Convention, the Basel Convention, CITES, the Montreal Protocol, the LRTAP and the Water and Health Protocol.<sup>54</sup> This option is based on the fact that the Secretariat is likely to come across cases of non-compliance, for instance during the review of reports or other information received by Parties. Arguments for and against this option rely on the impartiality of the Secretariat.

53. For example, under the Kyoto Protocol, the Secretariat does not have the mandate to initiate the procedure and its involvement has been the subject of some discussions. For some members of the enforcement branch, enhancing the role of the Secretariat in the review of Parties' submissions is seen as a source of consistency, expertise and impartiality. For others, this would jeopardize the independence of the Committee and the impartiality of the Secretariat.<sup>55</sup>

54. In its analysis of the shortcomings of the procedure under the Basel Convention, the Compliance Committee highlighted the restricted scope of the Secretariat trigger, which is limited to submissions relating to the difficulties that a Party may have in complying with its reporting obligations. It argued for a general Secretariat trigger as done in other procedures.<sup>56</sup>

55. *Referrals by the compliance body.* Only the Espoo Convention compliance regime includes referrals by the compliance body.<sup>57</sup> In addition, during the review of their compliance procedures, both the Cartagena and the Kyoto Protocol examined the possibility of enhancing the role of the compliance body.

56. Decision BS-V/1 of the Cartagena Protocol provides that the Compliance Committee can consider taking certain facilitative measures in 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

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<sup>51</sup> Doelle, Meinhard, "Early experience with the Kyoto Compliance System: Possible lessons from MEA compliance system design" (2010).

<sup>52</sup> Option reflected under the Aarhus Convention, the Espoo Convention, the Montreal Protocol mechanism and the Water and Health Protocol.

<sup>53</sup> The rules of procedure approved by Decision 4/CMP.2, and amended by Decision 4/CMP.4, clarify the process for these kind of submissions.

<sup>54</sup> Eight out of thirteen submissions received under the LRTAP were made by the Secretariat.

<sup>55</sup> Doelle, Meinhard, "Early experience with the Kyoto Compliance System: Possible lessons from MEA compliance system design" (2010).

<sup>56</sup> Report of the Committee for Administering the Mechanism for Promoting Implementation and Compliance of the Basel Convention and proposed work programme for the Committee for the period 2009–2010. UNEP/CHW.9/3, paragraph 26.

<sup>57</sup> Two out of five submissions received under the Espoo Convention are referrals made by the Implementation Body.

information from the Biosafety Clearing-House, that shows that the Party concerned is faced with difficulties complying with its obligations under the Protocol.

57. Both branches of the Compliance Committee under the Kyoto Protocol face shortcomings related to the trigger mechanism.<sup>58</sup> One of the envisioned solutions would be to give the branches a more active role in examining the reports from expert review teams established under the Protocol<sup>59</sup> and trigger the procedure as well as the possibility for the facilitative branch to engage in consultations with a Party with respect to its commitments.<sup>60</sup>

58. *Referrals by the governing body.* The compliance procedures under the ITPGRFA and the procedure under the London Protocol contemplate the trigger of the procedure by the governing body. There is no experience yet with how this trigger would work on practice.

59. *Communications by members of the public.* The compliance procedures under the Water and Health Protocol and the Aarhus Convention foresee a trigger by any member of the public, whether it be a natural or a legal person, or a NGO. Communications submitted have to fulfil certain formal criteria and the Committee takes into account the extent to which any domestic remedy was available to the person making the communication.<sup>61</sup> Parties have the possibility to “opt out” of the compliance procedures with respect to these communications for a period of 4 years after the entry into force of the procedure.<sup>62</sup>

60. As of February 2011, fifty-five communications from the public were received in the context of the Aarhus Convention, of which:

- (a) Fourteen were found to be inadmissible or the file was closed for lack of corroborating information or lack of collaboration from the communicants;
- (b) Ten were identified as cases of non-compliance;
- (c) Eleven were found to be compliant; and
- (d) Fourteen are pending.

The Committee is still examining the admissibility of the remaining communications.<sup>63</sup>

61. The compliance bodies under the Cartagena Protocol and the Espoo Convention have received submissions by NGOs even though they do not have the mandate to consider them. The Compliance Committee of the Cartagena Protocol decided not to consider the issue further, but agreed that for the future, “...in the event of allegations received from non-Party sources concerning the state of compliance of a Party, the Committee may invite the Party concerned to indicate, if the Party so wishes, to the Committee to consider the information received with a view to providing advice and assistance to that

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<sup>58</sup> To date, the facilitative branch has received one submission non eligible and the enforcement branch has received four referrals from expert review teams.

<sup>59</sup> Groups of experts, nominated by Parties, who review national reports submitted by Annex I Parties to the UNFCCC, and the Kyoto Protocol and established under Article 8 of the Protocol.

<sup>60</sup> Doelle, Meinhard, “Early experience with the Kyoto Compliance System: Possible lessons from MEA compliance system design” (2010).

<sup>61</sup> For further details on communications by the public in the Aarhus Convention see: <http://www.unece.org/env/pp/compliance/Pubcom1109.doc>.

<sup>62</sup> No Party has made use of this possibility to date.

<sup>63</sup> See: <http://www.unece.org/env/pp/pubcom.htm>.

Party, as appropriate.”<sup>64</sup> At its sixth meeting, the Committee discussed the submission received from a NGO alleging non-compliance of a Party with its obligations under the Protocol made on the basis of the above paragraph. However, the Committee, in its discretion, decided not to invite the Party concerned to indicate whether it wished the Committee to consider the submission.<sup>65</sup>

62. Likewise, the Espoo Convention Implementation Committee considered how to deal with information other than submissions from Parties and decided that it was linked to the Committee initiative<sup>66</sup> as described in paragraph 6 of decision III/2, “Where the Committee becomes aware of possible non-compliance by a Party with its obligations...”. The Committee considered and identified a number of possible sources of information by which the Committee might become aware of possible non-compliance by a Party and therefore could initiate the compliance procedure itself. It finally agreed that when receiving information regarding compliance from NGOs, the Committee would gather information, contact the concerned Parties, copy the information received from the NGO and seek the Parties’ observations, and then the Committee would decide upon proceeding at its own initiative.<sup>67</sup>

63. *Experts referrals.* This trigger can be found only in the procedure under the Kyoto Protocol, which gives expert review teams<sup>68</sup> established under Article 8 of the Protocol, the possibility to initiate the compliance procedure. The enforcement branch has dealt with four referrals in total, all of them initiated by expert review teams. However, a possible lack of consistency in bringing issues before the Committee has resulted in questions concerning the independence, impartiality and possible conflicts of interest of expert review teams.<sup>69</sup>

## 2. *Processing the submissions*

64. Submissions are generally received by the Secretariat. Sometimes different processes are foreseen depending on who invoked the procedure. In the case of a self-trigger, the usual practice is that that the Secretariat transmits the self-submission to the compliance body for its consideration.

65. In the other cases, generally, the Secretariat sends a copy of the submission to the concerned party. The submission, together with the response and information from the concerned party, are then transmitted to the compliance body. In most cases, when the procedure was initiated by another party or by members of the public, the compliance body is first directed by the procedure to consider the admissibility of the submission and afterwards to gather information to assess the possible measures to be taken. Specific timelines are generally established for the different steps of the process.

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<sup>64</sup> Report of the Compliance Committee under the Cartagena Protocol on Biosafety on the work of its fifth meeting (19-21 November 2008), UNEP/CBD/BS/CC/5/4 (2008), paragraph 25.

<sup>65</sup> Report of the Compliance Committee under the Cartagena Protocol on Biosafety on the work of its sixth meeting (4-6 November 2009), UNEP/CBD/BS/CC/6/4 (2009), paragraph 20 and 21.

<sup>66</sup> Report on the activities of the Implementation Committee on its fourteenth session (15-17 January 2008), ECE/MP.EIA/2008/5, paragraph 21.

<sup>67</sup> Report of the Implementation Committee on its sixteenth session (10-12 March 2009), ECE/MP.EIA/IC/2009/2, paragraphs 49 and 50.

<sup>68</sup> Groups of experts tasked to review national reports submitted by Annex I Parties to the UNFCCC and the Kyoto Protocol and established under Article 8 of the Protocol. Members are selected by the Secretariat from experts nominated by Parties in the context of the annual inventory review of emissions, which requires the participation of over 120 skilled experts per year. The Secretariat selects experts to ensure coverage of all inventory sectors, and to achieve an overall balance in the participation of experts from annex I and non-annex I Parties, as well as geographical balance among them. Two lead reviewers, one each from an annex I and a non-annex I Party, guide the work of the teams.

<sup>69</sup> Doelle, Meinhard, “Early experience with the Kyoto Compliance System: Possible lessons from MEA compliance system design” (2010).

### 3. *Participation of the party concerned in the process*

66. Consultation through the entire process with the party that is the subject of a submission is essential to guarantee due process. The party is normally entitled to participate in the deliberations of the compliance body, but not in the elaboration and adoption of recommendations to the governing body.

67. *Questions.* Who should be able to trigger the compliance procedure under the Nagoya Protocol? Should entities other than Parties trigger the procedure? When a submission is made, what should be the process related to the consideration of the submissions?

#### ***E. Information and consultation***

68. The compliance body in its consideration of the submissions made normally receives information from the party which is the subject of the submission and from the submission's author, but it can also seek information from other sources including, for example, the governing body, the Secretariat and other subsidiary bodies, international organizations, experts and NGOs. Many compliance procedures foresee the possibility of gathering information in the territory of a party upon its invitation.<sup>70</sup> In some instances confidentiality of the communications is required.

69. *Questions:* Which sources of information should the compliance body rely upon? Should confidentiality be maintained?

#### ***F. Measures to promote compliance and address cases of non-compliance***

70. *Competent bodies.* The governing body and the compliance body can play different roles on compliance matters. In certain compliance procedures,<sup>71</sup> the governing body is the only institution that can make the final decision regarding compliance on the basis of the recommendations and reports of the compliance body. In other compliance procedures, such as CITES and the Kyoto Protocol, the governing body enables the compliance body to take all measures regarding compliance, and in the case of the Kyoto Protocol COP-MOP serves as appellate body for appeals against decisions of the facilitative and enforcement branches.

71. In other procedures<sup>72</sup> both the compliance body and the governing body have the capacity to take measures to address compliance, but in the case of the measures taken by the compliance body these are normally of a facilitative nature. For example, the compliance procedure under the Basel Convention distinguishes two stages in the procedure. First the Committee, after coordination with the concerned party, provides advice, recommendations and information to that party. After, if the Committee considers it necessary to pursue further measures, it may recommend the Conference of the Parties consider stronger measures.

72. *Considerations.* When considering taking measures to promote compliance and to address cases of non-compliance, the competent body takes several factors into account. The most common factors are the capacity of the party concerned and the cause, type, degree and frequency of the non-compliance. The compliance procedure under CITES includes also consideration to the appropriateness of the measures so that they are commensurate with the gravity of the compliance matter and to the possible impact on conservation and sustainable use.

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<sup>70</sup> For example, under the Aarhus Convention, CITES, the Espoo Convention, the LRTAP and the Water and Health Protocol.

<sup>71</sup> For example, under the Aarhus and Espoo Conventions, the London Protocol and the LRTAP.

<sup>72</sup> For example, under the Cartagena Protocol, the ITPGRFA and the Water and Health Protocol.

73. *Consequences.* Measures to promote compliance and address cases of non-compliance are usually applied in an order of increasing severity. Response measures can include incentives, assistance, and/or sanctions. Normally, the first response to situations of non-compliance is the adoption of facilitative measures. Only when these measures are exhausted, and the party is still found to be in non-compliance, are stronger measures considered, such as trade and economic measures or suspension of rights. This is usually without prejudice to the prerogative of the competent body to decide to apply the measures in the order it may consider appropriate taking into account the list of considerations mentioned above. A response can also be tailored to the underlying reason for non-compliance. For example a lack of financial or human capacity would suggest a facilitative response, and a lack of political will or negligence would suggest a stronger response.

74. In practice, the measures taken within the compliance regimes examined usually focus on assistance rather than the suspension of rights and privileges under the treaty and other stronger measures.<sup>73</sup> This is consistent with the general recognition that the common reason for non-compliance is lack of capacity.<sup>74</sup>

75. The measures taken within other compliance regimes to promote compliance and to address cases of non-compliance include:

- (a) Providing advice or assistance to the party concerned in the following areas: financial;<sup>75</sup> technical, legal,<sup>76</sup> technology transfer, and/or training and other capacity-building measures;
- (b) Requesting or assisting, as appropriate, the party concerned to develop a compliance action plan within an agreed timeframe and indicators to assess satisfactory implementation;
- (c) Inviting the party concerned to submit progress reports on its efforts to comply;
- (d) Issuing a caution or warning;<sup>77</sup>
- (e) Issuing declarations of non-compliance;<sup>78</sup>
- (f) Distributing to all Parties a public notification through the Secretariat;<sup>79</sup>
- (g) Publishing cases of non-compliance;<sup>80</sup>
- (h) Suspending, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, of specific rights and privileges;<sup>81</sup> and/or
- (i) Applying economic or trade consequences.<sup>82</sup>

<sup>73</sup> The suspension of specific rights and privileges under the Montreal Protocol related to trade is only foreseen for cases of repeated non-compliance. To date it has been applied to only one country.

<sup>74</sup> UNEP Compliance Manual, p. 144.

<sup>75</sup> The facilitative branch of the Kyoto Protocol and the Water and Health Protocol includes the possibility of facilitating technical or financial assistances from other sources than those established under the MEA to developing countries.

<sup>76</sup> The ITPGRFA's procedures include the provision of legal assistance. Basel Convention's procedure envisages that the Committee may provide advice, non-binding recommendations and information relating to establishing and/or strengthening its domestic/regional regulatory regimes.

<sup>77</sup> For example, under the Basel Convention, CITES, the Montreal Protocol and the Protocol on Water and Health.

<sup>78</sup> For example, under the Aarhus Convention, the Kyoto Protocol, and the Protocol on Water and Health.

<sup>79</sup> For example, under CITES.

<sup>80</sup> For example, under the Cartagena Protocol and the Protocol on Water and Health.

<sup>81</sup> For example, under the Montreal Protocol these rights include those concerned with industrial rationalization, production, consumption, trade, transfer of technology, the financial mechanism and institutional arrangements. Other examples are under the Aarhus Convention and the Protocol on Water and Health.

76. Responses to non-compliance can be combined. For example, it is usual to request the development of compliance actions plans and the submission of progress reports when both facilitative and stronger measures are taken.

77. Some compliance procedures and mechanisms give some discretionary powers to the governing body to “take such other non-confrontational, non-judicial and consultative measures as may be appropriate”,<sup>83</sup> or state that the list of measures is not necessarily exhaustive.<sup>84</sup>

78. The procedures and mechanisms adopted under the ITPGRFA have retained only measures of a facilitative nature. Other measures bracketed in earlier drafts, such as the issuing of cautions or notifications, were not reflected in the final text. Nevertheless, the Governing Body retains the possibility to take any other actions it deems appropriate considering the circumstances.

79. Under the Cartagena Protocol, the definition of stronger measures for cases of repeated non-compliance was left for the Conference of the Parties to the Protocol to further consider at its third meeting. At their fourth meeting, the Parties to the Protocol decided in decision BS-IV/1 “to defer consideration or adoption of measures on repeated cases of non-compliance until such time as experience may justify the need for developing and adopting such measures”.<sup>85</sup>

80. *Questions.* What roles should the compliance body and COP-MOP have in relation to the measures taken to promote compliance and to address non-compliance? What considerations should be taken into account during the procedure? Article 30 of the Nagoya Protocol specifies that “these procedures and mechanisms shall include provisions to offer advice or assistance, where appropriate....” What other measures should be included in the procedure?

#### ***G. Review of procedures and mechanisms***

81. Review of the compliance procedures and mechanisms is explicitly foreseen in the regime itself only under the Cartagena Protocol, CITES and the ITPGRFA. Under other MEAs, reviews are conducted within the context of the general evaluation of the effectiveness of the particular instrument or developed by practice.

82. *Questions.* Should the review of the compliance procedures and mechanisms adopted for the Nagoya Protocol be explicitly provided for? Should it be scheduled?

#### ***H. Brief summary of lessons learned***

83. Since the adoption of the compliance regime under the Montreal Protocol in 1990, many MEAs have developed similar compliance procedures and mechanisms, and valuable practical experience has been gained.

84. Compliance procedures examined have similar elements and features, but there are also some substantial differences among them depending on the characteristics of the MEA and the nature of its obligations.

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<sup>82</sup> For example, under CITES, and the Kyoto Protocol and the Montreal Protocol.

<sup>83</sup> Decision I/7 of the Aarhus Convention, Annex., ECE/MP.PP/Add.8 (2004), paragraph 37; and decision I/2 of the Water and Health Protocol, Annex. ECE/MP.WH/2/Add.3 (2007), paragraph 35.

<sup>84</sup> COP resolution Conf. 14.3. Guide to CITES Compliance Procedures”, Annex, (2007), paragraph 31.

<sup>85</sup> Documents UNEP/CBD/BS/COP-MOP/3/2/Add.1 and UNEP/CBD/BS/COP-MOP/BS/CC/3/2 provide information and experience regarding repeated cases of non-compliance under the compliance mechanism of other multilateral environmental agreements.

85. From the compliance procedures and mechanisms reviewed, the following observations may be derived:

- (a) In some instances the compliance bodies have faced problems related to members' attendance, engagement and expertise and delays for replacement;
- (b) The main shortcoming relates to the lack of submissions;
- (c) Taking into account that most cases of non-compliance do not result from intentional disregard for treaty obligations but rather from a lack of awareness, capacity and resources,<sup>86</sup> the promotion of self-submission by Parties with difficulties to comply is essential if the nature of the compliance procedure is to be facilitative and preventive. Self-submissions can be encouraged through incentives, such as making funds available, and limiting the measures taken in response to non-compliance to those that are facilitative;
- (d) To be effective, compliance procedures and mechanisms should not rely exclusively on Parties' trigger;
- (e) Most of the non-compliance cases examined by the compliance bodies were initiated by referrals from the Secretariat or the compliance body. This function is normally supported by tasking the compliance body to review Parties' implementation through monitoring and reporting;
- (f) Responses can be tailored to the underlying reason for non-compliance, for instance lack of financial or human capacity would suggest facilitative response and lack of political will or negligence would suggest a stronger response;
- (g) The compliance body should be allowed at minimum to take some kind of facilitative measures to ensure the necessary flexibility and expedition. Stronger measures could be left to the governing body to decide.

86. It is important to take stock of the lessons learned from other MEAs. In particular, valuable experience can be drawn from the compliance procedures and mechanisms under the Cartagena Protocol. In addition, the compliance procedures recently adopted under the ITPGRFA, while building on the compliance procedures of the Cartagena Protocol, incorporate some of the lessons learned from previous experiences, giving a stronger emphasis to promoting compliance and the facilitative aspects of the procedures.

87. The full texts of the compliance procedures and mechanisms adopted under the Cartagena Protocol and the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) are found in UNEP/CBD/ICNP/1/INF/1.

#### **IV. SUGGESTED ISSUES FOR CONSIDERATION**

88. The Intergovernmental Committee for the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising From Their Utilization may wish to:

- (a) Further review and develop the elements and options for compliance procedures and mechanisms on the basis of the foregoing analysis;
- (b) Consider the experiences and outcomes of the compliance procedures under the Biosafety Protocol and the International Treaty on Plant Genetic Resources for Food and Agriculture and whether, if adapted to the circumstances of the Nagoya Protocol, either or both could provide a possible

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<sup>86</sup> UNEP Compliance Manual at p. 144.



basis to begin developing draft elements and options to expeditiously advance the Intergovernmental Committee's work;

(c) Define a process leading to the adoption of compliance procedures and mechanisms by the first meeting of the Parties to the Protocol, in accordance with Article 30 of the Protocol. The process could include:

- (i) Inviting Parties to communicate in writing to the Executive Secretary their further views regarding elements and options, guided by a questionnaire to be developed by the Secretariat drawing *inter alia* from the questions provided in the present document;
- (ii) Requesting the Executive Secretary to compile a synthesis report of the views expressed by Parties, and from these requesting the Executive Secretary to develop draft elements and options;
- (iii) Option 1: Requesting the Executive Secretary to submit the synthesis report and the draft elements and options to the Intergovernmental Committee at its second meeting for its consideration;

Option 2: Requesting the Executive Secretary to convene an expert meeting on compliance procedures and mechanisms, subject to the availability of funds, to review the synthesis report and further refine the draft elements and options developed by the Executive Secretary for consideration by the Intergovernmental Committee at its second meeting; and

Inviting Parties, other Governments and relevant international organizations to provide financial support to convene an expert meeting on compliance procedures and mechanisms.

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