The International Symposium on COP10 and COP-MOP5:

The Significance of the Nagoya-Kuala Lumpur Supplementary Protocol and the Nagoya Protocol on ABS

Tuesday, March 15th, 2011
Grand Prince Hotel Akasaka
Tokyo, Japan

I INTRODUCTION

1. The Ministry of Foreign Affairs of Japan hosted the "International Symposium on COP10 and COP-MOP5: The Significance of the Nagoya-Kuala Lumpur Supplementary Protocol and the Nagoya Protocol on ABS" at Grand Prince Hotel Akasaka, Tokyo, on March 15, 2011. The main negotiators, industry representatives, the NGOs and the academic experts participated in this symposium. Upon adoption of these two protocols, this symposium discussed the significance of adoption of these protocols and exchanged views on the future perspective of the Protocols.

2. The symposium was composed of three parts: (I) Negotiation and Adoption of the Nagoya-Kuala Lumpur Supplementary Protocol; (II) Cartagena Protocol Regime and Implementation of the Nagoya-Kuala Lumpur Supplementary Protocol and (III) Nagoya Protocol on ABS. Panelists who were involved in the negotiation of the Nagoya-Kuala Lumpur Supplementary Protocol and the Nagoya Protocol on ABS provided their observations to the significance of those two protocols from their perspectives and experiences. Through this symposium, participants raised various questions to the panelists from the floor and keen discussion held between them. The working language of the symposium was English with simultaneous interpretation in Japanese and English.

II OPENING REMARK

3. The symposium was opened by Dr. Atsushi Suginaka (Director, Global Environment Division, International Cooperation Bureau, Ministry of Foreign Affairs of Japan) and welcomed all panelists and participants to this symposium on behalf of the Government of Japan, and COP10 and COP-MOP5 presidency.

4. Dr. Suginaka gave an overview of the outcome of the tenth meeting of the Conference of the Parties to the Convention on Biological Diversity (CBD-COP 10) and the fifth meeting of the Conference of the Parties serving as the Meeting of the Parties to the Cartagena Protocol on Biosafety (COP-MOP 5) in last October, which could produce two new protocols – 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 and the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety and expressed their sincere gratitude for the efforts and the collaborations of the Parties and stakeholders.

5. Dr. Suginaka also noted that the signature of these protocols started in February 2nd and March 7th at the United Nations Headquarters in New York and emphasized that it is quite important to pursue early entry into force of these protocols and effective implementation of the protocol shall be secured. With regard to the effective implementation, Japan announced to contribute 1 Billion Japanese Yen to the multilateral mechanism to support capacity building. Recently, Japan proposed to establish new funds in Global Environment Facility (GEF) and, thanks to the understanding of the Council Members, establishment of the new fund was approved. The objective of the new fund is promoting early entry into force and effective implementation of the Nagoya Protocol. Finally, he expressed that Japan intends to exercise its responsibility of COP10 and COP-MOP5 presidency and will demonstrate leadership in the field of conservation and sustainable use of biological diversity with the close cooperation with CBD Secretariat and other Parties.

III PRESENTATION BY PANELISTS

Part I Negotiation and Adoption of the Nagoya-Kuala Lumpur Supplementary Protocol

6. At first session of the symposium, Ms. Jimena Nieto(Senior Adviser, Office of the Vice minister of the Environment, Ministry of the Environment, Housing and Territorial Development, Colombia) made her presentation titled “Negotiating the Supplementary Protocol: Significance and Challenges”.

7. After her presentation, a panel discussion was held, chaired by Mr. Akiho Shibata (Professor of International Law, Kobe University). A panel discussion started by his presentation on a basic analysis of features and issues of the Nagoya-Kuala Lumpur Supplementary Protocol.

8. Panelists; Mr. Alejandro Lago Candeira (Director of the UNESCO Chair for the Environment, Universidad Rey Juan Carlos, Spain), Mr. Elmo Thomas (Deputy Director: Research, Science and Technology, Ministry of Education, Namibia) , Mr. Reynaldo Ariel Alvarez-Morales (Executive Secretary, Intersecretarial Commission of Biosafety of Genetically Modified Organisms, Mexico), Mr. Hiroaki Ichiba (Deputy Director, Ministry of Foreign Affairs of Japan) and Mr. Duncan Currie (Greenpeace International) made their presentation and discussed on the issue presented by the moderator.

Presentation

9. Ms. Jimena Nieto (Senior Adviser, Office of the Vice minister of the Environment, Ministry of the Environment, Housing and Territorial Development, Colombia), was Co-Chairs of the Open-ended Ad Hoc Working Group of Legal and Technical Experts on Liability and Redress in the Context of the Cartagena Protocol on Biosafety, presented the history and the outcome of the negotiation of the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress. The Cartagena Protocol on Biosafety was adopted in 1999 in Montreal, Canada and in its Article 27 appeal to Parties to negotiate protocol that will answer the question on what happened if damage occurs to biodiversity as a result of the transboundary movement of living modified organisms (LMOs). The process was started with a Workshop on Liability and Redress that took place in December 2002 in Rome. Since 2002, she and Mr. René Lefeber from the Netherlands worked together as the Co-Chairs in this process. The Open-Ended Ad Hoc Working Group of Legal and Technical Experts on Liability and Redress was created and met for the five time from 2005 to 2008 and it was supposed to be the last meeting of the Working Group in Cartagena, Colombia, in March 2008. During that meeting, the Co-Chairs presented a proposal that was named the "Core Elements Paper". That proposal comprised of four categories that are administrative approach, civil liability component, supplementary compensation schemes and complimentary capacity building measures. However, the Group of Latin America and Caribbean Countries("GRULAC") opposed to accept the Co-Chairs proposal so that Parties had to move from Cartagena without an agreement. Another historical event in the meeting was made from the industry that they provide their proposal in relation to the process which is called the "Compact". The important thing is that this proposal from the industry gave a positive impact to the negotiations at that point. After four years of intensive negotiation, parties could not meet the COP-MOP-4 deadline for the adoption of international rules and procedures for liability and redress of damage resulting from transboundary movements of LMOs because some

delegations had strong positions on some of the issues. Malaysia created Like-Minded Group in order to move forward the process and tried to give a response to the some delegations from the GRULAC that did not want to have any outcomes. Finally we could agree to work towards legally binding instruments on liability and redress that include an administrative approach despite we could not meet a deadline.

10. Ms. Nieto continued to explain the process after the COP-MOP4 in 2008. Co-Chairs observed that it was difficult to continue the negotiations in an open-ended format so they decided to have a smaller format which is called the "Friends of the Co-Chairs" in accordance with the UN practice. This group consisted of Parties which had strong positions. That group met on four times until the COP-MOP5 in Nagoya, 2010 and could manage to get an agreement on the issues that were more difficult to agree upon in this format. She highlighted that the Supplementary Protocol made significant contributions to international environmental law by having the definition of damage, response measures and operator and so on. Those issues were also presented by other panelists. She also put emphasis on the characteristic of this process as an inclusive and transparent. Parties and observers were invited from the beginning to present with their text and proposals for the negotiations. This instrument was not only built by the parties but also included text from all sectors, including the NGOs, the private sector and the academy. The role of the Co-Chairs was mainly to guide the discussion to be legally sound. Finally, she concluded that the spirit in Nagoya was really positive. The Government of Japan allowed Parties to have a meeting back to the COP-MOP and it helped to achieve an agreement on the text even before COP-MOP. That allowed also for the Protocol to be adopted in a spirit of friendliness and of happiness.

11. Mr. Akiho Shibata (Professor of International Law, Kobe University), who served as a moderator of this session, presented the basic features of the Supplementary Protocol on Liability and Redress(for his presentation material, see Annex 1). Professor Shibata explained that the Supplementary Protocol was adopted as a legally binding treaty and it deals with possible biodiversity damage that may result from living modified organisms (LMOs). The Supplementary Protocol does not directly address damage to human health because it was adopted within the legal framework of the Convention on Biological Diversity and the Cartagena Protocol on Biosafety which aims at the conservation and sustainable use of the biological diversity. The safety of pharmaceutical products and foods made from LMOs are effectively dealt with in different international institutions. For better understanding of the reality of LMOs, he gave an overview of the use of

LMOs in our daily life. He said that, as of 2009, there are 25 countries harvesting GM crops, totaling 134 million ha worldwide. In Japan, in 2009 alone, 20 LMOs were approved for open use. However no commercial harvesting of GM crops have yet to be realized in Japan. For contained use of LMOs, more than 100 approvals are made each year in the field of research and industrial activities.

12. The question then is how to deal with possible damage to biodiversity that may be caused by LMOs. In his presentation, he provided possible case scenarios in order to demonstrate how the Supplementary Protocol would be applied and implemented. First, he explained that, even though the Supplementary Protocol as a treaty applies only to LMOs subject to transboundary movements, the domestic law implementing the Supplementary Protocol most likely would not differentiate imported LMOs and domestically produced LMOs. Second, the Supplementary Protocol provided for the administrative approach to liability, its core scheme is stipulated in Article 5, and also allowed the Parties, in Article 12, to establish the civil liability approach under their domestic laws to deal with the damage. Under the administrative approach, a legal relationship would be established between the competent authority of the Party and the operator. He explained that this is very different from the civil liability approach which establishes a legal relationship between the victim of the damage and the operator who caused the damage and tries to resolve the issue normally in the court and by financial compensation. Under the Supplementary Protocol, the competent authority of the imported Party would demand the operator to take appropriate response measures. Third, he explained that the significant achievements of the Supplementary Protocol could be found in its definition of damage to biological diversity and its detailed definition of "response measures" which includes also restoration of biological diversity to the condition that existed before the damage occurred, or its nearest equivalent. Finally, he touched upon the definition of "operator" under the Supplementary Protocol and expressed the view that, in principle, the "operator" would be determined by the Parties' domestic laws.

13. Based on such analysis, Professor Shibata then identified six interesting features of the Supplementary Protocol that could be discussed in more detail amongst the Panelists. First, the significance of the administrative approach to liability which is actually the center piece of the Supplementary Protocol. Second, why only one article on civil liability was inserted in the Supplementary Protocol. Third, how the Supplementary Protocol achieved a scientifically sound legal regime, because it involves a lot of scientific knowledge and understanding such as the concept of LMOs and the concept of damage or threat of damage to biological

diversity. Fourth, how the Supplementary Protocol balanced the conservation of biodiversity with the trade interests. Fifth, the flexibilities provided in the Supplementary Protocol allowing Parties to determine how to implement its provisions by their domestic law. Sixth, the transparency of the negotiating process of the Supplementary Protocol.

Panel Discussion

13. Mr. Alejandro Lago Candeira (Director of the UNESCO Chair for the Environment, Universidad Rey Juan Carlos, Spain) presented the issue on administrative approach in the process of the negotiation on rules and procedures of liability and redress in the context of Article 27 of the Cartagena Protocol. He also shared the EU experiences on the European Directive 2004/35 on environmental liability ("Environmental Liability Directive") with regard to the prevention and remedying of environmental damage. The idea of this Environmental Liability Directive was to establish a community environmental liability scheme. Indeed, many of the environmental legislation adopted at the community level intends to avoid internal disturbances to the common market. This objective was to integrate a common approach to effectively execute the polluter pays principle. As another feature of the Environmental Liability Directive is that it is a directive. It is a legal norm that obliges member states to fulfill its objectives but it also allows a certain degree of flexibility in the means on how to achieve that. Therefore, it is an instrument that needs to be transposed and to be developed into each national system. With regard to the merits and demerits of the administrative approach. EU considers the administrative approach is a very good solution for the rules and procedures on liability and redress in the context of the Cartagena Protocol because its main focus would be to address damage to the conservation and sustainable use of biodiversity. This would not be well handled by traditional civil liability systems. The administrative approach is based on designation of a competent authority that is in charge of the system. Nevertheless, the main obligation is not on the competent authority but on the polluter that is objectively channeled to the operator. The operator has obligations to take response measures in cases where environmental damage has occurred. One of the main merits of the administrative approach is preventive character. It is not necessary to wait to prove that damage has actually occurred but we can act if there is an imminent threat despite it has been slightly watered down in the Supplementary Protocol. Second merit is it covers "orphan damage", which is damage that could not be easily claimed by someone so it could not be redressed and the civil liability regimes cannot cope very well with this orphan damage. Another merit is that it is important to note that the

administrative system does not substitute the civil system, so it has a complimentary character. A possible demerit is that the process is left to the discretion of the competent authority, at least how it is established in the Supplementary Protocol. This can be solved at the national level with the introduction of the possibility of allowing third parties to request the competent authority to take action.

14. Mr. Elmo Thomas (Deputy Director: Research, Science and Technology, Ministry of Education, Namibia) shared the position of the African group to a civil liability in the negotiation of the Supplementary Protocol. African group interprets that Article 27 calls for rules and regulations on liability and redress and this rules and regulations include some guidelines and binding rules and regulations. Therefore African group quite stick to this idea of having something that it is legally binding. African group also looked at liability and redress as two issues. One is on liability: who pays and how much for damage. The other is on redress: how to fix the problem or the damage that occurred. Consequently the concept of damage becomes at the crux of negotiation. African group considers the rest of the environment and the socio-economic aspect must be taken care for considering the concept of damage with referring the Cartagena Protocol as the mother Protocol. Therefore he mentioned the importance of clear definition of the damage and the need for having articles on civil liability other than administrative approach. As a consequence, he pointed out the importance of Article 5 and 12.2 of the Supplementary Protocol which provide for that Parties shall provide rules and procedures in their domestic law and adequate rules and procedures in their domestic law on civil liability for material or personal damage associated with the damage.

15. Mr. Reynaldo Ariel Alvarez-Morales (Executive Secretary, Intersecretarial Commission of Biosafety of Genetically Modified Organisms, Mexico) presented his observation to the Supplementary Protocol from scientific point of view. He, as a scientist, mentioned that scientists tend to think that there must be very well defined points in order to take a decision whereas how lawyers interpret. It may be the same issues that we scientists think and layers may want to interpret those in the benefit of the people or whatever. They are very complementary each other. For instance the EU uses the term “imminent threat of damage” in its directive. This is very good example of flexibility that the directive allow for the deletion of this and go back and adjust within their own rules and law. For the same reasons, Mexico and most of the GRULAC countries opted for the deletion of this term. With regard to the concept of “imminence”, it is very difficult to attribute those damages to LMOs whereas oil pollution, it is obvious to be damage to the environment. He

pointed out that the definition of damage in the Supplementary Protocol has two characteristics. It is measurable or otherwise observable. There is also the need to establish link between environment. The problem is a concept of "imminent threat of damage" because LMOs would be associating with dangerous substances which are well known or proven to have adverse effects. But it depends on their use and most likely for commercial purposes. They may be comparable to exotic species. In any cases, there is no reason to associate these type of characteristics to LMOs at this moment. That is why the proposition of imminent threat of damage could not be part of this regime. With respect to the deletion of "products thereof", this is also a very tricky question because damage to the environment must be associated with organisms that replicate in the environment where they should not be grown. No one would expect that any products do contain DNA, for instance a tomato puree made from transgenic tomatoes, have possibilities to pose risks to the environment. However, some people posed that products thereof need to be included as a component because horizontal genes transfer, those DNA may be replicable and may be transferable to other organisms, would happen. Actually horizontal genes transfer is a very well known issue within bacteria and other micro-organisms. But most of them are in evolutionary terms. Genes are not just transferred from fathers to the progeny but also in evolutionary terms, horizontally. For these reasons, it would cause actually much more problem by including products thereof at this moment. There are issues still for science to deal with and for law as well. In his conclusion, he evaluated the Supplementary Protocol is a very solid and scientifically sound instrument.

16. Ms. Jimena Nieto gave an overview of negotiation of the issue on financial security which provided for Article 10 of the Supplementary Protocol. Basically those who were in favor of having financial security provisions wanted to be able to request insurance from the exporters of LMOs. In that sense, it is for sure they have resources for compensation from damage. They thought that it was fair to request it in this context. However the other part of the room did not agree with that it would put additional costs on the technology and they were not ready to accept the technology to be more expensive. It was also presented that there was no available insurance for this kind of products and for environmental damage. She also pointed out the argument on relationship with the World Trade Organization, for instances if the insurances or the financial securities used as a trade barrier. That was of course what was behind all this discussion where the concern of financial security being used as a trade barrier to these products. The Cartagena Protocol had tried to solve that issue in its preamble that requests to look at trade and environment as mutually supportive. But there is a lot of ambiguity in the drafting of the preamble

on trade and environment in the Cartagena Protocol. At this moment, there is no clarity what would happen if a conflict arises. The compromised language in Article 10 of the Supplementary Protocol might be more a symbolic provision even though it is not clear how this will work if such a conflict arise. So she concluded that this final outcome is a fair balance in the two interests. Further she mentioned an issue related to the concept of imminent threat of damage on trade. Some Parties feared that the concept of imminent threat of damage could be used as a trade barrier as well. Because some Parties could deny import of LMOs for the reason that there is an imminent threat of damage to their territory. However such a declaration could be a trade barrier so that it would raise issue related to WTO rules. In the end, this issue was resolved as previous speaker already mentioned and it was a positive sign to the Protocol.

17. Mr. Hiroaki Ichiba (Deputy Director, Ministry of Foreign Affairs, Japan) provided an overview of the basic position of Japan toward this negotiation and the issue of flexibility of the Supplementary Protocol (for his presentation material, see Annex 2). In his presentation, first, he mentioned that Japan had two faces with regard to the negotiation. Japan was the host country of the COP–MOP5 so that Japan had to show their commitments to adopt the Supplementary Protocol. Fortunately there was a shared recognition among the negotiators that we need to complete this work and adopt the Supplementary Protocol because we already had passed the primary deadline designated under Article 27 of Cartagena Protocol, which was May 2008. Under these circumstances, Japanese delegation tried to be as flexible as possible and played a role as a mediator or a facilitator to bridge the gap between the two sides in Nagoya. At the same time, as one of the negotiating parties, Japan had its basic position toward the negotiation. First, the Supplementary Protocol should be within the scope of Cartagena Protocol on Biosafety for the reason that Cartagena Protocol was agreed upon after a very tough and difficult negotiation and based on a very fine and delicate balance. Second, the Supplementary Protocol should strike a balance between smooth international trade and careful treatment of LMOs. Third, the Supplementary Protocol should be consistent with the Japanese legal system.

18. As for the specific issue of flexibility, Mr. Ichiba pointed out that Japan attached importance to ensure flexibility for two reasons. One is the domestic requirement. Japan already provided for a very comprehensive regime, the Cartagena Law, in 2000 with regard to the risk of LMOs. The other is something international which was shared by many Parties. For each country, the situation surrounding them and the capacity of each government are different. Under these circumstances, it is

better for each government to have a flexible framework to respond to the situation. The flexibility was necessary in order for everyone to agree and adopt the Supplementary Protocol given diverse views on LMOs and different domestic legal systems and different level of development of domestic laws in each country. In this context, he mentioned that flexibility is not a new approach as the Cartagena Protocol on Biosafety entrusts a great deal to domestic law on what to do for risk assessment. Some may see this flexibility as a risk that some countries may establish a domestic system arbitrarily, but it was only practical option we could take. He said that, if necessary, this issue could be addressed in the future MOP. He suggested, as an example, to consider conducting mutual assessment and mutual monitoring among Parties in order to prevent the risk of establishing arbitral systems in certain countries. He said it depends on the collective effort of the parties in the future and he is optimistic about it.

19. Mr. Duncan Currie (Greenpeace International) highlighted the meaning of the Supplementary Protocol to address damage from LMOs and said that the damage may not be limited in space or time and therefore the Supplementary Protocol should not have limited in space or time. Mr. Currie also emphasized the role of observers in international negotiations for increasing transparency and accountability in the process. With regard to the issue on transparency and accountability in the process, he pointed out that its objective is to contribute to the protection of the rights of present and future generations to live in an adequate environment to his or her health and well being by referring Article 23 of the Cartagena Protocol and the Aarhus Convention which guarantees the right of access to information, public participation and decision making and access to justice and environmental matters. They are fundamental elements of good governance at all levels and essential for sustainability. It also must be taken care of keeping the processes open in principle to the public at large and specifically on public participation relevant to the negotiations. Public participation generally does contribute to the quality of decision-making on environmental matters in international forums by bringing different opinions and expertise to the process and increasing transparency and accountability. It also notes that the public should be allowed to participate at all relevant stages unless there is a reasonable basis to exclude them. In conclusion, he put emphasis again on the need for feedback the process to public because negotiations must have legitimacy and so if negotiations are conducted in a backroom for too prolonged a period then they resolute in legitimacy and that can be dangerous to the negotiation process as well.

20. Panelists further discussed the issue on civil liability which is Article 12 of the Supplementary Protocol. During the negotiation on this issue, there were big differences between Parties on its concept and scope and so on. One of the crucial aspects of the issue on civil liability is that this is to be implemented within the different national legal systems. Therefore it is difficult for many Parties to accept mandatory provision on civil liability because it might require a fundamental change of the civil liability legislation in their countries. There are still some concerns on civil liability provision of the Supplementary Protocol, several panelists pointed out the importance of Article 13 which mentions a review of the effectiveness of Articles 10 and 12. One participant raised a question from the floor to the panelists that the deletion of "imminent threat" seems to be a question of science but more a question of linguistic one. A panelist answered that it is right question and commented it will need for certain period of time before it occurs and it depends on the result of the risk assessment.

Part II Cartagena Protocol Regime and Implementation of the Nagoya-Kuala Lumpur Supplementary Protocol

21. At the second session, panelists made their presentations on Cartagena Protocol Regime and Implementation of the Nagoya-Kuala Lumpur Supplementary Protocol and discussed the issue related to this. This session was chaired by Ms. Jimena Nieto.

Presentation by the Panelists

22. Professor Akiho Shibata gave an overview of the possible domestic implementation of the Nagoya-Kuala Lumpur Supplementary Protocol in Japan (for his presentation material, see Annex 3). First, he explained that, under the Japanese domestic legal system, international treaties if duly ratified by and entered into force for Japan will have the force of law without any implementing legislation. However usually and especially for environmental treaties with detailed rules and procedures, implementing domestic legislations for treaties will be enacted. Therefore, the Japanese government examines carefully the content of new treaties for its consistency with the Japanese Constitution, its fundamental legal system and its legal philosophy. Second, he explained that, in 2003, Japan enacted the Law concerning Conservation and Sustainable Use of Biological Diversity through Regulation on the Use of Living Modified Organisms (Law No.97 of 2003: Japan's Cartagena Law) to implement all obligations under the Cartagena Protocol. Japan's Cartagena Law covers all LMOs as defined in the Cartagena Protocol and applies, irrespective of their foreign or domestic origin, to "use of and

other acts involving LMOs" in Japan. It authorizes the competent authority to order the users and others to take all necessary measures, including recovery of LMOs, to prevent adverse effect caused by LMOs that is defined as "the possibility of loss to biological diversity". Third, according to his view, the content of the new Supplementary Protocol based on administrative approach would be implemented, with only minor adjustments, by applying the existing Japan's Cartagena Law. Fourth, he pointed out that the following two issues should be kept in mind: First, the concept of "damage to the biodiversity" under the Supplementary Protocol shall be interpreted and implemented in Japan within the concept of "effects on biological diversity" under Japan's Cartagena Law. Second, the concept of "operator" under the Supplementary Protocol shall be interpreted and implemented in Japan within the concept of "users of LMOs and others" under Japan's Cartagena Law.

23. Professor Shibata then examined specific obligations and authorizations under the Supplementary Protocol and how they will be implemented domestically in Japan. With regard to the obligations under Article 5 and Article 12(1) relating to the administrative approach and the damage to biodiversity, Japan's Cartagena Law and other general administrative laws would be able to implement them, with one reservation. The required "response measures" under the Supplementary Protocol are very elaborate and far-reaching, but Japan's Cartagena Law requires all measures "that are necessary to prevent the adverse effects." It should be carefully examined whether "all necessary measures to prevent" under Japan's Cartagena Law can cover all the "response measures" that include restoration measures. With regard to the obligation under Article 5(3) dealing with "a sufficient likelihood of damage," Japan's Cartagena Law already covers this type of cases. With regard to the obligations under Article 12(2) and (3) dealing with civil liability for material or personal damage, Japan's general Civil Law (tort law) would most likely be the implementing framework, which allows the victim to pursue the liability of wrongdoers as long as all other necessary conditions provided in that Law are satisfied. However, such damage under the Civil Law may not be necessarily associated with the biodiversity damage. With regard to the authorization under Article 10(1) which allows Parties to retain the right to provide the provision on financial security in domestic law, although it is doubtful that Article 10(1) provided internationally recognized authority to impose financial security, the current Japan's Cartagena Law does not provide for such an authority, and, most likely, Japan would decide not to implement this provision against the "users" of LMOs. Finally, with regard to the authorization under the latter sentence of Article 12(1) which provides that the Parties may, as appropriate, apply or

develop civil liability rules and procedures for cases of biodiversity damage, under the current Japanese general Civil Law and its jurisprudence, it would be both legally and politically difficult to cover "biodiversity damage", therefore, Japan most likely will opt for not implementing this provision.

24. Mr. Dire Tladi (Legal Counsellor, Permanent Mission of South Africa to the United Nations) presented on implementation of the Nagoya-Kuala Lumpur Supplementary Protocol from African perspective. At the outset, he gave brief overview on the Genetically Modified Organisms Act(GMO Act) of South Africa in 1997. Mr. Tladi also mentioned the challenge of implementing the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress. He titled those challenges as issues on reinterpretation, revision and re-imagination to the provision of the agreement. He also described it as "fault lines". The re-emergence of the fault lines raise the problem of auto-interpretation of international law which comes from the fact the absence of a compulsory judicial organs to settle disputes, and allows individual states the privilege of determining for themselves what the law is in any given instrument. The difficulty of avoiding diverse interpretations can be illustrated by considering the term "damage" in the Supplementary Protocol. In the course of the negotiations, there has been discussed a broad range of definition of "damage". One prefers a narrow definition of damage that can only related to biodiversity, others prefer damage covered harm to human health and even economic loss. Finally language of the definition resulted as "an adverse effect on the conservation and sustainable use of biological diversity, taking also into account risks to human health;" but its language comes from the Cartagena Protocol, remain a lot of ambiguity or discretion to the States. What is important to note is that this was not a new debate but was simply replaying the negotiations of Cartagena Protocol in a new forum. The same contestation had applied to the definition of "operator". The Supplementary Protocol does not only leave a wide margin of discretion in the interpretation but also in the implementing state. For example, the Supplementary Protocol does not set out specific response measures that are to be implemented in the event of damage but rather leaves it to national authorities to make the determination. Similarly, while the Supplementary Protocol requires a closer link to be established between the damage and the living modified organism, how this is to be done is left completely up to domestic law. Then he pointed out that both the discretion and the ambiguity provided in the Supplementary Protocol allow States to reinterpret, revise and re-imagine the provision of the Supplementary Protocol and allow domestic laws how to implement it. Nonetheless, he added that the wide margin of available discretion to the domestic implementation is tempered by the transboundary character of the

Supplementary Protocol in its application. The point here is the discretion is not absolute as enforcement. It may need to take place in a different jurisdiction. Finally he concluded that the adoption of the Nagoya-Kuala Lumpur Supplementary Protocol is an exceptional feat only provided by the skilful ambiguity employed by drafters. Through the skilful employ of ambiguity, different domestic systems with different resource levels, different priorities attaching to environmental concerns, different policies towards biotechnology, towards trade, different policy concerns are free to make their own policy choices in implementing the supplementary protocol, whether as a result of explicit defense to domestic law or as a result of the ambiguity.

25. Mr. Tom Carrato (Chair, Global Industry Coalition Steering Committee) provided the industry perspective on the implementation of the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress(for his presentation material, see Annex 4). He said that the industry generally supported the Supplementary Protocol. The industry believes that an administrative approach to respond in the event of damage is the most appropriate approach for any damage to the environment or to biological diversity. In implementing the Supplementary Protocol, it provides a basic framework for an administrative approach in order to response to damage with a number of fundamental key elements. The Supplementary Protocol also need to be embodied into the domestic law of different jurisdictions. So he pointed out that Parties need to undertake careful analysis of domestic law in order to respond the specific mandate of the Supplementary Protocol. He also highlighted several elements of why the industry support the Supplementary Protocol. First of all, he observed that biodiversity is a public good to be protected by the State so the decision-making related to this should be based on sound scientific basis. Channeling of liability to the operator who caused the damage to biological diversity is another element. In relation to this, the Supplementary Protocol provides appropriate defenses to those who are accused of causing damage. It is also important that the Supplementary Protocol allows the domestic law to provide reasonable limitations both on the time for bringing the claim and on the financial cost for which an operator can be held for responsible. Those elements need to be embodied into the domestic law of different jurisdictions. So Parties need to undertake careful analysis of domestic law in order to respond the specific mandate of the Supplementary Protocol. In order to respond the issues left to the domestic law, the industry made some arrangements that was considered a binding contractual obligation among the six companies, and any other companies that chose to sign it, to remediate actual damage to biological diversity caused by their products. He referred to the arrangement as a “compact”. This compact can

apply whether the activity with the LMOs is purely domestic or international. The compact was designed to be fair, accessible and efficient. It is fully developed and clearly defined and self contained within the four corners of a document. In closing, Mr. Carrato emphasized that the detailed analysis of and verifying consistency with the existing domestic law would be a key to ratify and implement the Supplementary Protocol. So countries who decide to ratify and implement it have to actually be able to carry it out. The technical capacity to make the required scientific determinations is a very important element that countries would have in place in order to actually deal with an incidental damage to biological diversity.

26. Mr. Worku Damena Yifru (Programme Officer, Biosafety Policy and Law, CBD Secretariat) introduced the responsibilities and functions of the Secretariat in supporting the negotiations on liability and redress – past, present and future. The Secretariat is a treaty body, established under Article 24 of the Convention on Biological Diversity with some specific functions. The Secretariat is also assigned to be the secretariat for the Cartagena Protocol on Biosafety. Following the adoption of the two protocols in Nagoya in October 2010, the Secretariat has been further assigned to play the role of a secretariat to the two new instruments. The Secretariat is now providing secretariat service for four treaties. During the negotiations on liability and redress in the context of Article 27 of the Biosafety Protocol, the Secretariat organized and serviced a number of negotiation meetings - five open-ended working group meetings, and five small group meetings. The Secretariat has also produced about 20 information documents that were believed to facilitate the negotiations. From adoption in Nagoya, the Secretariat has processed its editing for making sure the accuracy of the different language versions of the text consulting with some Parties and working closely with the UN Treaty Section. The Secretariat submitted the final version of the text in all UN languages to the UN Treaty Section. The United Nations is the depository of the treaty so the Secretariat submitted the text for its authentication. The Supplementary Protocol opened for signature by Parties to the Protocol at the UN Headquarters in New York in 7 March 2011 and the Secretariat has witnessed its opening for signature. In conjunction with the opening for the signature of the Supplementary Protocol, the Secretariat has prepared an introductory note on the Supplementary Protocol explaining some basic facts about it for helping initiate a domestic process and prepare justification for government to proceed with signing and ratifying the Supplementary Protocol. Then he shared some information concerning activities until COP-MOP6. The Secretariat is supposed to undertake some activities based on COP-MOP5 decisions, which are decision BS-V/11 on liability and redress and decision BS-V/16 on the Strategic Plan of the Cartagena Protocol. Since decision

encourages Parties to the Cartagena Protocol to implement the Supplementary Protocol pending its entry into force, the Secretariat are supposed to provide support to Parties to embark implementing or incorporating provisions of the Supplementary Protocol. There is also a decision that makes reference to the need for cooperation among Parties in building capacities. It was also mentioned about reviewing and revising the existing Action Plan on Building Capacities for the Effective Implementation of the Cartagena Protocol. With regard to the Strategic Plan, it provides for the operational objective on liability and redress, including objective to adopt and implement the Supplementary Protocol and to assist Parties to the Protocol in their efforts to establish and apply the rules and procedures on liability and redress. The Secretariat intend to undertake related activities until COP-MOP6, including organizing briefings and workshops preparing and making available some promotional materials that may facilitate discussions or enhance the understanding of the provisions of requirements of the Supplementary Protocol.

27. After the presentation from panelists, there were some questions from the floor. Some participants requested comment to panelists on the restoration of the damages to the biodiversity in case the concept of the damages to the biodiversity is not referred in law itself. One panelist answered to this question that, it depended on a provision of the law, the concept of the damages to the biodiversity could be interpreted in the impact on biodiversity in a broad sense therefore the damage could be included as a part of its concept. However panelist also pointed that it may need to take careful consideration during the process of the signing and ratification whether there is a need for revising the law or not from point of view that the operator ultimately had to shoulder the burden for restoration. The other panelists add some comments that the Environmental Liability Directive, for example, is a framework and has wider range of scope so it is applicable to all environmental damage. However, the Supplementary Protocol does not cover all of biodiversity but focuses on specific aspects of biodiversity.

Part III Nagoya Protocol on ABS

28. At the third session, presentations made by distinguished panelist. After their presentation, panelists and participants discussed about their presentation and further question identified by panelists. This session was chaired by Mr. Masaru Oshima, Principal Deputy Director, Ministry of Foreign Affairs of Japan.

Presentation by the panelist

29. Mr. Fernando Casas(Co-Chairs of Intergovernmental Committee for the Nagoya Protocol on ABS), was Co-Chairs of the Ad Hoc Open-Ended Working Group

on Access and Benefit-Sharing, gave an overview of the significance of the adoption of Nagoya Protocol on ABS (for his presentation material, see Annex 5). In his presentation, he mentioned that the core of the Nagoya Protocol is ABC of ABS; Access, Benefit-sharing and Compliance. The Nagoya Protocol provides some key concept for this. First he mentioned the concept of "utilization" which means to conduct research and development on the genetic and/or biochemical composition of genetic resources, including through the application of biotechnology in the Protocol. Second key concept is the benefits arising from the utilization of traditional knowledge associated with genetic resources bearing in mind the fact that the situation of each country is different. Third concept is access to genetic resources which is critical concept for legal certainty, clarity and transparency. He also pointed out the importance of article on simplified measures on access for non-commercial research purposes. The critical loop from policy viewpoint here is the exercise of sovereign rights over genetic resources which imply the responsibility of countries on the conservation and sustainable use of biodiversity but as well the opportunity to enhance value and to add a maximize value. The key understanding is that all Parties to this Protocol eventually will be both providers and users. Therefore, it is important to recognize the linkage between benefit-sharing and conservation and sustainable use of biodiversity. The Nagoya Protocol actually provides opportunities for increasing national capacity and for add value to their own resources. But at the same time, we need to recognize that we are losing option values, genetic resources which have potential value for development. What is important is to build a win-win relationship. With regard to the signature, the Nagoya Protocol was opened for signature on 2 February 2011 during a signing ceremony held at the UN Headquarters. He also pointed out that the importance of the Global Environment Facility (GEF) which will operate the new fund for supporting countries looking to build enabling activities to ratify the protocol and as the financial mechanism of the Protocol. Finally he concluded that the early entry into force of the Protocol is still important for both users and providers to reduce the distrust and the risks of non-compliance.

30. After the presentation by Mr. Casas, Co-Chairs of Intergovernmental Committee for the Nagoya Protocol on ABS, panelists provided their presentation on "Future challenges and prospects of each region toward the ratification of the Nagoya Protocol on ABS" from their regional perspectives.

31. Mr. Pierre du Plessis (Technical Advisor, Interim Bio-prospecting Committee, Namibia) shared African perspectives on the challenges and prospects towards ratification of the Nagoya Protocol. He also added the outlook towards

implementation of the Protocol in Africa. He observed that the third objective of the Convention on Biological Diversity was not being implemented effectively by the Parties so far. In this connection, the effective implementation of fair and equitable benefit-sharing is a key to making the CBD work because it provides alternative development for countries rich in biodiversity. He also pointed out the importance of the Green Economy. A very key part of the Green Economy is the development of industries, income streams and development paths based on biodiversity including its fair and equitable benefit-sharing. In this regard, Mr. du Plessis also stressed that the third objective of the CBD includes full appropriate access to technology transfer, appropriate funding and capacity building and that will lead to Green Economy option being realized. With regard to the ABC of ABS; Access, Benefit-sharing and Compliance, he referred some criticism made at the WIPO-IGC meeting which said that the Nagoya Protocol is a flawed instrument because it is too prescriptive about access but weak on benefit-sharing and compliance because it gives too much emphasis on domestic law and on mutually agreed terms. However he expressed different observation of African perspectives that the Protocol is very useful tool which provide new opportunities and flexibilities for national implementation. Furthermore, the Nagoya Protocol provided two concrete advances. First, it provided the clear definition for inclusion of derivatives in the scope of the Protocol. Second, it provided for the user measures to ensure compliance with the prior informed consent of the country of origin or a Party that has acquired the genetic resources in accordance with the CBD. He noted that since user countries has long been not taking their responsibilities in their jurisdiction to effectively implement the third objectives of the CBD, those two major steps are quite important for countries providing genetic resources. What is more, Africa in general have very low capacity to negotiate the contract or lacks national legislation to regulate bioprocpecting. In this sense, the Nagoya Protocol which provide for user measures and clear obligations of user countries are quite important. A global multilateral benefit sharing mechanism is another crux for Africa which is based on the idea that a user must pay for global biodiversity. Users have an obligation to contribute to sustainable use and conservation of biodiversity. Although it is not defined the format of a global multilateral benefit sharing mechanism but it should be discussed how this mechanism could work out. To summarize briefly, the Nagoya Protocol is a crucial part of safeguarding and valorizing the national capital that is biodiversity. It is also important step for pursuing poverty alleviation and economic development strategy that does not destroy biodiversity.

32. Dr. Atsushi Suginaka (Director, Global Environment Division, International Cooperation Bureau, Ministry of Foreign Affairs of Japan) provided an overview of

Japanese response and challenges to the Nagoya Protocol on ABS(for his presentation material, see Annex 6). He presented that the Nagoya Protocol is expected to provide merit for both users and provider countries through its implementation. First he pointed out four merits in general that are the promotion of utilization of genetic resources, the contribution to the conservation of biological diversity, the promotion of compliance with domestic legislation or regulatory requirement on ABS and the respect for traditional knowledge. He also mentioned Japanese domestic challenges to address implementation of the Nagoya Protocol. Since the process of signature to the Protocol has opened in 2nd February 2001 and Japan intends to sign the Nagoya Protocol as early as possible, Japan has to address various domestic challenges for implementing the Nagoya Protocol effectively. Japan has been acting mainly as a user of genetic resources but there were no specific domestic rules on ABS. This situation is called free access. For this reason, Japan intends to learn from those countries with already established domestic ABS legislations. In considering Japan's domestic framework, the following points are need to be addressed. Since the convention had entered into effect in 1993, users have not always successfully accessed genetic resources so they concerns the Nagoya Protocol might introduce more complicated procedures and make further difficulties. Such concerns might be partially caused by the lack of clear understanding among the users so it is important to make provider's legal system more transparent and to raise further awareness among the users.

33. He highlighted some major articles which require concrete considerations toward ratification that are Article 5 on benefit-sharing, Article 6 on Access, Article 10 on Global Multilateral Benefits Sharing Mechanism, Article 15, 17 and 18 on Compliance. With regard to Article 5, 6, 15, 17 and 18, Japan will consider necessary new domestic measures, including the improvement of existing measures. With regard to Article 10, he explained that Japan contributed a new trust fund at GEF to support the capacity building on ABS in developing countries and this is an initiative for promoting early entry into force and effective implementation of the Nagoya Protocol on ABS not prejudge the necessity and the modality of global multilateral mechanism under Article 10. He also stressed that this ABS Fund should focus on the activities relating to conservation and sustainable use of genetic resources. Concrete modalities of operation will be discussed at the 2nd Intergovernmental Committee for the Nagoya Protocol to be held in April next year. Another important process for Japan is awareness-raising following the COP 10, various biodiversity related event have been held in Japan. In Japan, Organizations such as Japan Bioindustry Association have been actively working to raise awareness of this area. It is very important to share the objectives and major

elements of the Nagoya Protocol with academic and industry expert for their deeper understanding of the ABS. Japan intends to seek effective measure through discussions with relevant stakeholders. In conclusion, Dr. Suginaka expressed that Japan intends to exercise its leadership as COP 10 Presidency and asked the CBD Secretariat, each parties and stakeholders for their further support to ensure effective and stable implementation of the Nagoya Protocol.

34. After the presentation from panelists, participants raised some questions to the panelist. One participant questioned about the EU perspectives on the ratification and implementation of the Nagoya Protocol. Since there were no speaker from EU on the Nagoya Protocol in this session, panelist from EU of other session provided some observations about the EU perspectives, pointing out that the EU was in a different position regarding the Nagoya-Kuala Lumpur Protocol, where the EU already had the instrument on liability and redress at the EU level, and to the ABS Nagoya Protocol on ABS, where there is no such an instrument on ABS at the EU level. . Therefore it is going to be a longer and more difficult internal process for implementing the Nagoya Protocol at the EU level. The other participants asked the Mr. Cassas as a Co-Chair of the Intergovernmental Committee for the Nagoya Protocol on approach to encourage countries to accelerate their signature and ratifications to the Protocol. Mr. Cassas responded that there are some signals. For example, providing funds for a number of key countries could work in the direction of promoting both the signature and ratification of the Protocol is one on them. The other is political one that ratification of some key countries could be a definitely powerful message for it. The other panelist added that it is crucial a provider countries enact a good system on compliance that is balanced against access for ensuring a win-win situation.

IV CLOSING REMARK

35. Dr. Suginaka, Director of Global Environment Division, International Cooperation Bureau, Ministry of Foreign Affairs of Japan, extended his gratitude to all the panelists and participants to make the symposium fruitful. Due to the Great East Japan Earthquake including Tsunami on March 11, 2011 and the resultant nuclear power plant accidents, some panelists could not attend this symposium. However, the panelists and participants held active discussion and exchanged a lot of views.

36. The symposium closed the all the session at 7 p.m. on 14 March 2011.

Annex1

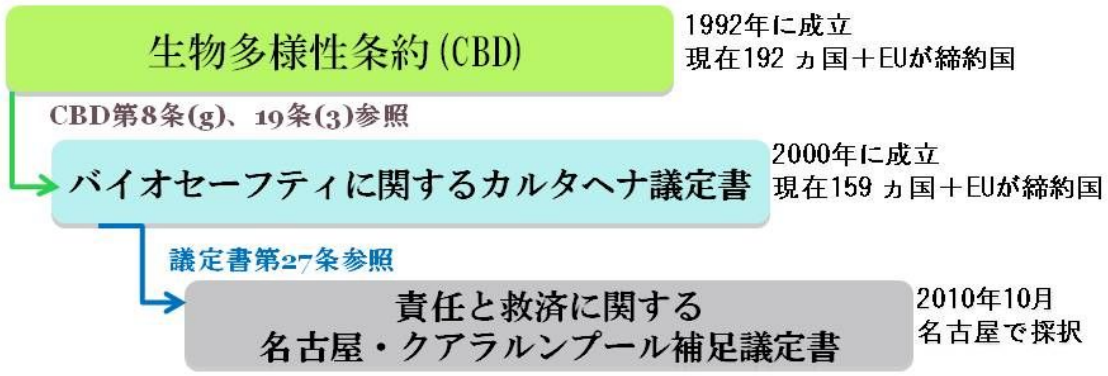
国際シンポジウム

名古屋・クアラルンプール補足議定書の意義

神戸大学国際協力研究科・教授（国際法）
柴　田　明　穂

2011年3月15日
赤坂グランドプリンスホテル
（東京・日本）

生物多様性条約、カルタヘナ議定書の枠組



・「条約」「議定書」とは、法的に拘束力ある国家間の合意。主に国家に権利や義務を課すことにより、ある課題を解決したり目的を達成したりするもの。

・責任と救済に関する補足議定書は、生物多様性の保全とその持続的利用を目的としたCBDの孫条約であり、それに悪影響を及ぼす可能性のある改変された生物(LMO)の安全な利用等を確保することを目的としたカルタヘナ議定書の下に成立。LMOは、「遺伝子組換え生物等」と言い換えてよい。

LMOの現実

1. 2009年現在,世界25ヵ国で遺伝子組換え作物が栽培されている。スペイン(トウモロコシ10万ha)、メキシコ(綿、ダイズ10万ha)、南アフリカ(トウモロコシ、ダイズ、綿210万ha)など。その合計は1億3400万ha. 1999年には4000万ha。
2. 日本では, 2009年からの1年半程度の間に,約 20の LMOの野外使用認められている。その中には、海外企業が開発したダイズなどの他に、日本のサントリーが開発した観賞用ブルーカーネーション、東北大学が開発したイネなどが含まれている。しかし、日本ではGM農作物の商業栽培はなされていない。加えて、研究や鉱工業分野での実験室等での閉鎖系のLMO利用確認申請は毎年100件以上。

→LMO利用は通常の現代人間生活の一部

名古屋・クアラルンプール補足議定書の目的

第1条(目的)

LMOに関わる責任と救済(liability and redress)の分野における国際的な規則や手続を規定して、人の健康に対する危険も考慮して、生物多様性の保全及び持続可能な利用に貢献すること。

↓

どういった方法で？

↓

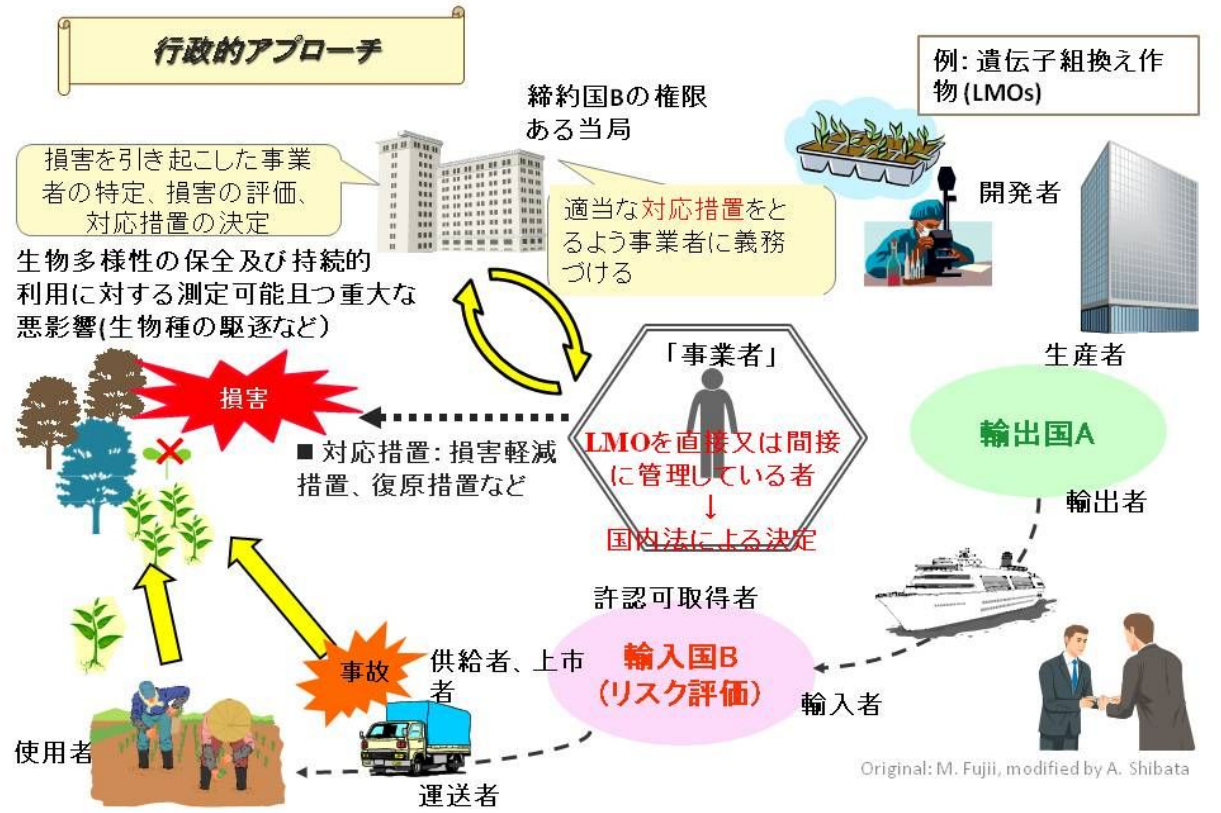
①前文4項：損害への対応措置を定める必要性の認識

→第5条を中心とする行政的アプローチ（主たるアプローチ）

②前文2項：リオ宣言原則13(環境損害の被害者への賠償責任及び補償に関する国内法を整備する)を考慮

→第12条の民事責任関係条項（補完的アプローチ）

名古屋・クアラルンプール補足議定書の運用例



補足議定書の特徴と争点　その１

1. 生物多様性損害に対して行政的アプローチを採用したこと（５条）。事業者は、被害者に対する金銭補償ではなく、損害に対して対応措置をとることを義務づけられる。行政当局（裁判所ではなく）がそのプロセスにて重要な役割を担う。

2. 民事責任条項が1つ盛り込まれたこと(12条)。しかも、生物多様性損害については民事責任法の適用・制定が任意であるのに対し、生物多様性に関わる物的又は人的損害については民事責任法を定めることを目指して、民事法の適用・制定が義務化されたこと。

3. LMOないしLMO起因生物多様性損害の科学的特徴・知見を反映した内容になっていること（「急迫の虞」削除、「LMO産品」の削除=3条「範囲」、4条「因果関係」など）。LMO起因損害は、長期的・累積的・潜伏的に発生するから、発生した損害とある特定の活動との因果関係を証明することは不可能。

補足議定書の特徴と争点　その２

4. 生物多様性保全とLMO貿易の利益とのバランス(10条：財政的保証、5条3項、16条4項)。損害が実際に発生する前に、事業者に財政的その他の負担を課すことは、場合によっては、LMO利用ないしその貿易の障壁になり得る。

5. 補足議定書の国内実施に柔軟性が多く認められていること(3条6:損害、5条7:対応措置と民事法、5条8:対応措置全般、10条:財政的保証、12条:民事責任など）。国際スタンダードの確立(普遍性)と、各国事情・国内法体系の差異(個別）とのバランス。

6. 交渉プロセスの透明性。

Supplementary Protocol: Features and Issues #1

1. **Administrative approach to address damage to biodiversity (Art.5). Operators are required to take response measures, rather than monetary compensation. The administrative competent authority, rather than the courts, will assume significant role in the process.**

While at the beginning of the negotiation, there were several possible approaches to liability identified for damage to biological diversity caused by LMOs (civil liability, state liability, administrative approach based on response measures, etc), the Parties at the end agreed that the Supplementary Protocol would mainly be based on the "administrative approach". Why some Parties advocated for this approach, and what are the merits and demerits of this approach?

Supplementary Protocol: Features and Issues #2

2. (Only) One article on civil liability(Art.12). Application or development of domestic civil liability law for biodiversity damage is voluntary, whereas, civil liability law with the aim to address material or personal damage associated with biodiversity damage became obligatory.

Some Parties demanded to have at least one legally binding provision on civil liability, and the outcome of negotiation resulted in Article 12. Article 12 is very unique in several aspects: it allows for an extensive flexibility and its scope covers not only the damage to biodiversity but also "material and personal damage associated with" the biodiversity damage. Why was the civil liability provision so important for some Parties? How do you "read" Article 12?

Supplementary Protocol: Features and Issues #3

3. Scientifically-sound legal regime (deletion of "imminent threat" and "products thereof"=Art.3, and Art.4). As biodiversity damage be long-term, cumulative and latent, its causal link to a particular activity may not be established.

The Supplementary Protocol addresses issues requiring advanced scientific and technological knowledge and understanding: cf. nature of LMOs; their risks; and the concept of damage to biological diversity. During the negotiation, from the perspective of "sound science", certain concepts and provisions were considered not appropriate. For example, the concept of "imminent threat of damage" was deleted; the required causal link should NOT be between the damage and the activities dealing with LMOs, but between the damage and the LMOs themselves; and the "products thereof" was deleted from the scope of Supplementary Protocol. Did the "sound-science" prevail? Was the "sound-science" transposed into "legally sound" texts?

Supplementary Protocol: Features and Issues #4

4. **Balancing the biodiversity conservation and trade interests (Art. 10 on financial security, Art.5 (3), Art.16 (4)). A financial or other burden imposed on operators before the damage actually occurs may, in certain circumstances, be considered as inappropriate barriers to trade.**

This Supplementary Protocol had to accommodate, on one hand, the interests of LMO exporting countries who feared that this new treaty may be used (abused) as a trade barrier, and, on the other, the Parties' conservation and sustainable use interests over their biological biodiversity, which may be damaged by LMOs. The provision on financial security was a symbolic one, and the outcome of negotiation (Article 10) was indeed a sensitive compromise. Why was this issue so controversial, and does the final outcome reflect a fair balance between the two interests?

Supplementary Protocol: Features and Issues #5

5. A lot of flexibility permitted when domestically implementing the Supplementary Protocol (Art.3(6):damage; Art.5 (7) and (8): response measures; Art.10:financial guarantee; Art.12: civil liability) . Need of balance between international standards (universality) and each States' specific circumstances and legal systems (individuality).

This Supplementary Protocol is characterized by its flexibility, in the sense that (1) the treaty obligations can be implemented domestically in accordance with the Parties' domestic law, and (2) the treaty authorizes the application of domestic law to address certain issues with little (or almost no) internationally agreed-upon standards. This flexibility is a double-edged sword. Why was this (too much) flexibility provided in the Supplementary Protocol, and what are the merits and demerits of such flexibility?

Supplementary Protocol: Features and Issues #6

6. Transparency of the negotiating process.

The Co-chairs' efforts to ensure the transparency of the negotiating process must be greatly appreciated. In the beginning, the submissions from observers were officially reflected in the negotiating documents. Some delegations formally provided briefing opportunities to the selected observers. At the same time, it was also necessary, during the latter part of the negotiation, to utilize closed consultations among the small number of interested Parties to promote agreement. Was the overall process of negotiation sufficiently transparent so that the general public could follow the process and provide inputs, directly or through the Parties, to the process?

Supplementary Protocol: Features and Issues

Definition of Damage:

Article 2 (2) (b): "Damage" means an adverse effect on the conservation and sustainable use of biological diversity, taking also into account risks to human health, that:

(i) Is measurable or otherwise observable taking into account, wherever available, scientifically-established baselines recognized by a competent authority that takes into account any other human induced variation and natural variation; and

(ii) Is significant as set out in paragraph 3 below;

Article 2 (3) A "significant" adverse effect is to be determined on the basis of factors, such as:

(a) The long-term or permanent change, to be understood as change that will not be redressed through natural recovery within a reasonable period of time; (b) The extent of the qualitative or quantitative changes that adversely affect the components of biological diversity; (c) The reduction of the ability of components of biological diversity to provide goods and services; (d) The extent of any adverse effects on human health in the context of the Protocol.

Supplementary Protocol: Features and Issues

Definition of "operator"

Art.2 (2) (c): (c) "Operator" means any person in direct or indirect control of the living modified organism which could, as appropriate and as determined by domestic law, include, *inter alia*, the permit holder, person who placed the living modified organism on the market, developer, producer, notifier, exporter, importer, carrier or supplier;

Thank you!

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Annex2

Japan's Basic Negotiation Stance

〈As One of the Parties〉

- The Supplementary Protocol should be within the scope of Cartagena Protocol on Biosafety
- The regime under the Supplementary Protocol should strike balance between smooth international trade and careful treatment of LMOs
- The Supplementary Protocol should be consistent with the domestic legal system

Japan's Basic Negotiation Stance

〈As the Host Country of the COP-MOP5〉

Strong Commitment to Adopt the Supplementary Protocol in Nagoya

- High expectations for the adoption in Japan
- Primary deadline was already passed (2008.5 COP-MOP4) and the COP-MOP5 was the last chance

Article 27 of Cartagena Protocol:

The COP-MOP shall endeavour to complete the elaboration of international rules and procedures on liability and redress within four years.

Japan tried to be as flexible as possible and played a role as a mediator

Annex3

国際シンポジウム

カルタヘナ議定書体制と名古屋・クアラルンプール補足議定書の日本における国内実施

柴田明穂
神戸大学大学院国際協力研究科・教授（国際法）

International Symposium

Cartagena Protocol and Nagoya-Kuala Lumpur Supplementary Protocol: Domestic Implementation in Japan

Akiho SHIBATA
Professor of International Law, Kobe University

国際法たるカルタヘナ議定書と国内法たる日本のカルタヘナ法

(1) 国際法と国内法

日本においては、国際法たる条約は日本国が締結してその効力が生じれば、特別の立法がなくとも国内法上の効力が認められる。しかし、通常は、そして特に環境条約のように細かい規則や手続を定め、個人の権利義務に関わる規定がある場合には、条約の内容を国内的に実施する国内法(条約を担保する法) を制定する。故に、日本政府が環境条約を交渉し、締結する際には、その条約の国内法による実施を想定しながら行い、日本国憲法との整合性のみならず、日本の基本的な法体系・法思想と齟齬がないか精査する。

(2) カルタヘナ議定書とカルタヘナ法

日本のカルタヘナ法は、カルタヘナ議定書の担保法。従って、カルタヘナ議定書上の義務は全てカルタヘナ法で担保している。他方で、カルタヘナ議定書が「許容」している問題 (医薬品の開放系利用) や裁量を認めている事項(生物多様性への悪影響の認定方法など) については、その許容性ないし裁量性の中で、日本法で独自に定める。こうした条約実施の細部につき、締約国間で差異が生じ、それが条約の実効的な実施に支障が出るようになると、締約国会議(COP)などの場で統一が図られる。

3

Cartagena Protocol (as int' l law) and Japanese Cartagena Law (as domestic law)

(1) International law and its implementing domestic law

In Japan, international law, including treaties, will have the force of law in Japan if the treaty is ratified by and entered into force for Japan, without any implementing legislation. However, usually and especially for environmental treaties with detailed rules and procedures, an implementing domestic legislation for treaties will be enacted. Thus, when Japanese government negotiates and concludes an environmental treaty, it examines carefully whether its content is consistent with not only the Constitution, but also the fundamental legal system and legal thinking of Japan.

(2) Cartagena Protocol and Japanese Cartagena Law

Japan's Cartagena Law is the implementing legislation for CP. Thus, the Law implements all obligations under the CP. On the other hand, where the CP "authorizes" something (cf. application to GM pharmaceuticals) or recognizes certain discretion (determination of risks to biodiversity), the Japanese law may determine these issues independently. Such independent determinations among Parties may lead to difficulties in effective implementation of the treaty, and COP decisions may try to harmonize the domestic implementation.

カルタヘナ法と
名古屋・クアラルンプール補足議定書

(1) カルタヘナ法の基本構造

カルタヘナ法は、カルタヘナ議定書で対象となるLMOを対象としつつ、その出自に関わりなく、LMOの日本国内における「使用等」の行為全般を対象にし、かつ、生物多様性を損なうおそれ＝生物多様性（悪）影響を広くとって、行政当局が、当該悪影響の防止(LMOの回収等を含む）に必要な措置をとることを、使用等している者に対して命じることを定めている。

従って、行政的アプローチを中心とする補足議定書の内容は、現行カルタヘナ法の基本構造に合致しており、同法が担保法となることが想定され、且つ、同法の微調整で実際に担保できると考える。

(2) 補足議定書担保との関係で留意すべき基本事項

①SP上の生物多様性損害は、カ法上の「生物多様性影響」の延長線上にて（その重大性が大きいものと）解釈され、実施されるであろうこと。

②SP上の「事業者」は、カ法上の「使用等をしている者、もしくはした者又はさせた者（国内管理人を含む）、二種使用についてはその確認を受けた者」と解釈され、実施されるであろうこと。

Japanese Cartagena Law (JCL) and the Supplementary Protocol

(1) Basic Structure of JCL

JCL covers all LMOs as defined in CP and applies, irrespective of their foreign or domestic origin, to an comprehensively defined "use or other acts" involving LMOs undertaken in Japan. JCL defines broadly "the possibility of loss to biological diversity" as adverse effect and authorizes the competent authority to direct the users, etc to take all necessary measures (including recovery of LMOs) to prevent such effect.

Thus, the content of the Supplementary Protocol based on administrative approach is basically in line with the JCL. It is expected that the JCL, with only minor adjustments, will be the implementation legislation for SP.

(2) Two basic points to note when applying JCL for SP

① The concept of "biodiversity damage" under SP will be interpreted and implemented under JCL's concept of "effects on biological diversity" (more significant ones).

② The concept of "operator" under SP will be interpreted and implemented under JCL's concept of "User and others."[6]

補足議定書により締約国に課される条約上の義務と権限

(1) **5条+12条1**：①損害発生時に、②事業者に対し、③損害発生つき当局に通知し、損害を評価し、そして適切な対応措置をとるよう要求する、④国内法制度を確立する義務。

それに伴い、⑤当局は損害発生させた事業者を特定し、損害を評価し、いかなる対応措置が事業者によってとられるべきか決定する。⑥当局の当該決定につき不服申立等の救済制度を確保し、利用可能な救済につき事業者に通知する。

↓

①と②については前述の留意事項があるも、③から⑤は現行カ法でほぼ担保可能。

③の「対応措置」につき、SPは、損害封じ込め及び軽減措置等に加えて、生物多様性を復原する措置（損害が生じる前に存在した状態等に復原する措置など）を含む。これら全てを、カ法でいう「（悪影響）防止のために必要な措置」で読む込むことができるか、要検討。

⑥は、行政不服・事件関係の一般法で担保されうると考える。

7

Specific obligations and authorizations under the Supplementary Protocol

(1) Art.5 + Art.12 (1) : ①When biodiversity damage occurs; ② requiring the operators to: ③inform the competent authority, evaluate the damage, and take appropriate response measures; ④ Parties are obliged to provide such domestic law.

In this regards, ⑤the competent authority shall identify the operator, evaluate the damage and determine the response measures to be taken; and ⑥domestic law shall provide remedies for operators, and the competent authority must inform the operator the available remedies.

↓

Regarding ①②, see above notes. From ③to⑤, basically the existing JCL will be able to implement these obligations.

③ Regarding "response measures", the SP includes not only containment and mitigation of damage, but also restoration measures like restoring the biological diversity to the condition that existed before the damage occurred. Under JCL, all these measures will need to be implemented under "other necessary measures to prevent" adverse effects.

⑥ will be implemented applying general administrative complaints laws.

8

補足議定書により締約国に課される条約上の義務と権限

(2) 5条3：⑦関連する情報（利用可能な科学的情報又はBCHにより利用可能な情報を含む）が、適時の対応措置が取られないことにより損害が発生する十分な可能性を示している場合、事業者は当該損害を回避するため適切な対応措置をとるよう要求される。

↓

カ法は、「損失のおそれ」を対処すべき悪影響の対象としており、担保可能。

(3) 12条2, 3：⑧生物多様性損害に関連する物的又は人的損害に対する民事責任に関する国内法上の十分な規則及び手続を定めることを目的として、一般民事責任法ないし特別民事責任法を引き続き適用するか、新たに開発し適用する。

↓

日本の一般民事法（不法行為法）は、物的又は人的損害が発生すれば、同法に基づく諸条件を満たす限りにおいて、加害者の民事責任（賠償責任）を問うことは可能。但し、生物多様性損害に関連していなくとも良い。

9

Specific obligations and authorizations under the Supplementary Protocol

(2) **Art. 5 (3)** ⑦When information indicates that there is a sufficient likelihood that damage will result, the operator shall be required to take response measures: Parties are obliged to provide such domestic law.

↓

JCL applies to adverse effects including "a threat of loss," therefore the concept of likelihood of damage will be implementable.

(3) **Art. 12 (2) (3)** ⑧ Parties shall, with the aim of providing civil liability law for material or personal damage associated with the biodiversity damage, either apply or develop civil liability law.

↓

Japanese general civil law (tort law) is applicable to any material and/or personal damage, and allows to pursue liability of wrongdoer as long as all the necessary conditions provided in the law are satisfied. These damage, however, may not necessarily be associated with the biodiversity damage.

10

補足議定書により締約国に課される条約上の義務と権限

(4) 10条1：⑨ 締約国は、その国内法において、財政的保証を定める権利を維持する。但し、この権利は、議定書の最後の3つの前文を考慮して、国際法上の権利と義務と適合するように行使されなければならない。

（条約上認められた権限であるかも疑わしいが、仮にそうでも）

↓

カ法は、生じる損害に備えて財政的保証（例えば保険への加入）を「使用者等」に要求できるような規定を有していない。そもそも、日本は、日本国内で利用されるLMOにつき、一般的に、もしくは個別分野毎に、財政的保証を課すような政策判断をするか。

(5) 12条1後段：⑩ 締約国は、生物多様性損害につき（行政的アプローチに加えて）、適当な場合には、民事責任法を適用し、又は制定することができる。

↓

日本の一般民事法（不法行為法）において、生物多様性損害を賠償の対象にするには、多くの法的・政策的困難があり得る。恐らく、条約上許されているこの権限は、行使しないと判断すると思われる。[11]

Specific obligations and authorizations under the Supplementary Protocol

(4) Art. 10 (1) : ⑨ Parties retain the right to provide, in their domestic law, for financial security. This right must be exercised in a manner consistent with the rights and obligations under international law, taking into account the final three preambular paragraphs of the Protocol.

(It is doubtful whether this provision provided a legal authority under the treaty. But even it was so:)

↓

JCL does not specifically provide for the authority to impose financial guarantee against "users and others." I am not sure whether Japan will make use of such authority towards LMOs uses generally or in specific fields.

(5) 12条1後段 : ⑩ Parties may apply or develop civil liability law to address biodiversity damage.

↓

Under the current Japanese general civil law (tort law) and its jurisprudence, it would be both legally and politically difficult to cover "biodiversity damage."

カルタヘナ議定書体制と
名古屋・クアラルンプール補足議定書の
日本における国内実施

Thank You!

Annex4

CropLife INTERNATIONAL

NAGOYA – KUALA LUMPUR SUPPLEMENTARY PROTOCOL (N-KL SP)
ON
LIABILITY AND REDRESS

RATIFICATION & IMPLEMENTATION

15 March 2011

J. Thomas Carrato
Chair, Global Industry Coalition Steering Committee
Executive Director Emeritus, The Compact

1

Global Industry Coalition (GIC)

- Represents companies engaged in plant science, seed production, agricultural biotechnology, food production, animal agriculture.
- Coordinates input from private sector developers and users of biotechnology on all issues under Cartagena Protocol on Biosafety (Protocol).
- Is truly "global" – with industry partners in over 25 countries (including CBI Japan).
- Is the recognized "observer" organization for global industry within the Protocol implementation process.
- Closely coordinates with industry stakeholders, including the grain and seed trades
- Is led by CropLife International (Sarah Lukie, Executive Director)

2

GIC Position on Ratification

- The GIC fully supports ratification of the Nagoya-Kuala Lumpur Supplementary Protocol on Liability & Redress (N-KL SP).
  - The N-KL SP sets forth an administrative approach to response in the event of damage, which is the most appropriate approach for any damage to the environment or to biological diversity.
  - The N-KL SP incorporates a clear definition of and the critical role of a science-based determination of "damage" .
  - The N-KL SP is consistent with guiding principles advocated by industry in the negotiations on liability and redress and embodied in The Compact.

3

GIC Position on Implementation

- Implementation of the N-KL SP will be a complex process for each ratifying Party.
- For example, there are ***18*** separate references in the N-KL SP to the application of *domestic law*.
- To begin the process, implementation of the N-KL SP requires careful analysis of "*domestic law*" by each Party to answer two fundamental questions:
  1. Does *domestic law* already meet the specific mandates of the N-KL SP? **If yes, the Party may choose to apply existing *domestic law*.**
  2. Does *domestic law* cover the many issues left to *domestic law* by the N-KL SP? **If no, the Party either must or may, as set forth in the N-KL SP, amend or develop *domestic law* to address those issues.**

4

GIC Position on Implementation (continued)

- In considering the applicability of domestic law, or the development of new domestic law, the GIC urges the Parties to consider:
  1. the principles that guided industry in participating as observers through the course of the negotiations of the N-KL SP; and
  2. the characteristics of workable liability & redress systems compiled by industry in preparation for those negotiations.
- In addition, The Compact provides examples of reasonable and practical provisions that address the issues left by the N-KL SP to *domestic law* or not covered by the N-KL SP at all, including:
  - *Considerations and Elements in determining Damage*
  - *Causation*
  - *Channeling of Responsibility*
  - *Defences*
  - *Misuse*
  - *Time & Financial Limitations*
- The Compact also provides an example of a mechanism that affords financial security, consistent with principles underlying insurability and of domestic business and corporation laws

5

Guiding Principles for Efficient & Fair Resolution of Claims of Damage

- Protection of biological diversity as a "public good" by the State.
- Science-based evidence and decisions.
- Responsibility channeled to the "operator" who caused the damage.
- Legal due process for those against whom claims for damage to biological diversity are made.
- Independent unbiased decision-makers.
- Respect for precedent.
- Practical and fair application.
- Social responsibility: enabling the use of more sustainable technology that is essential to food and agricultural security while appropriately protecting biological diversity.

6

Characteristics of a "Workable" System

- Clear scope and definitions – in this case, those already set forth in the N-KL SP should be incorporated into domestic law:
  - Damage;
  - "Significant" adverse effect; and
  - Response measures.
- A definition of "operator" that holds persons in operation control responsible.
- The requirements of both factual and legal causation.
- Appropriate defenses to protect against unfair imposition of responsibility.
- Response measures which are consistent with the N-KL SP definition and focused on remediation.
- Reasonable financial and time limitations for claims.

7

"The Compact - A Contractual Mechanism for Response in the Event of Damage to Biological Diversity Caused by the Release of a Living Modified Organism"

- **Private Sector Initiative = Voluntary Binding Contract**: Each Member of the Compact agrees that it will timely respond to damage to biological diversity caused by the release of an LMO by that Member.
- **Designed to be a fair, accessible, and efficient system:**
  - Fully developed, clearly defined and self-contained process;
  - Any W.T.O. or U.N. Member can initiate a claim supported by science-based evidence;
  - Timely resolution of a claim administered by the Permanent Court of Arbitration; and
  - Qualified neutrals make all decisions and have access to independent experts.
- **Technology Provider Is Responsible for Its Own LMO**: Compact Members can be responsible for responding under the Compact even when responsibility might fall to others in the supply & use chain under otherwise applicable law. There are clearly defined defenses, such as misuse.
- **Complements N-KL Supplementary Protocol with a Form of Financial Security**: The Compact assures both access to those who release LMOs and their ability to pay.
- **An Option for States**: States choose whether to seek redress under the Compact. The Compact provides States with a meaningful opportunity to seek Response under the Compact in lieu of other redress mechanisms that may be available to the State.

8

GIC Position on Implementation (continued)

- The State should be prepared to implement the N-KL SP upon ratification:
  1. Any amendments to domestic law or new legislation necessary or appropriate to implement N-KL SP should be in place at the time of ratification.
  2. The capacity to administer and respond to an allegation of "damage" must be in place:
     a. Infrastructure and processes to receive and administer claims, to manage notifications, to investigate and assess damage, and to implement or manage response measures.
     b. Technical capacity to make the required scientific determinations.

9

Background Detail Slides

10

N-KL SP Mandates

For "damage", as defined in Art. 2, Parties shall:

- Provide in *domestic law* for rules and procedures to address "damage", and to do so, provide for response measures in accordance with the Supplementary Protocol. Art. 12.1
- Use existing law or develop new law or apply a combination to provide adequate rules and procedures in *domestic law* on civil liability to address personal injury or property damage associated with "damage". Art. 12.2
- Implement response measures in accordance with *domestic law*. Art. 5.8.
- Require operators to inform the competent authority of and evaluate damage, and take appropriate response measures. Art. 5.1
- Identify responsible operators, evaluate damage, and determine which response measures should be taken by the operator. Art. 5.2

11

N-KL SP Mandates (continued)

Parties shall:

- Provide and inform the operator of remedies in accordance with *domestic law*, including the opportunity for administrative or judicial review of decisions regarding evaluation and response measures. Art. 5.6

Parties shall not:

- Limit or restrict any right of recourse or indemnity that an operator may have against another person. Art. 9

12

N-KL SP Determinations

In accordance with domestic law, Parties shall:

- Determine which persons or activities are included as "operators" – defined generally as a person in direct or indirect control of the living modified organism Art. 2.2(c)
- Establish a causal link between the damage and the LMO. Art. 4

13

N-KL SP Discretionary Determinations

Parties may:

- Implement response measures. Art. 5.4
- Recover the costs of evaluating damage and response measures from the operator. Art. 5.5

Parties may in their *domestic law*:

- Provide for situations in which the operator may not be required to bear the costs of response measures. Art. 5.5
- Provide for any exemptions or mitigations (defences) they deem appropriate. Art. 6

N-KL SP Discretionary Determinations (continued)

Parties may in their *domestic law*:

- Provide for relative and for absolute time limits and for the commencement of time periods. Art. 7
- Provide for financial limits for recovery of costs and response measures. Art. 8
- Address financial security, consistent with international rights and obligations and taking into account the last 3 preambular paragraphs of the Protocol. Art. 10.1

15

Thank You!

Annex5

"International Symposium on COP10 and COP-MOP5: The Significance of Nagoya-Kuala Lumpur Supplementary Protocol and Nagoya Protocol on ABS"
Tokyo, Japan, March 15 and 16, 2011

Significance of the Adoption of the Nagoya Protocol on ABS

Fernando Casas-Castañeda
Co-Chair, Ad Hoc Open-ended Intergovernmental Committee
The ABS Nagoya Protocol, United Nations Convention on Biological Diversity

The NABSP was **adopted** at COP 10 in Nagoya the 29th of October, 2010

The NABSP is open for **signature** at the United Nations Headquarters in New York from 2 February 2011 to 1 February 2012

The NABSP is expected to **entry into force** before October 2012, hopefully for the celebration of "Rio + 20" in June 2012

Fernando Casas, Co-Chair
CBD/ABS/NP/IC

The importance of the adoption

- A legally binding instrument based upon **PIC & MAT**
- International mechanisms to **ensure compliance**
- Expected **cooperation** in **non compliance**

Fernando Casas, Co-Chair
CBD/ABS/NP/IC

The key concepts:

Benefits arising out of the **utilization of genetic resources as well as subsequent applications and commercialization** to be shared in a fair and equitable way

Benefits arising from the **utilization of traditional knowledge associated with genetic resources** to be shared in a fair and equitable way

Fernando Casas, Co-Chair
CBD/ABS/NP/IC

Access to genetic resources

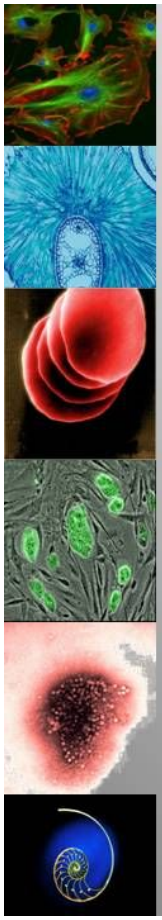
- **Certainty, clarity and transparency** on access conditions
- **Simplified measures on access to non-commercial research**, taking into consideration a change of intent
- **In health emergencies expeditious ABS**, including access to affordable treatments

Fernando Casas, Co-Chair
CBD/ABS/NP/IC

The **critical loop** from the policy viewpoint

- Exercise of sovereign rights over genetic resources
  - **Responsibility** on conservation and sustainable use
  - **Opportunity** to value and add value
- Secure **benefit-sharing** arising out of utilization of genetic resources or associated TK
- Contribute to conservation and sustainable use

Fernando Casas, Co-Chair
CBD/ABS/NP/IC



Potential value and utilization

- A **tiny percentage** of plants, fungi, microorganisms have been **screened**
- Even those have only been **screened against** a **small fraction of the diseases** for which they could be effective
- We are **losing "option values" as** potentially effective bioactive compounds developed over millions of years—vanish, as the species in which they evolved go extinct

Fernando Casas, Co-Chair
CBD/ABS/NP/IC

Three Scenarios of the
Implementation Phase

1. Distrust and lack of transparency among **losers**
2. Accountable **win-win** relationship
3. Fragmented and divisive **winners-losers**

Fernando Casas, Co-Chair
CBD/ABS/NP/IC

Political will and political signals

- The **signature** depends on
  - Domestic **proactive ABS policy-making**
  - Cooperative procedures and institutional **mechanisms to promote compliance** with the Protocol in NABSP-IC/1 for COP-11 (Article 18.4)
  - The negotiation of the needs for and modalities of a **global multilateral benefit-sharing mechanism** in NABSP-IC/2 (Article 10)
  - Early dynamics in **relevant international agreements and instruments** as evidence that they are supportive and do not run counter the CBD and the NP (Article 4.2)

Fernando Casas, Co-Chair
CBD/ABS/NP/IC

Political will and political signals

- The **ratification** depends on
  - The future **evaluation of the effectiveness** (Articles 18.4, 26.4, 31)
    - GEF (Targeted **financial support for capacity building and development** initiatives through the financial mechanism)
  - Early entry in to force of **both users and providers** will reduce distrust and regulatory risks of non-compliance

Fernando Casas, Co-Chair
CBD/ABS/NP/IC

Fernando Casas
Co-Chair
Ad Hoc Open-ended Intergovernmental Committee
The Nagoya ABS Protocol
United Nations Convention on Biological Diversity
http://www.cbd.int/abs/ir/casas.shtml
http://www.cbd.int/abs/ir/
E-mail: fccasas@gmail.com
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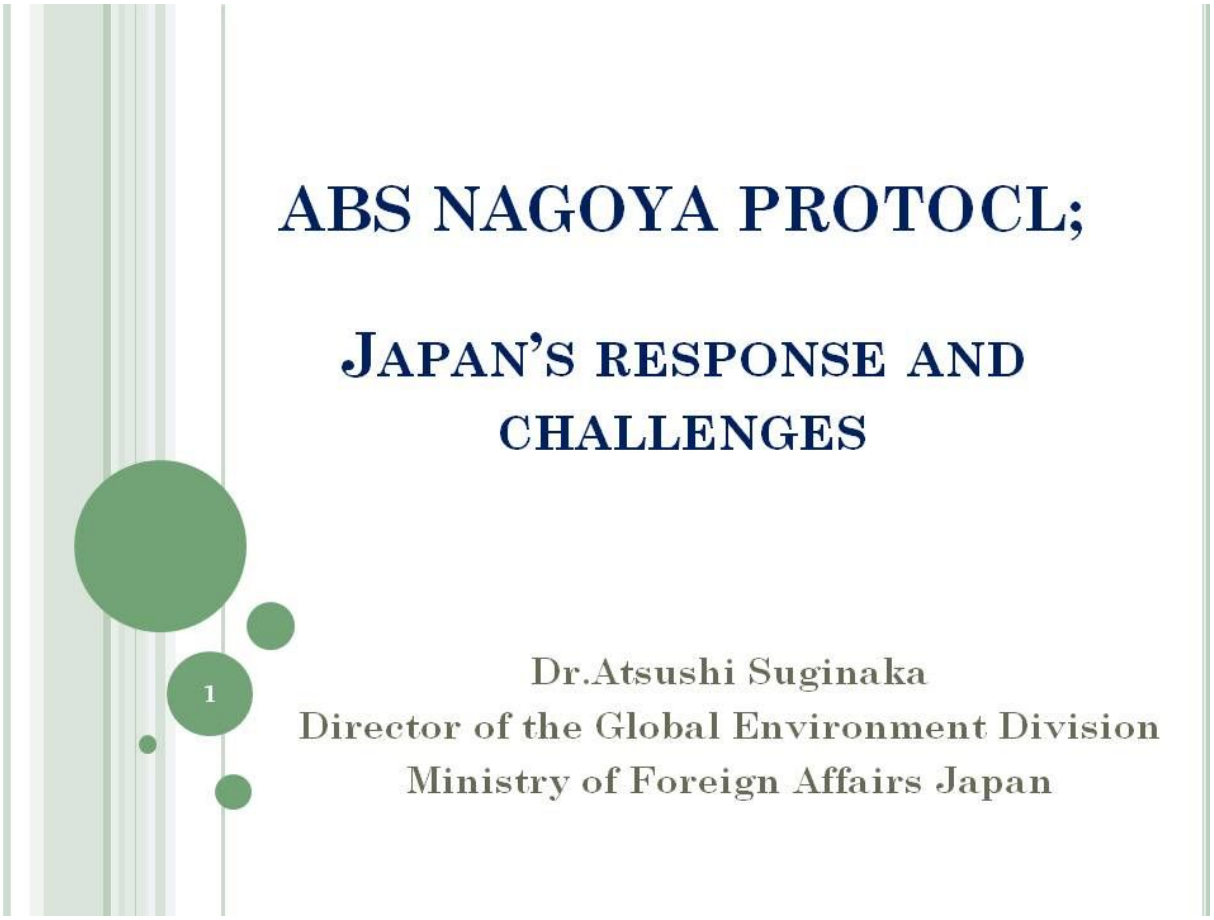
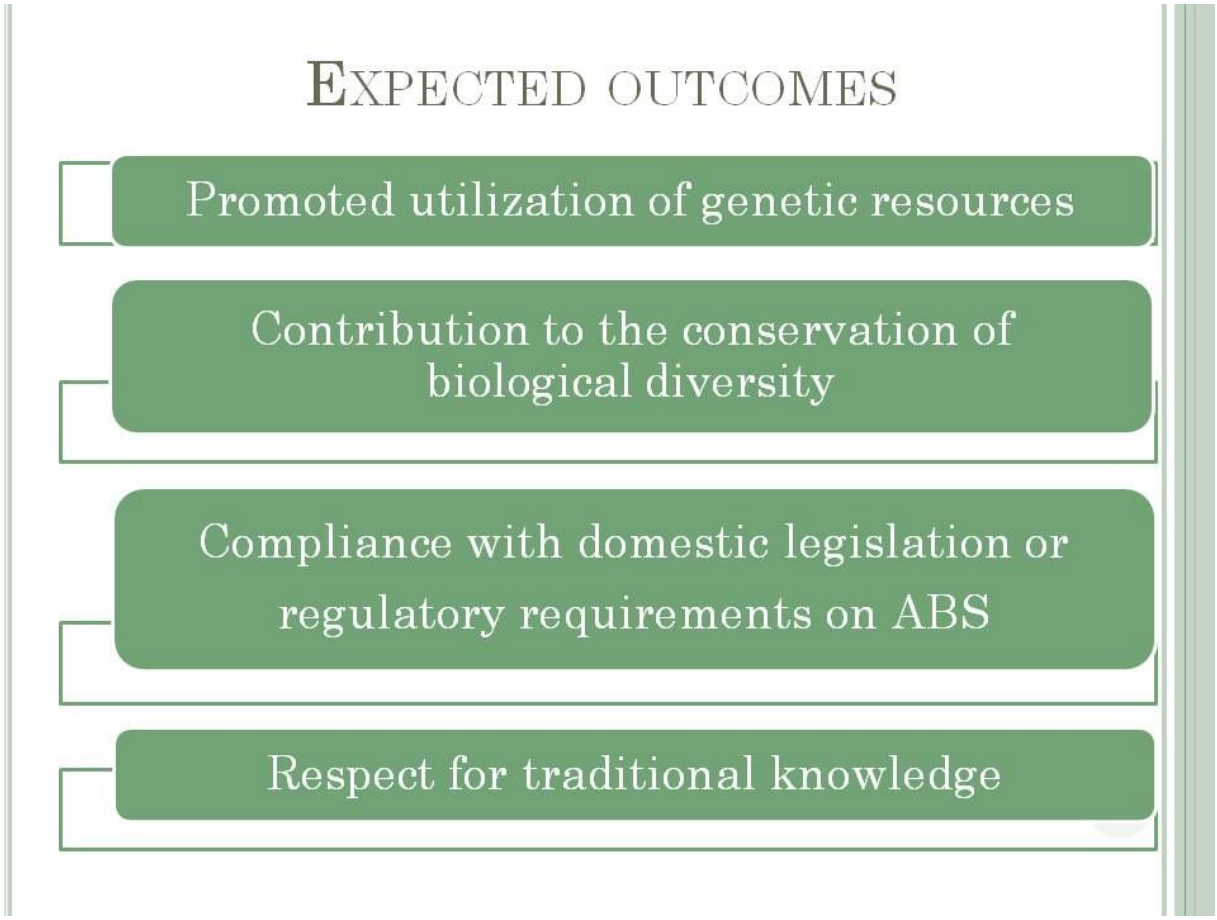
Annex6


ABS NAGOYA PROTOCL;
JAPAN'S RESPONSE AND CHALLENGES
1
Dr.Atsushi Suginaka
Director of the Global Environment Division
Ministry of Foreign Affairs Japan


EXPECTED OUTCOMES
Promoted utilization of genetic resources
Contribution to the conservation of biological diversity
Compliance with domestic legislation or regulatory requirements on ABS
Respect for traditional knowledge

JAPAN'S RESPONSE TOWARD SIGNATURE AND RATIFICATION

Signature Open	
Feb.2 2011	Columbia, Yemen, Brazil, Algeria

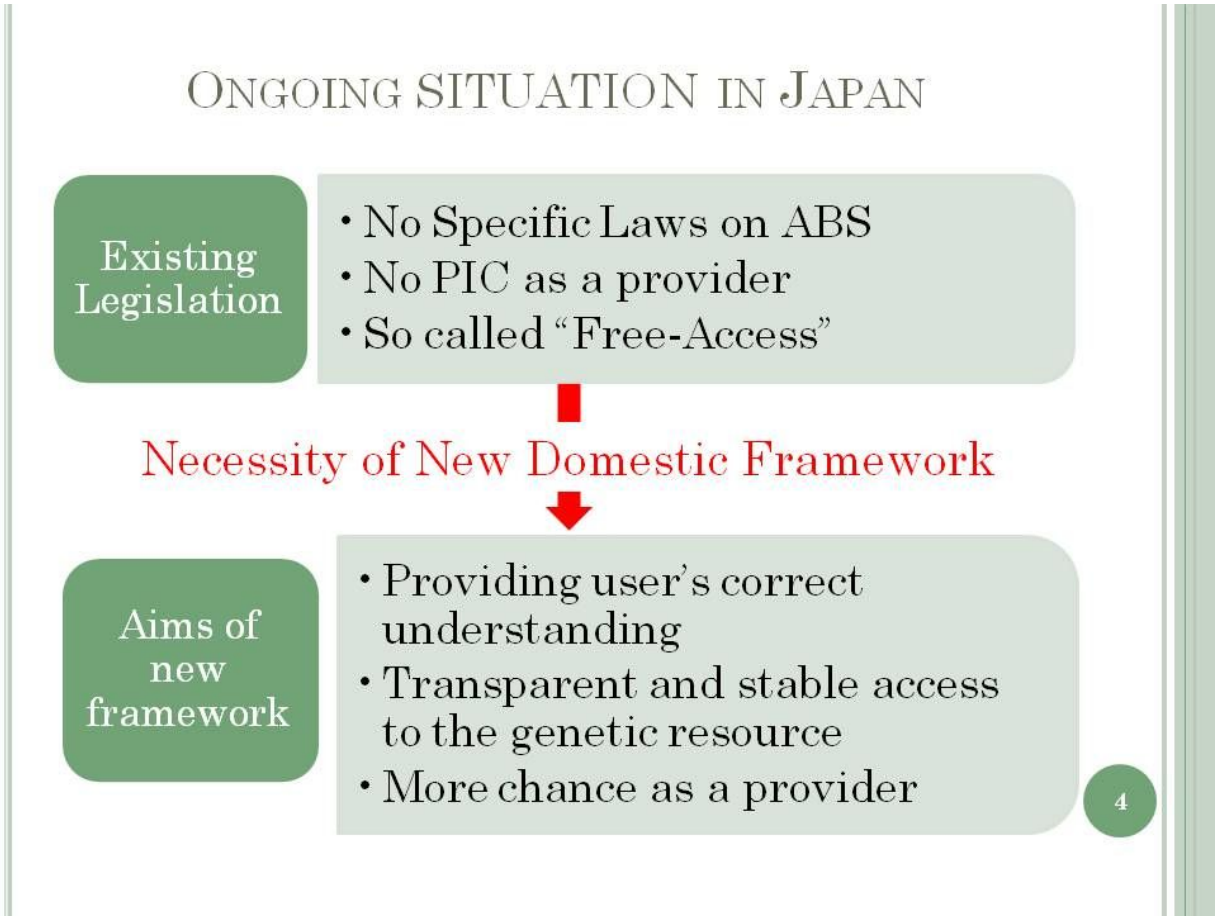
↓

Another Signing Ceremony	
May 11-13 2011	CSD High Level Segment

↓

Japanese Signature
Earliest Signature

3


ONGOING SITUATION IN JAPAN
Existing Legislation
• No Specific Laws on ABS
• No PIC as a provider
• So called "Free-Access"
Necessity of New Domestic Framework
Aims of new framework
• Providing user's correct understanding
• Transparent and stable access to the genetic resource
• More chance as a provider
4

CONSIDERATIONS TOWARD RATIFICATION -1-

Article 5: Fair and Equitable Benefit Sharing

Consider the necessity of new domestic measure

Article 6: Access to genetic resources

Consider the necessity of new domestic measure

Article 10: Global Multilateral Benefit-Sharing Mechanism

-COP10: Japan announce 1 billion Yen contribution
-Set up New "Sun-set" Trust fund at GEF
-Further Discussion at 2nd IGC

5

CONSIDERATIONS TOWARD RATIFICATION -2-

Article 15: Compliance with domestic legislation or regulatory requirements on access and benefit-sharing

Core articles: Examine legislative, administrative or policy measure

Article 17: Access to genetic resources

Core articles :Examine appropriate checkpoint. Examine legislative, administrative or policy measure

Article 18: Compliance with Mutually Agreed Term

Consider the necessity of new domestic measure

6

CONCLUSION

Coming process

- Expert meeting in ABS Clearing-House in April
- 1st Intergovernmental Committee in June

Further Awareness Raising

- Biodiversity Decade Event
- Organization such as JBA

Japan continue to examine leadership as COP10 Presidency

7