Article 29. Monitoring and Reporting

Each Party shall monitor the implementation of its obligations under this Protocol, and shall, at intervals and in the format to be determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, report to the Conference of the Parties serving as the meeting of the Parties to this Protocol on measures that it has taken to implement this Protocol.

1 Overview

Article 29¹ is a common provision in multilateral environmental agreements calling for Parties' regular monitoring of implementation and reporting to the Protocol's governing body. These obligations are critical for ensuring compliance with the Protocol, assessing its actual operation on the ground, and may also facilitate cooperation and exchange of information among Parties and ABS stakeholders. The following section will discuss the functions of these obligations more in detail, and also explore links with other relevant provisions of the Protocol.

2 Functions and Links

Article 29 is modeled after similar provisions in the CBD² and the Biosafety Protocol.³ It imposes two mutually reinforcing obligations on Parties: to monitor implementation of the Protocol, and to report on its implementation measures. Monitoring will provide information needed for the reporting. In turn, the requirement to provide reports may elicit feedback on the way monitoring has operated, and may be improved in the future.⁴ Monitoring is particularly significant as many of the obligations in the Protocol are not self-executing,

¹ This provision was not subject to negotiation and was first incorporated in the Cali Draft.

² CBD Article 26.

³ Biosafety Protocol Article 33.

⁴ Based on the commentary of the corresponding obligation under the Biosafety Protocol. See Mackenzie et al., *Explanatory Guide to the Cartagena Protocol*, op. cit., 191. See also Greiber et al., *Explanatory Guide*, op. cit., 241–242.

but rather explicitly require the adoption of domestic measures to enable implementation. This will imply that Parties have to ensure access to, or set up, reliable mechanisms of information gathering and data management at the national level.⁵

In practice, reports will be submitted through the Secretariat. The Protocol's governing body will determine the intervals at which reports are to be submitted (usually in time for every, or every second, meeting of the governing body) and provide guidance to Parties on the format and content of the reports to ensure that information is provided in a comparable format.⁶ This practice is in fact common to other multilateral environmental agreements, as their compliance procedures are essentially 'informational'.⁷ On the one hand, it is expected that the reporting obligation exercises a positive influence on Parties having to assess the extent and impact of their implementation efforts and to justify them before the Secretariat, other Parties, international organizations and stakeholders to whom the report will be available.⁸ On the other hand, these reports provide opportunities for the Secretariat to evaluate progress in the implementation of the Protocol, and to other States or stakeholders to scrutinize the practices of and exercise pressure on individual States.⁹ National reports collectively may also feed into the review process foreseen under Protocol.¹⁰ Depending on the compliance procedures and mechanisms that will be agreed under the Protocol,¹¹ national reports may further be taken into account by a future compliance committee.

Usually national reports indicate what kind of measures have been adopted by Parties towards implementing their obligations, in order to enable Parties individually and collectively to assess how effectively the treaty is operating. These reports may also allow NGOs and other interested stakeholders to monitor progress at the country level. Reports can further serve to strengthen communication and coordination among relevant national authorities responsible for the implementation of the Protocol, and foster scientific understanding and self-examination.¹² In an ideal scenario, national reporting can, in addi-

5 Ibid.

6 Ibid.

7 Daniel Bodansky, *The Art and Craft of International Environmental Law* (Cambridge: Harvard University Press, 2011), 238–243.

8 Alexandre C. Kiss and Dinah Shelton, *Guide to International Environmental Law* (Leiden: Martinus Nijhoff Publishers, 2007), 84.

9 Ibid.

10 See this commentary on Article 31.

11 See this commentary on Article 30.

12 Bodansky, *Art and Craft of International Environmental Law*, op. cit., 239; and Birnie, Boyle and Redgwell, *International Law and the Environment*, op. cit., 239–243.

tion, open the door to peer review, peer pressure and mutual learning. Scrutiny and exchange of lessons learnt can be undertaken by the focal points of other Parties and interested stakeholders on the basis of information provided through national reporting.¹³ In the context of the CBD, however, in view of the absence of a mechanism to systematically and effectively monitor implementation and compliance at the national level, the COP has not engaged in the review of individual national reports but, rather, limited itself to offering conclusions on the basis of the CBD Secretariat's syntheses of these reports.¹⁴ National reporting, however, may receive increased attention in the context of the Nagoya Protocol, given the link between the domestic ABS framework of provider countries and user countries' international obligations on addressing compliance by their users.¹⁵ In that regard, it should be noted that Parties to the Cartagena Protocol have recently tasked the Biosafety Compliance Committee to systematically review Parties' reports with a view to identifying general compliance challenges, and to engaging with Parties that still need to put in place their national biosafety framework.¹⁶

It should also briefly be recalled that ensuring timely and accurate national reporting is a challenge in many MEAs,¹⁷ although 'misreporting is more difficult than it appears.'¹⁸ Non-compliance procedures can be employed, and are often employed by other MEAs, to put pressure on States that are late or deficient in their reporting. In addition, the Protocol's governing body may issue guidance to ensure sufficient quality and comparability of reporting, thereby making misreporting easier to detect.¹⁹

13 Bodansky, *Art and Craft of International Environmental Law*, 239; and Birnie, Boyle and Redgwell, *International Law and the Environment*, op. cit., 239–243.

14 This examination tends to focus on the mere *submission* of the report and on a *quantitative* analysis of legislative developments (for instance, the percentage of Parties with biodiversity-related legislation in place) rather than on a *qualitative* analysis of the content of the national reports, including the quality and comprehensiveness of national legislation and impacts of State measures on biodiversity and achievement of the CBD objectives. Involvement of subsidiary bodies under the CBD in the examination of reports has not yielded results in this direction either: see Morgera and Tsioumani, "Yesterday, Today, and Tomorrow," op. cit., 7.

15 See this commentary on Article 15, section 3.1.

16 See "Report of the Compliance Committee under the Cartagena Protocol on Biosafety" (12 June 2013) UN Doc UNEP/CBD/BS/CC/10/5.

17 Birnie, Boyle and Redgwell, *International Law and the Environment*, op. cit., 243.

18 Bodansky, *Art and Craft of International Environmental Law*, op. cit., 239.

19 Ibid.