



SUMMARY OF THE FIRST MEETING OF THE CONFERENCE OF THE PARTIES TO THE CONVENTION ON BIOLOGICAL DIVERSITY SERVING AS THE MEETING OF THE PARTIES TO THE CARTAGENA PROTOCOL ON BIOSAFETY: 23-27 FEBRUARY 2004

The First Meeting of the Conference of the Parties (COP) to the Convention on Biological Diversity (CBD) serving as the Meeting of the Parties to the Cartagena Protocol on Biosafety (COP/MOP-1) took place from 23-27 February 2004, at the Putra World Trade Centre, in Kuala Lumpur, Malaysia. Over 750 participants attended the meeting, representing 81 Parties to the Protocol, 79 non-Parties, as well as UN agencies, non-governmental organizations (NGOs), intergovernmental organizations, indigenous and local communities, academia and industry. Delegates adopted 13 decisions on, *inter alia*: decision making by Parties of import; capacity building and the roster of experts; handling, transport, packaging and identification (HTPI) of living modified organisms (LMOs), information sharing and the Biosafety Clearing-house (BCH); liability and redress; compliance; other issues for implementation; the medium-term programme of work for the COP/MOP; guidance to the financial mechanism; and the budget for distinct costs of the Secretariat and the biosafety work programme.

Arriving in Kuala Lumpur, expectations were moderate for COP/MOP-1 delegates, charged with the daunting task of addressing operational and institutional issues that will facilitate the Protocol's implementation. This sense of moderation certainly benefited negotiations on challenging issues such as compliance, and HTPI. Although stumbling blocks were encountered over the establishment of a Compliance Committee and documentation accompanying movements of LMOs destined for use as food, feed or processing (LMO-FFPs), COP/MOP-1 was successful in setting up the operational framework needed for effective implementation of the Protocol, and in electing the Compliance Committee members by the closing plenary. This meeting will certainly be remembered as a major stepping stone in the history of the Convention on Biological Diversity.

A BRIEF HISTORY OF THE CARTAGENA PROTOCOL ON BIOSAFETY

The CBD, negotiated under the auspices of the UN Environment Programme (UNEP), was adopted on 22 May 1992, and entered into force on 29 December 1993. There are currently 188 Parties to the Convention. Article 19.3 of the CBD provides for Parties to consider the need for, and modalities of, a protocol setting out procedures in the field of the safe transfer, handling and use of LMOs that may have an adverse effect on biodiversity and its components.

The Biosafety Protocol, adopted on 29 January 2000, entered into force on 11 September 2003, 90 days after receipt of its 50th instrument of ratification. The Biosafety Protocol addresses the safe transfer, handling and use of LMOs that may have an adverse effect on biodiversity, taking into account human health, with a specific focus on transboundary movements. It establishes an advance informed agreement (AIA) procedure for imports of LMOs for intentional introduction into the environment, and also incorporates the precautionary principle and mechanisms for risk assessment and risk management. The Protocol establishes a BCH to facilitate information exchange, and contains provisions on capacity building and financial resources with special attention to developing countries and those without domestic regulatory systems. There are currently 87 Parties to the Protocol.

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COP-1: The first meeting of the CBD COP (November - December 1994, Nassau, the Bahamas) established an Open-ended *Ad Hoc* Group of Experts on Biosafety, which met in Madrid in July 1995. Most experts favored the development of a protocol on biosafety under the CBD, and the meeting developed lists of elements receiving unanimous and partial support.

COP-2: At the second meeting of the COP (November 1995, Jakarta, Indonesia), delegates established an Open-ended *Ad Hoc* Working Group on Biosafety (BSWG) "to develop, in the field of the safe transfer, handling and use of LMOs, a protocol on biosafety, specifically focusing on transboundary movement of any LMO that may have an adverse effect on biological diversity," on the basis of the Madrid report.

COP-3: The third meeting of the COP (November 1996, Buenos Aires, Argentina) supported the application of the UNEP International Technical Guidelines for Safety in Biotechnology.

COP-4: At its fourth meeting (May 1998, Bratislava, Slovakia), the COP decided that the agenda of the extraordinary meeting, to be convened for the purpose of adopting a protocol on biosafety, would address matters relating to the adoption of the protocol and preparations for COP/MOP-1.

BIOSAFETY WORKING GROUP: The BSWG met six times between 1996 and 1999. The first two meetings identified issues and terms, and helped articulate positions. By the third meeting, in October 1997, delegates had produced a consolidated draft text to serve as a basis for negotiation. The fourth and fifth meetings focused on reducing and refining options for each article of the draft protocol. At the final meeting of the BSWG (February 1999, Cartagena, Colombia), delegates intended to complete negotiations on the draft protocol, for submission to the Extraordinary Meeting of the Conference of the Parties (ExCOP).

EXCOP: At the ExCOP (February 1999, Cartagena, Colombia), delegates could not agree on a compromise package that would finalize the protocol, and the meeting was suspended. Outstanding issues included: the protocol's relation to other agreements, especially those related to trade; the inclusion of commodities within the protocol's scope; the application of the AIA procedure, particularly with regard to the precautionary principle; and requirements for documentation and identification.

Following suspension of the ExCOP, three sets of informal consultations (July 1999, Montreal, Canada; September 1999, Vienna, Austria; and January 2000, Montreal, Canada) were held to address outstanding issues. Five major negotiating groups emerged during the Cartagena meetings: the Central and Eastern European Group (CEE); the Compromise Group (Japan, Mexico, Norway, Republic of Korea and Switzerland, later joined by New Zealand and Singapore); the European Union (the EU); the Miami Group (Argentina, Australia, Canada, Chile, the US and Uruguay); and the Like-minded Group (G-77 and China countries, less the three developing country members of the Miami Group).

RESUMED EXCOP: The resumed ExCOP (January 2000, Montreal, Canada) adopted the Cartagena Protocol on Biosafety. Decision EM-I/3 established the Intergovernmental Committee for the Cartagena Protocol on Biosafety (ICCP) to undertake preparations for COP/MOP-1, and requested the CBD Executive Secretary to prepare work for the development of a BCH. The decision also provides for a regionally balanced roster of experts to be nominated by governments to provide advice and support.

COP-5: At its fifth meeting (May 2000, Nairobi, Kenya), the COP adopted a work plan, which included issues for consideration by the ICCP at its first two meetings. During the meeting, a high-level segment on the Protocol was held, which included a Ministerial Roundtable on capacity building to facilitate implementation of the Protocol. During a special ceremony, 67 countries and the European Community signed the Protocol.

ICCP-1: The first meeting of the ICCP (December 2000, Montpellier, France) discussed information sharing and the BCH, capacity building, the roster of experts, decision-making procedures, compliance, and HTPI (Article 18). ICCP-1 concluded with recommendations for intersessional activities and synthesis reports on each substantive item to be further considered by the ICCP at its second meeting.

ICCP-2: The second meeting of the ICCP (October 2001, Nairobi, Kenya) developed recommendations on issues including: information sharing; HTPI; monitoring and reporting; capacity building; the roster of experts; guidance to the financial mechanism; decision-making procedures; liability and redress; compliance; views on other issues of importance for the Protocol's implementation; the Secretariat; Rules of Procedure; cooperation with the International Plant Protection Convention; and preparatory work for MOP-1.

COP-6: The sixth meeting of the COP (April 2002, The Hague, the Netherlands) decided that if the Protocol were to enter into force later than in a year, COP/MOP-1 would be held in conjunction with COP-7. COP-6 adopted several decisions of relevance to the Protocol, including on: the financial mechanism; application for CBD Secretariat observer status to the World Trade Organization (WTO) Committees on Sanitary and Phytosanitary Measures (SPS) and on Technical Barriers to Trade (TBT); and the budget.

ICCP-3: The third meeting of the ICCP (April 2002, The Hague, the Netherlands) adopted recommendations to COP/MOP-1 on: liability and redress; procedures and mechanisms to ensure compliance; information sharing and the BCH; capacity building; the roster of experts; HTPI; monitoring and reporting; and other issues for implementation, including transboundary movements of LMOs between Parties and non-Parties.

COP-7: At its seventh meeting (9-20 February 2004, Kuala Lumpur, Malaysia), the COP adopted work programmes on protected areas, mountain biodiversity and technology transfer. Delegates also adopted decisions on: the Multi-Year Programme of Work up to 2010; the Strategic Plan; and access and benefit-sharing. Decisions of relevance to the Biosafety Protocol include: the financial mechanism; application for CBD Secretariat observer status to the WTO SPS and TBT Committees; and the budget.

COP/MOP-1 REPORT

COP/MOP-1 President Dato' Seri Law, Minister of Science, Technology and the Environment of Malaysia, opened the meeting on Monday, 23 February, noting the opportunity to establish a harmonized system on the movement of living modified organisms (LMOs) and enable informed decisions regarding their import.

Ahmed Djoghlaif, on behalf of UNEP Executive Director Klaus Töpfer, noted that the Protocol will help derive benefits from biotechnology while protecting biodiversity and human health from the risks posed by LMOs.



CBD Executive Secretary Hamdallah Zedan highlighted the successful completion of the BCH pilot phase, urged continued efforts to facilitate information sharing on LMOs, and stressed the need for adequate funding to implement the Protocol.

The Secretariat explained that the COP Bureau would serve as the Bureau of COP/MOP-1, noting the need to replace five Bureau members from countries not currently Parties to the Protocol. Delegates elected the following new members: Eric Mugurusi (Tanzania) for the African Group; Pati Keresoma Liu (Samoa) for the Asia and Pacific Group; François Pythoud (Switzerland) for the Western Europe and Others Group; Erik Schoonejans (France) for the EU and Acceding Countries (EU); and Sergei Gubar (Ukraine) for Central and Eastern Europe. Other Bureau members are: John Ashe (Antigua and Barbuda); Soumayila Bance (Burkina Faso); Fernando Castañeda (Colombia); Desh Deepak Verma (India); and Gordana Beltram (Slovenia).

Delegates adopted the agenda without amendment (UNEP/CBD/BS/COP-MOP/1/1 and Add.1), and agreed to establish two working groups. François Pythoud and Amb. Philémon Yang (Cameroon) were elected Chairs of Working Group I (WG-I) and Working Group II (WG-II), respectively. Gordana Beltram was elected Rapporteur of the meeting.

ICCP Chair Amb. Yang reported on the work of the ICCP (UNEP/CBD/BS/COP-MOP/1/3 and Add.1-3), highlighting recommendations on information sharing and capacity building.

During the week, the plenary met on Monday, and held brief afternoon sessions from Tuesday to Thursday to review progress and hear statements from industry and NGOs. Plenary addressed: rules of procedure for COP/MOP meetings, mechanisms and procedures to facilitate decision making by Parties of import, monitoring and reporting, guidance to the financial mechanism, the Secretariat, and the medium-term programme of work. The plenary established a contact group on the budget, and "Friends of the President" groups on priority setting and on guidance to the financial mechanism.

The working groups met from Monday afternoon to Thursday. WG-I addressed: information sharing and the Biosafety Clearing-house (BCH); handling, transport, packaging and identification (Article 18); and other issues necessary for the effective implementation of the Protocol. WG-I established a contact group on documentation requirements for LMOs for use as food, feed or processing. WG-II considered: capacity building, compliance, and liability and redress. WG-II established a contact group on compliance.

The closing plenary of the seventh Conference of the Parties to the CBD (COP-7) resumed on Friday, following the closure of COP/MOP-1, to consider the COP/MOP-1 decision on guidance to the financial mechanism, and hear closing statements.

This report summarizes discussions and decisions on each agenda item, according to their consideration by the plenary and working groups. Unless otherwise noted, all decisions were adopted without, or with minor, amendments by the closing plenary on Friday, 27 February 2004.

PLENARY

RULES OF PROCEDURE: On Monday, the Secretariat introduced, and delegates adopted without amendment, a draft decision on the rules of procedure for COP/MOP meetings (UNEP/CBD/BS/COP-MOP/1/2).

Final Decision: In the decision (UNEP/CBD/BS/COP-MOP/1/L.12), the COP/MOP notes that, according to Article 29 of the Protocol (COP/MOP), the Rules of Procedure of the COP apply under the Protocol, unless otherwise decided by the COP/MOP. The COP/MOP decides that where a member of the COP Bureau representing a non-Party to the Protocol is substituted by a member elected by and from among the Parties to the Protocol, the term of office of the substitute member shall expire at the same time as the term of office of the Bureau member he or she substitutes for. The COP/MOP also decides that amendments to the Rules of Procedure of the COP shall not apply to the COP/MOP, unless otherwise decided by the COP/MOP.

DECISION PROCEDURE: On Monday, the Secretariat introduced a note on draft procedures and mechanisms to facilitate decision making by Parties of import (UNEP/CBD/BS/COP-MOP/1/4).

Many developing countries urged identifying other possible mechanisms to facilitate decision making, capacity building and technology transfer. The African Group, supported by many, said Parties of export should not attempt to determine importing Parties' decisions, but assist them to acquire expertise. Tanzania said the procedures and mechanisms should be demand-driven. India stressed that discussion on this item is separate from compliance.

On Thursday, COP/MOP-1 President Dato⁹ Seri Law introduced a draft decision (UNEP/CBD/BS/COP-MOP/1/L.1), noting addition of language on financial assistance or other means to facilitate importing Parties' decision making. Delegates adopted the decision with this amendment.

Final Decision: In the decision (UNEP/CBD/BS/COP-MOP/1/L.1), the COP/MOP decides to continue identifying and building upon mechanisms that will further facilitate capacity building.

The annexed procedures and mechanisms to facilitate decision making by Parties of import contain sections on guidelines and procedures. The guidelines state, *inter alia*, that: Parties shall cooperate to ensure that importing Parties have access to the BCH; the procedures and mechanisms should be demand-driven by importing Parties; and the roster of experts and the BCH are referred to as main mechanisms to provide support to facilitate decision making, while other mechanisms should be kept under consideration.

The procedures require that a Party of import, after receiving notification from the Party of export or the notifier, seek assistance from the roster of experts to make a decision. In case of absence of receipt of notification or a decision from a Party of import that is a developing country or with an economy in transition, the Party of export may, as appropriate, help the Party of import financially to obtain expertise in order to enable it to reach a decision. It is further stated that the procedures and mechanisms shall be separate from, and without prejudice to, the procedures and mechanisms established in the context of compliance and dispute settlement.



MONITORING AND REPORTING: On Monday, the Secretariat presented documents on monitoring and reporting, including a draft decision (UNEP/CBD/COP-MOP/1/10 and INF/9). Delegates approved the draft decision without amendment.

Final Decision: In the decision (UNEP/CBD/BS/COP-MOP/1/L.12), the COP/MOP:

- recognizes the need for clear and simple reporting requirements that consider limitations in developing countries, avoid duplication of other CBD requirements, support statistical analysis and compilation, and encourage Parties to provide detailed information;
- requests Parties to use the reporting format annexed to the decision;
- recommends that Parties prepare reports in a consultative process involving all relevant stakeholders, as appropriate; and
- decides that intervals and formats of the reports be kept under review.

The COP/MOP also requests Parties to submit their reports every four years, and submit an interim report two years after the Protocol's entry into force.

The annex to the decision includes the format for the interim national report on the Protocol's implementation, including guidelines for submission of an interim national report no later than 11 September 2005.

SECRETARIAT: On Monday, the plenary considered the programme budget for the secretariat and the biosafety work programme for the biennium 2005-2006 (UNEP/CBD/BS/COP-MOP/1/11 and UNEP/CBD/COP/7/2). Colombia, for the Latin America and the Caribbean Group (GRULAC), supported a zero budget increase and prioritized Article 18.2 (documentation for LMOs) and establishing a compliance committee. Delegates established a contact group, chaired by John Ashe, which met from Tuesday to Thursday to address, *inter alia*, the establishment of the Protocol's trust funds, the distinct and shared costs of secretariat services, and the budgetary implications of decisions taken by the COP/MOP.

In the closing plenary, Mexico drew attention to lack of funds for activities proposed under the decisions on HTPI, and liability and redress that are requested by the COP/MOP to be funded under the Protocol's core budget. Several Parties pledged funds for these activities, with Germany announcing that it will host a workshop on capacity building for HTPI in 2004, the EC pledging funding for an open-ended technical expert group, and the UK announcing that previously pledged, but unused, funds would be made available. Delegates then adopted the decision, with the African Group noting that its approval is subject to availability of these pledges.

Final Decision: In the decision (UNEP/CBD/BS/COP-MOP/1/L.9), the COP/MOP establishes: a Trust Fund for the core budget with US\$2,000,500 for 2005 and US\$1,713,700 for 2006; a voluntary Trust Fund for additional contributions for approved activities with US\$542,118 for 2005 and US\$282,500 for 2006; and a voluntary Trust Fund for facilitation of participation with US\$1,672,400 for 2005 and US\$1,672,400 for 2006. It approves a staff of five for the work programme on biosafety, and decides that the financial rules of the Convention be applied to the Protocol.

GUIDANCE TO THE FINANCIAL MECHANISM: On Monday, the Secretariat introduced a draft decision on guidance to the financial mechanism (UNEP/CBD/COP-MOP/1/12). Many delegates stressed the need for capacity building, with the Asia and Pacific Group calling upon developed countries to provide financial support for the Protocol's implementation. Mexico requested a reference to the vulnerability of countries that are centers of origin and of genetic diversity.

On Tuesday, the plenary established a "Friends of the President" group, chaired by Linda Brown (UK), to elaborate a revised draft decision on guidance to the GEF to support capacity building and preparatory activities to facilitate ratification and implementation.

In the closing plenary, Argentina, China and Chile, opposed by Iran, the UK, Japan and the EU, raised concerns about difficulties for countries wanting to become Parties to the Protocol, noting that efforts to build the necessary infrastructure will not be supported financially. Linda Brown, Chair of the "Friends of the President" group, clarified that the decision represents a consensus achieved in a regionally balanced group, and urged delegates not to re-open negotiations. Delegates adopted the decision with added reference, giving particular importance to countries that are centers of origin and of genetic diversity in the guidance on eligibility for funding from the Global Environment Facility (GEF). Delegates forwarded the decision to COP-7.

Final Decision: In the decision (UNEP/CBD/BS/COP-MOP/1/L.7), the COP/MOP decides that financial support by the GEF be given, subject to its guidance and eligibility criteria, to developing countries that are Parties to the Protocol, and also to non-Parties for the development of national biosafety frameworks and the establishment of national BCHs when they provide a clear political commitment towards becoming Parties to the Protocol. The COP/MOP also stresses the need for country-driven activities, and invites assistance for capacity-building activities and support for demonstration projects on national biosafety frameworks. It urges rapid implementation of the GEF's Initial Strategy for assisting the preparation for ratification, and notes that the GEF's mandate includes: funding for legislative and administrative frameworks; further areas of capacity building; facilitating technical support; and the use of networks.

MEDIUM-TERM WORK PROGRAMME: On Monday, the Secretariat introduced the proposed medium-term work programme for the COP/MOP (UNEP/CBD/BS/COP-MOP/1/14).

Highlighting the need for broad ratification of the Protocol, GRULAC proposed not to consider punitive measures relating to compliance. Several developing country Parties suggested addressing socioeconomic issues at COP/MOP-2, rather than COP/MOP-4.

Several countries stressed the need for a system of unique identifiers and to address risk assessment and management. Some countries supported considering emerging issues. Several delegates suggested identifying priorities before adopting the work programme.

An NGO representative expressed concern about postponing consideration of public participation to COP/MOP-3. A "Friends of the President" group, co-chaired by Birthe Ivars (Norway) and Ernesto Cespedes (Mexico), was established to set priorities.



On Thursday, delegates adopted, without amendment, a revised draft decision (UNEP/CBD/BS/COP-MOP/1/L.5).

Final Decision: In the decision (UNEP/CBD/BS/COP-MOP/1/L.5), the COP/MOP decides to hold its second and third meetings on an annual basis, and that annual meetings may be held beyond the third meeting as necessary. The COP/MOP adopts the annexed medium-term work programme up to COP/MOP-5, which will consist of standing and rolling issues. Under the work programme:

- COP/MOP-2 will address notification, risk assessment and risk management, HTPI, liability and redress, socioeconomic considerations, and public awareness and participation;
- COP/MOP-3 will consider HTPI, liability and redress, subsidiary bodies, monitoring and reporting, and assessment and review of the Protocol's effectiveness;
- COP/MOP-4 will discuss monitoring and reporting, and review of implementation; and
- COP/MOP-5 will focus on application of the AIA procedure, and the review of the work programme.

WORKING GROUP I

INFORMATION SHARING AND THE BCH: On Monday, the Secretariat introduced documents on information sharing and the BCH (UNEP/CBD/BS/COP-MOP/1/5 and INF/1, 13, 14, 17 and 18). Many delegates said the BCH is essential to the Protocol's effective implementation, and requested that it enter into its operational phase.

Several delegates said the BCH should be transparent and regularly updated. Some delegates suggested encouraging non-Parties to contribute information. Several delegates stressed developing countries' difficulties in accessing and using the BCH, and called for training and capacity building, including for countries that have signed, but not yet ratified, the Protocol. Many developing countries called for developing non-Internet based mechanisms. Some delegates recommended that the BCH contain information on unique identifiers for LMOs. Mexico highlighted an arrangement on transboundary movements of LMOs, among Parties to the North American Free Trade Agreement (NAFTA).

On Wednesday, WG-I approved the draft decision with a minor amendment.

Final Decision: In the decision (UNEP/CBD/BS/COP-MOP/1/L.6), the COP/MOP approves the transition of the pilot phase of the BCH to the operational phase, adopts the annexed modalities of its operation, and urges Parties, governments and other users to provide information to the BCH, including on decisions relating to the release or import of LMOs made prior to the Protocol's entry into force. The COP/MOP requests the Executive Secretary to: further develop non-Internet based BCH mechanisms; continue analyzing the identified capacity-building and financial requirements of developing countries; and to report to COP/MOP-2 on implementation of the BCH with a view to developing a longer-term work programme.

The annexed modalities of operation of the BCH contain sections on: the BCH role, the BCH characteristics, administration, role of the BCH focal points, technical oversight and advice, obligations of partner organizations, reports on activities, and periodic review.

HANDLING, TRANSPORT, PACKAGING AND IDENTIFICATION:

Delegates considered HTPI (UNEP/CBD/BS/COP-MOP/1/7 and INF/3) from Tuesday to Thursday. A contact group, co-chaired by Veena Chhotray (India) and Eric Schoonejans (France), met on Tuesday and Wednesday to address documentation for LMO-FFPs. A "Friends of the Chair" group was established to address the type of documentation accompanying LMO-FFPs and finalize a CRP on the basis of a Chair's text, for consideration by WG-I.

Documentation for LMO-FFPs (Article 18.2(a)): Delegates discussed the type of documentation accompanying LMO-FFPs, with divergent views over whether to use stand alone documentation or a commercial invoice.

Regarding information contained in accompanying documentation, some Parties noted that exporters of LMO-FFPs should be "required," instead of "encouraged," to declare that a shipment contains LMO-FFPs. In the contact group, delegates discussed the minimum interim requirements necessary to implement the documentation requirements. A few Parties objected to the suggestion made by many to include the LMO's name and unique identifier in the documentation. In working group discussions, Mexico, opposed by many, suggested to "encourage," rather than "request," Parties and other governments to require that documentation for LMO-FFPs include the common, scientific and, where available, commercial names, and the transformation event code of the LMO or, where available, its unique identifier code. Parties agreed to "urge" Parties and other governments to do so.

In working group discussions, many Parties supported establishing an open-ended working group. In the contact group, delegates agreed to establish an open-ended technical expert group on identification requirements for LMO-FFPs, and discussed whether to convene a technical meeting prior to the open-ended technical expert group. Delegates also debated criteria on which participation should be based, and participants designated. In the working group, Parties discussed the prioritization of the expert group's work, with some suggesting prioritizing work on type, content, and the extent and modality of using unique identifiers.

On information to be provided on contact points for information, views diverged over referring to any other appropriate authority in addition, or alternatively, to the last exporter and first importer.

Documentation for LMOs destined for contained use or for intentional introduction into the environment (Article 18.2(b) and (c)): Parties debated the type of documentation accompanying LMOs destined for contained use or for intentional introduction. Many supported stand alone documentation, Japan and some non-Parties supported existing documentation, and Brazil and Mexico proposed the use of commercial invoices or other documentation.

Regarding information contained in accompanying documentation, Parties disagreed over reference to unique identification. Several Parties supported adding details on common scientific and commercial names.

Regarding contained use, delegates discussed text noting that further information "could" include, if appropriate, common, scientific and commercial names, unique identification and risk class. Many Parties proposed deleting "if appropriate" and specifying that such information "should" be made available. Delegates discussed including reference to "risk class."



Unique identification systems: Parties debated which identification system should be used, discussing reference to the OECD Unique Identifier system, harmonization of unique identifier codes, and the role of the BCH. Many proposed that the working group analyze existing systems and advise the COP/MOP on their suitability.

Final Decision: The decision (UNEP/CBD/BS/COP-MOP/1/L.11) contains sections on: documentation for LMO-FFPs; documentation for LMOs destined for contained use or for intentional introduction into the environment; unique identification system(s); and capacity building.

a. Documentation for LMO-FFPs (Article 18.2(a)): The COP/MOP notes the interim nature of the present documentation requirements, subject to a decision on detailed requirements to be taken by COP/MOP-2. The COP/MOP requests Parties and urges other governments to take measures to require the use of a commercial invoice or other document required or utilized by existing documentation systems, as documentation that should accompany LMO-FFPs. The COP/MOP requests Parties and other governments to ensure that documentation accompanying LMO-FFPs clearly identifies that the shipment may contain LMO-FFPs, and states that they are not intended for intentional introduction into the environment.

The COP/MOP also:

- requests Parties and urges other governments to take measures to ensure that the documentation accompanying LMO-FFPs provides details of a contact point for further information: the exporter, the importer, or any appropriate authority, when designated by a government as the contact point;
- urges Parties and other governments to require that accompanying documentation includes (i) the common, scientific and, where available, commercial names, and (ii) the transformation event code of the LMOs or, where available, its unique identifier code; and
- encourages Parties and other governments to require exporters of LMO-FFPs to declare in accompanying documentation that the shipment contains LMO-FFPs, the identity of the LMO, and any unique identification, where possible.

The Executive Secretary is requested to synthesize: information on Parties' experience in implementing the requirements of Article 18.2(a); views of Parties regarding the detailed requirements referred to in the second sentence of Article 18.2(a); and experiences of Parties with using existing unique identification systems under the Protocol.

The COP/MOP decides to establish an open-ended technical expert group on identification requirements of LMO-FFPs, whose terms of reference (ToR) are annexed to the decision. The ToR provide that the technical expert group shall examine issues related to specifying the identity of LMO-FFPs, including: accompanying documentation, information provided in the accompanying documentation, the extent and modality of using unique identifiers, and thresholds for adventitious or unintentional presence of LMOs that may be needed to trigger identification requirements. The expert group shall also review available sampling and detection techniques, with a view to harmonization and prepare a draft decision on these matters to be considered by COP/MOP-2.

b. Documentation for LMOs destined for contained use or for intentional introduction into the environment (Article 18.2(b) and (c)): The COP/MOP requests Parties and urges other governments to ensure the use of a commercial invoice or other documents as accompanying documentation, required or utilized by existing documentation systems, and considering formats outlined in an annexed sample template.

Parties are also requested, and other governments invited, to submit prior to COP/MOP-3, information on experience gained with the use of accompanying documentation, for future consideration of a stand alone document.

Regarding LMOs for contained use, the COP/MOP requests Parties and urges other governments to ensure that documentation accompanying LMOs contain, *inter alia*:

- clear identification as "LMOs," including common and scientific names of the organisms, and as "destined for contained use";
- name and address of the consignee, and exporter or importer, as appropriate, including contact details;
- any requirements for the safe handling, transport and use of LMOs as provided under applicable existing international instruments, domestic regulatory frameworks, or under any agreements entered into by the importer and exporter; and
- where appropriate, further information including the commercial names of the LMOs, new or modified traits and characteristics such as event(s) of transformation, risk class, specification of use, and unique identification, where available.

Regarding LMOs for intentional introduction, the COP/MOP requests Parties and urges other governments to ensure that documentation accompanying LMOs contains the following information and declaration:

- clear identification as "LMOs" and their description, including common and scientific names, relevant traits and genetic modification, including transgenic traits and characteristics, such as event(s) of transformation or a reference to a unique identification system;
- any requirements for the safe handling, transport and use of LMOs as provided under applicable existing international requirements, domestic regulatory frameworks, or under any agreement entered into by the importer and exporter;
- the name and address of the exporter and importer;
- the details of the contact point for further information, including an individual or organization in possession of relevant information in case of emergency;
- a declaration that the movement of the LMOs is in conformity with the Protocol's requirements; and
- where appropriate, further information, including the commercial name, risk class, and import approval for the first transboundary movement of LMOs.

The Executive Secretary is requested to report on information received from Parties, other governments or relevant international organizations on the above for consideration by COP/MOP-2.

c. Unique identification system(s): The COP/MOP invites Parties and other governments to take measures to apply, as appropriate, the OECD Unique Identifiers for Transgenic Plants to LMOs under the Protocol, without prejudice to the possible devel-



opment and applicability of other systems. The Executive Secretary is requested to develop or maintain, in the BCH, a register of unique identification codes to ensure harmonization of such codes, and encourages the OECD and other relevant organizations to initiate or enhance their activities towards developing a harmonized system of unique identifiers.

d. Capacity building: The COP/MOP requests the Executive Secretary to convene, prior to the meeting of the open-ended technical expert group, a workshop on capacity building and exchange of experiences related to implementing Article 18.2.

OTHER ISSUES FOR IMPLEMENTATION: Delegates discussed other issues necessary for the effective implementation of the Protocol (UNEP/CBD/BS/COP-MOP/1/13) on Tuesday, and adopted a draft decision on Wednesday.

Several Parties proposed addressing risk assessment and risk management. Delegates debated inviting Parties to submit relevant information. Tanzania, opposed by several Parties, supported establishing a permanent subsidiary body to deal with scientific and technical issues relating to the Protocol's implementation. Regarding transboundary movements of LMOs between Parties and non-Parties, many Parties said the draft decision should encourage non-Parties to ratify the Protocol, and include language ensuring that risk assessment is carried out.

Final Decision: In the decision (UNEP/CBD/BS/COP-MOP/1/L.4), the COP/MOP decides to use, as appropriate, all mechanisms available for considering scientific and technical issues arising from the Protocol, and formulating consensual views and common guidance necessary for effective implementation.

The COP/MOP also:

- decides to consider at its third meeting the need for a permanent subsidiary body to provide the COP/MOP with advice on scientific and technical issues; and
- requests the Executive Secretary to collect and collate existing guidance material regarding risk assessment and risk management of LMOs for consideration by COP/MOP-2.

In the annex containing guidance on the transboundary movement of LMOs between Parties and non-Parties, the COP/MOP recommends that each Party should, *inter alia*:

- notify or ensure prior notification of exports of LMOs to non-Parties;
- encourage and assist non-Parties to make informed decisions regarding imports of LMOs;
- ensure that risk assessment is carried out when exporting LMOs to non-Parties;
- apply its domestic regulatory framework, the AIA procedure, or a comparable procedure, when importing LMOs from a non-Party; and
- monitor and report transboundary movements with non-Parties.

The COP/MOP encourages non-Parties to:

- ratify the Protocol;
- cooperate with Parties in their efforts to achieve the Protocol's objectives;
- adhere to the Protocol's provisions on a voluntary basis, in particular those regarding AIA, risk assessment, risk management, and HTPI;

- make available to the BCH information required under the Protocol;
- participate in capacity-building activities designed and implemented to promote the Protocol's effective implementation; and
- inform the Secretariat of its competent national authorities and national focal point.

The Executive Secretary is requested to facilitate the participation of non-Parties.

WORKING GROUP II

CAPACITY BUILDING: On Monday, the Secretariat introduced documents on capacity building (UNEP/CBD/BS/COP-MOP/1/6 and Add.1-3), including interim guidelines for a roster of experts and an action plan and coordination mechanism for capacity building for effective implementation of the Protocol. Delegates expressed support for the proposed activities, with several stressing the need for capacity building for risk assessment and management, and identification and testing of LMOs. Many developing countries said they require capacity to make informed choices, and emphasized the need for demand-driven initiatives.

Delegates called for, *inter alia*, comprehensive institutional capacity building, field projects responding to countries' needs, references to centers of origin and genetic diversity, and access to, and use of, the BCH. Delegates requested clarifying the role of NGOs and the private sector in capacity building, with some suggesting strengthening their involvement. Regarding the roster of experts, delegates suggested limiting the number of expert nominations per country, and ensuring regional balance in their use. Several proposed including socioeconomic aspects in the action plan. The FAO called for references to the *Codex Alimentarius* and the International Plant Protection Convention.

On Wednesday, WG-II considered and approved a conference room paper (CRP) containing an amended draft decision and interim guidelines on the roster of experts. Delegates also considered a CRP on the action plan and coordination mechanism on capacity building. The African Group requested that only developed country Parties be invited to provide financial support for capacity-building activities and, with others, opposed references to industry's role in, *inter alia*, contributing to guidance on implementation issues. An informal group was formed to draft language on centers of origin and genetic diversity.

The closing plenary adopted two decisions on capacity building and the roster of experts without amendment.

Final Decision on Capacity Building: In the decision (UNEP/CBD/BS/COP-MOP/1/L.3), which contains five annexes, the COP/MOP adopts the annexed Action Plan, and invites Parties, other governments and relevant organizations to address its gaps. It further invites: the submission, and periodic updating, of capacity-building needs and priorities to the BCH; the use of the annexed toolkit; and the provision of financial and other assistance to developing country Parties. It urges implementation of the GEF's Initial Strategy for assisting countries to prepare for ratification, and requests the Executive Secretary to report on implementation and on capacity-building needs and priorities.



The COP/MOP also adopts the Coordination Mechanism for the implementation of the Action Plan, and requests the Executive Secretary to discharge the mechanism's functions and report on progress by COP/MOP-2.

The COP/MOP further takes note of the preliminary criteria and indicators for monitoring implementation, and also requests the Executive Secretary to report on operational experience at COP/MOP-4.

Annex I of the decision contains the Action Plan for capacity building, which includes sections on: objective, key elements, processes and steps, implementation on different levels, and monitoring and coordination. It also contains an appendix on the sequencing of activities.

Annexes II, III and V, respectively, address: the role of different entities in supporting capacity building; an implementation toolkit; and a set of preliminary indicators for monitoring implementation of the Action Plan. Annex IV on the Coordination Mechanism contains sections on: objective, guiding principles, elements, and administration.

Final Decision on the Roster of Experts: In the decision (UNEP/CBD/BS/COP-MOP/1/L.2), the COP/MOP adopts the annexed interim guidelines for the roster of experts, and urges nominations of experts, and updating of information contained in the roster. The Executive Secretary is requested to implement the interim guidelines and report on their use at COP/MOP-2 with a view to monitoring the regionally balanced use of experts.

The COP/MOP decides that a pilot phase of the voluntary fund will ensure payment for the use of experts by developing countries, and requests the Executive Secretary to administer the pilot phase and report on its operation.

Annex I of the decision contains interim guidelines for the roster of experts regarding: mandate, administration, access, membership, scope, reporting and review of the roster's operation, and choice, obligations, liability, payment of and expertise required by its experts. Annex II contains interim guidelines for the pilot phase of the voluntary fund regarding: purpose, financing, administration, eligibility criteria, and procedures for the operation of the fund.

COMPLIANCE: On Tuesday, WG-II considered draft compliance procedures and mechanisms (UNEP/CBD/BS/COP-MOP/1/8 and INF/4). Many opposed punitive measures to address non-compliance. The US supported, and several delegates opposed, reference to consistency with international law. Regarding the compliance committee, many Parties requested deleting a reference to balanced representation of importing and exporting countries in the committee. On submissions for non-compliance, several Parties, opposed by Brazil, supported submissions from any Party with respect to non-compliance by another Party.

WG-II agreed to establish a contact group co-chaired by Jürg Bally (Switzerland) and Rawson Yonadi (Tanzania) to address outstanding issues, including measures to address non-compliance and the committee's membership, procedures and underlying principles. The contact group met from Tuesday to Thursday.

The contact group debated references to: issuing a caution to the non-compliant Party; submissions from the COP/MOP through the Secretariat; the principle of common but differentiated responsibilities, or paying particular attention to the special needs of

developing country Parties and implementation difficulties they encounter; and balancing representation of importing and exporting countries in the compliance committee. Many delegates called for committee members to serve objectively and in the best interest of the Protocol, while a developed country group asked that they also serve in their individual capacity. An informal group was created to draft text on suspension of rights and privileges, and a regionally balanced "Friends of the Co-Chairs" group was established to discuss outstanding issues.

On Thursday, Co-Chair Bally reported to the contact group on progress made by the "Friends of the Co-Chairs" group, noting that disagreement remained regarding: reference to common but differentiated responsibilities; members serving in their personal capacity; Party-to-Party triggers; and measures to address non-compliance.

On Thursday evening, WG-II approved without amendment a Chair's text on draft procedures and mechanisms on compliance, prepared by WG-II Chair Yang and the "Friends of the Co-Chairs" group.

Final Decision: In the final decision (UNEP/CBD/BS/COP-MOP/1/L.10), the COP/MOP adopts the annexed procedures and mechanisms on compliance, establishes the Compliance Committee, and requests the Executive Secretary to arrange for a meeting of the Committee before COP/MOP-2.

The annex on procedures and mechanisms on compliance contains sections on: the objective, nature and underlying principles; institutional mechanisms; functions of the Committee; procedures; information and consultation; measures to promote compliance and address cases of non-compliance; and review of the procedures and mechanisms.

On the underlying principles, the compliance procedures and mechanisms shall be facilitative and cooperative in nature, pay particular attention to developing country Parties' special needs, and take into full consideration the difficulties they face in implementing the Protocol.

The Compliance Committee shall meet twice a year, be regionally balanced and consist of 15 members elected by the COP/MOP. Committee members shall serve objectively and in a personal capacity.

On procedures, the Committee receives, through the Secretariat, any submissions relating to compliance from any Party with respect to itself, and from any Party, which is affected or likely to be affected, with respect to another Party. The Committee may reject any ill-founded submission.

On information and consultation, the Committee shall consider relevant information from: the Party concerned; the Party that has made a submission; the BCH, COP, COP/MOP and subsidiary bodies to the Convention and Protocol; and relevant international organizations.

On measures to promote compliance and address non-compliance, the Committee may report to the COP/MOP on non-compliant Parties' efforts to return to compliance and maintain this as an agenda item of the Committee until adequately resolved. Upon the Committee's recommendations, the COP/MOP may, taking into account the compliance capacity of the Party involved, especially developing countries, and the cause, type, degree and frequency of non-compliance, also decide to, *inter alia*: issue a caution to the concerned Party; request the Secretariat to publish



cases of non-compliance in the BCH; and in cases of repeated non-compliance, take such measures as may be decided upon by COP/MOP-3 and thereafter.

On the review process of the procedures and mechanisms, the COP/MOP shall, at its third meeting and thereafter, review their effectiveness, address repeated cases of non-compliance, and take appropriate action.

LIABILITY AND REDRESS: On Tuesday, WG-II considered documents on liability and redress (UNEP/CBD/BS/COP-MOP/1/9, Add.1 and INF/5-8).

Many delegates supported creating a working group on liability and redress, and suggested that it report to the COP/MOP. China, Canada and others proposed that the working group make recommendations on appropriate international rules and procedures, if so requested by the COP/MOP. The Republic of Korea called for a set of interim measures until the regime is established.

On Wednesday, delegates considered a CRP on the draft ToR for an open-ended working group on liability and redress. Some delegates opposed a reference noting that the working group needs to clarify the concepts embodied in Article 27 of the Protocol (Liability and redress). Delegates debated the work plan of the working group and whether it “shall,” rather than “endeavor to,” complete its work within four years. Delegates established a “Friends of the Chair” group to resolve outstanding issues regarding the mode of adoption of any possible outcome.

On Thursday, delegates approved a revised CRP with a minor amendment.

Final Decision: In the decision (UNEP/CBD/BS/COP-MOP/1/L.8), the COP/MOP establishes an open-ended *ad hoc* working group of legal and technical experts on liability and redress. It requests the Executive Secretary to convene a technical group of experts to undertake preparatory work for the working group, which should meet at least once before COP/MOP-2.

The annexed ToR for the working group state that the group shall be composed of representatives, including legal, technical and scientific experts, nominated by Parties, and shall be open to observers. The working group shall: examine information provided by Parties, governments and others; take into account the report of the workshop on liability and redress; and take due account of ongoing processes under international law. It shall analyze general issues relating to the potential and/or actual damage scenarios of concern and to the application of international rules and procedures to these scenarios. The working group shall also elaborate options for elements of rules and procedures, which may include, *inter alia*, definition and nature of damage, valuation of damage to biodiversity and human health, channeling of liability, roles of Parties of import and export, mechanisms of financial security and standing/right to bring claims.

The group shall report to each COP/MOP and, two years after its establishment, the COP/MOP will review its activities and provide guidance. It shall present its final report, together with the proposed international rules and procedures to the COP/MOP, and shall complete its work in 2007.

The indicative work plan attached to the decision provides for a meeting of the technical expert group in 2004, and for five meetings of the working group from 2005-2007, subject to budgetary considerations.

COP/MOP-1 CLOSING PLENARY

On Friday morning, COP/MOP-1 President Dato' Seri Law opened the closing plenary. He explained that the COP-7 Bureau would serve as the Bureau of COP-MOP/2, and noted the need to replace six Bureau members from countries not currently Parties to the Protocol. Delegates elected the following new members: Birthe Ivars (Norway); Eric Mugurusi (Tanzania); Sergey Gubar (Ukraine); Igor Ferencik (Slovakia); Pati Keresoma Liu (Samoa); and Ahmed Salem (Tunisia) until Moustafa Fouda (Egypt) takes office on 21 March 2004, when Egypt becomes a Party to the Protocol. Other Bureau members are: Philip Buckley (Ireland); Oyundari Navaan-Yunden (Mongolia); Dalia Salabarría Fernandez (Cuba); and Antonio Matamoros (Ecuador).

Rapporteur Gordana Beltram (Slovenia) reported on credentials submitted by representatives of Parties attending COP/MOP-1, and proposed that participation of the 19 delegations, whose credentials were not in order, be provisionally approved. The plenary agreed.

Delegates adopted a decision on the date and venue of COP/MOP-2 (UNEP/CBD/BS/COP-MOP/1/L.13), with an amendment noting that COP/MOP-2 will be held in the second quarter of 2005. The Secretariat explained that unless an offer to host the meeting is received, it will be held at the site of the CBD Secretariat in Montreal, Canada.

Regarding other matters, Rapporteur Beltram introduced, and Parties adopted, a tribute to the Government and people of Malaysia, expressing the deep appreciation and sincere gratitude of COP/MOP-1 (UNEP/CBD/BS/COP-MOP/1/L.14).

WG-I Chair Pythoud and WG-II Chair Yang presented the reports of their working groups. Delegates adopted WG-I's report (UNEP/CBD/BS/COP-MOP/1/L.12/Add.1) with a minor amendment, and WG-II's report (UNEP/CBD/BS/COP-MOP/1/L.12/Add.2) without amendment.

Delegates then proceeded to elect the Compliance Committee members, each regional group nominating one member for a two-year term and two members for four-year terms. The African Group nominated Bather Kone (Mali) for a two-year term, and Mary Fosi Mbantenkhu (Cameroon) and Tewolde Berhan Egziabher (Ethiopia) for four-year terms. GRULAC nominated Victor Villalobos (Mexico) for a two-year term, and Leonard O'Garro (Barbados) and Alavaro Rodriguez (Colombia) for four-year terms. Central and Eastern Europe nominated Sergey Gubar (Ukraine) for a two-year term, and Biserka Strel (Slovenia) and Gábor Nechay (Hungary) for four-year terms. The Western Europe and Others Group nominated Birthe Ivars (Norway) for a two-year term, and Jürg Bally (Switzerland) and Veit Koester (Denmark) for four-year terms. The Asia and Pacific Group nominated Netatua Prescott (Tonga) for a two-year term, and Nemat Khansari (Iran) and Gurdial Singh Nijar (Malaysia) for four-year terms. The plenary elected the fifteen nominated candidates.

Rapporteur Beltram presented, and delegates adopted without amendment, the meeting's report (UNEP/CBD/BS/COP-MOP/1/L.12). Australia noted its disappointment that the views of non-Parties were not taken into account in decision making, and requested making clear that the COP/MOP cannot make requests to non-Parties to the Protocol. The US noted its understanding that non-compliance measures developed by the COP/MOP will be consistent with international law, and that provisions for documen-



tation requirements under Article 18.2 (documentation of LMOs) are voluntary. Canada thanked all Parties for their efforts to accommodate minority views.

COP/MOP-1 President Dato' Seri Law thanked all delegates for their work, and said the meeting provided a solid basis for the Protocol's effective implementation. He then gavelled the meeting to a close at 12:30 pm.

COP-7 CLOSING PLENARY

COP-7 President Dato' Seri Law opened the resumed COP-7 closing plenary, immediately following the closure of COP/MOP-1, introducing the COP/MOP-1 decision on guidance to the financial mechanism (UNEP/CBD/BS/COP-MOP/1/L.7). He said the decision will complete the guidance given by COP-7.

Argentina, supported by Zimbabwe, Chile and Uruguay, expressed concern regarding the process of elaboration of the decision. He said the text inadequately restricted access to GEF funding for non-Parties, and requested a reference to the need for assistance in developing infrastructure to accommodate LMO segregation in order to comply with Article 18.2. After informal consultations, Nigeria proposed and delegates agreed to language noting that all developing country Parties to the Convention, which provide a clear political commitment towards becoming Parties to the Protocol, shall also be eligible for funding by the GEF for establishing other necessary institutional capabilities to enable a non-Party to become a Party. The plenary adopted the decision with this amendment.

Mauritius, on behalf of the Small Island Developing States, invited delegates to the meeting on the 10-year review of the Barbados Programme of Action. India, on behalf of the Asia and Pacific Region and the Like-minded Megadiverse countries, called on non-Parties to ratify the Protocol. Ethiopia, on behalf of the African Group, said the COP/MOP should ensure that the meetings requested by COP/MOP-1 decisions can be covered by the 2005 budget. Hungary, on behalf of Central and Eastern Europe, Australia, on behalf of JUSCANZ, Ireland, on behalf of the EU, Acceding Countries and Bulgaria and Romania, and Colombia, on behalf of GRULAC, made statements of appreciation to the Malaysian Government and the Secretariat.

The Republic of Korea invited delegates to Jeju for the UNEP Governing Council from 29-31 March 2004. Nepal stressed its willingness to meet its commitments despite its weak infrastructure. NGO and indigenous representatives rejected the NAFTA Trilateral Arrangement on LMO-FFPs, and said that decisions based on the precautionary principle do not necessarily entail trade restrictions.

Nehemiah Rotich, on behalf of UNEP Executive Director Klaus Töpfer, said UNEP will continue to support CBD work. CBD Executive Secretary Hamdallah Zedan paid tribute to the progress achieved during COP-7 and COP/MOP-1. COP-7 President Dato' Seri Law said the meeting successfully set a path for an operational and practical instrument on biosafety to ensure protection against the adverse effects of LMOs without unduly impeding trade. He then gavelled COP-7 to a close at 3:50 pm.

A BRIEF ANALYSIS OF COP/MOP-1

Nearly four years after the lengthy and painful negotiations leading up to its adoption, the Cartagena Protocol on Biosafety finally entered into force. Eighty-seven Parties have now ratified the Protocol and, as more countries continue towards ratification, the first meeting of the Parties faced the important task of setting up the operational framework to enable the Protocol's effective implementation. Delegates had their hands full with issues such as developing a compliance procedure, elaborating documentation requirements under Article 18 (Handling, transport, packaging and identification (HTPI)), setting up the process for drafting rules and procedures on liability and redress, and addressing capacity building and the Biosafety Clearing-house (BCH).

Delegates were not only faced with a full process-focused agenda, they also had to be mindful of other international processes dealing with biotechnology-related issues. Even though the Protocol is the only international instrument dealing exclusively with living modified organisms (LMOs), it runs in parallel with various international instruments and standard-setting bodies, including the International Plant Protection Convention, the *Codex Alimentarius*, the Organization for Economic Cooperation and Development (OECD) and a number of agreements under the World Trade Organization (WTO).

This brief analysis focuses on HTPI and compliance, and examines the dynamics between Parties and non-Parties, and the meeting's success in setting up the operational framework for implementation.

DOCUMENTATION OF LMOs: BEING PRACTICAL YET EFFECTIVE

With a clear mandate to establish documentation requirements for all shipments of LMOs destined for food, feed or for processing (LMO-FFPs), Parties not only reached agreement on interim documentation measures, but also decided to create an expert group to take work forward on the type and content of documentation. The outcome of the negotiations on HTPI went beyond the expectations of many, namely that opposition to delving into these details at this early stage would prevail. Ably guided by WG-I Chair Pythoud, delegates succeeded in crafting language that satisfied both those preferring a step-by-step practical approach to putting in place documentation for LMO-FFPs, and those wishing to forge ahead on elaborating the Protocol's "may contain" requirements. These requirements reflect a compromise reached during the very last stage of the Protocol's negotiation, under which the documentation accompanying LMO-FFPs should clearly identify that they "may contain" LMOs. The expert group will now have to interpret the "may contain" language and determine the extent to which additional information should be included. In this regard, one of the significant steps achieved at this meeting is the recognition of the unique identifiers developed by the OECD, which gives credibility to a system that can help address the many LMO information needs under the Protocol, and assist importers and exporters in accessing information through the BCH.

While documentation is an essential basis for transparency in the Protocol, many developing countries are in a Catch-22 situation: while they need to gain experience before developing their own approval system, they need to first develop their approval system to gain experience. As the process moves forward, Parties



will need to develop the appropriate capacity-building tools to resolve this quandary. The challenge for the Protocol as documentation requirements are further being developed will be to find the right balance between practicality and effectiveness.

A COMPLIANCE COMMITTEE IS BORN

Compliance remained a difficult issue during the meetings of the Intergovernmental Committee on the Cartagena Protocol (ICCP), and delegates in Kuala Lumpur initiated their deliberations on the basis of a heavily bracketed text. Most developing country delegations had decided in advance that sanctions are not the solution, and negotiated in full force to ensure the development of a facilitative procedure that would give due consideration to their capacity needs and shield them from non-compliance allegations. Other Parties were set to ensure effective mechanisms to address non-compliance, which, according to them, would signal a strong Protocol. It was of little surprise, therefore, that issues related to Party-to-Party triggering and measures to address repeated non-compliance were most contentious.

Differences were so entrenched that despite discussions in the working group, contact group, informal consultations and a "Friends of the Co-Chairs" group, consensus seemed impossible. As delegates waited for the "Friends" output late Thursday night, many had resigned themselves to the possibility of proceeding with brackets. Yet, unexpectedly, a delicate compromise was reached in the nick of time, under WG-II Chair Yang's strong leadership. The decision establishes a Compliance Committee where procedures can be triggered by any Party affected or likely to be affected by another Party's non-compliance. On repeated cases of non-compliance, Parties postponed decision on measures until COP/MOP-3, which may encourage some non-Parties to finalize their ratification by that time to enable them to participate in the negotiations.

The Committee's success depends largely on its members, who are called upon to serve objectively and in a personal capacity. However, this personal mandate may prove difficult to apply as Parties will nominate members to the Committee. One key to building the Committee's credibility and authority will be to ensure that members are seen to be serving in the Protocol's best interest. The nomination of some well-respected individuals with a long history in the Cartagena process is a promising first step in this direction.

SECURING PARTIES' RIGHTS VERSUS ENCOURAGING RATIFICATION: ACHIEVING A FINE BALANCE

From beginning to end, the meeting struggled to find a balance on the extent of participation of non-Parties in the process. Disagreements arose over participation of non-Parties in contact and drafting groups, and their exclusion from the "Friends of the Chair" groups, especially with regard to the financial mechanism. Many Parties, echoed by the WG-II Chair, stressed that adopted decisions should only reflect the views of Parties, while non-Parties expressed concern over their lack of meaningful participation.

The issue was further clouded by the appeals of several delegates whose countries were nearing ratification, or whose eventual ratification rested to a great extent on the meeting's outcome. The positions of old coalitions now facing the need to accommodate Party and non-Party perspectives also contributed to the tension, reinforcing the transatlantic divide. The NAFTA Trilateral Arrangement on LMO-FFPs, recently put in place by Mexico (a

Party), Canada and the US (non-Parties), further highlighted the fundamental differences in LMO regulation between the US and the EU. While the EU recently put in place one of the most stringent systems for labeling and traceability of LMOs, the Trilateral Arrangement allows up to 5 percent of LMOs before requiring documentation. Many saw this Arrangement as running counter to the spirit and intent of the Protocol, and, importantly, as having the adverse potential to start a domino effect across the American continent if other countries follow suit.

On the substance, a balance was successfully achieved between adopting concrete decisions to move forward in implementation, with measures on documentation for LMOs, and leaving other issues, including details of measures to address non-compliance, to be taken up at a later stage when more countries have finalized the ratification process. This balance was delicate and uncertain until the end, as illustrated by a lengthy debate in the COP/MOP closing plenary over funding opportunities for non-Parties. This thorny issue was carried over by non-Parties to the COP-7 closing plenary, following conclusion of the COP/MOP, and threatened to postpone agreement on guidance to the financial mechanism. Agreement was eventually reached by ensuring access to GEF funds for developing country CBD Parties in order to enable development of the necessary institutional capabilities to be in a position to implement the Protocol, provided they show a clear political commitment towards becoming Parties.

SETTING STRONG FOUNDATIONS FOR IMPLEMENTATION

The establishment of a Compliance Committee was applauded as a concrete outcome and a major achievement towards the Protocol's implementation. Notwithstanding its crucial importance, other outcomes of the meeting, such as the establishment of a Working Group mandated with drafting, within four years, rules and procedures in the field of liability and redress, should not be underestimated. These are all solid steps towards the development of an operational and effective mechanism, which would simultaneously enable the Protocol's implementation, gain the confidence of Parties and non-Parties alike, and address society's concerns over potential risks of LMOs.

THINGS TO LOOK FOR BEFORE COP-8

UNEP-GEF SUBREGIONAL WORKSHOP ON DEVELOPMENT OF NATIONAL BIOSAFETY FRAMEWORKS

FOR ANGLOPHONE AFRICA: This workshop is tentatively scheduled from 9-12 March 2004, in Dar-es-Salaam, Tanzania. For more information, contact: Christopher Briggs; tel: +41-22-917-8411; fax: +41-22-917-8070; e-mail: chris.briggs@unep.ch; Internet: <http://www.unep.ch/biosafety/devsubregwrkshops.htm>

SYMPOSIUM ON MAIZE AND BIODIVERSITY: THE

EFFECTS OF TRANSGENIC MAIZE IN MEXICO: This symposium, organized by the North American Commission for Environmental Cooperation (CEC), will convene from 11-12 March 2004, in Oaxaca, Mexico. For more information, contact: CEC; tel: +1-514-350-4300; fax: +1-514-350-4314; e-mail: info@ccemtl.org; Internet:

<http://www.cec.org/maize/symposium/index.cfm?varlan=english>



SIXTH MEETING OF WIPO'S INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE: This meeting will convene from 15-19 March 2004, in Geneva, Switzerland. For more information, contact: World Intellectual Property Organization; tel: +41-22-338-8161; fax: +41-22-338-8810; e-mail: publicinf@wipo.int; Internet: <http://www.wipo.int/tk/en/igc/documents/index.html#6>

EIGHTH SPECIAL SESSION OF THE UNEP GOVERNING COUNCIL/FIFTH GLOBAL MINISTERIAL ENVIRONMENT FORUM: These meetings will be held jointly from 29-31 March 2004, in Jeju, Republic of Korea. For more information, contact: Beverly Miller, Secretary for the UNEP Governing Council; tel: +254-2-623431; fax: +254-2-623929; e-mail: beverly.miller@unep.org; Internet: <http://www.unep.org> or <http://www.2004unepkorea.org/>

SECOND ASIAN CONFERENCE ON BIOTECHNOLOGY AND DEVELOPMENT: This conference, organized by the Confederation of Indian Industry, the Research and Information System for the Non-Aligned and Other Developing Countries and IUCN-The World Conservation Union, will be held from 7-8 April 2004, in New Delhi, India. For more information, contact: Nagesh Kumar, Director-General, RIS; tel: +91-11-246-821-7780; fax: +91-11-246-821-7374; e-mail: dgoffice@ris.org.in; Internet: <http://www.ris.org.in/SecConference/SACBD.htm>

12TH SESSION OF THE COMMISSION ON SUSTAINABLE DEVELOPMENT: CSD-12 will be held from 14-30 April 2004, at UN headquarters in New York. During the first three days the CSD will serve as the Preparatory Committee for the International Meeting to Review the Implementation of the Barbados Programme of Action for the Sustainable Development of Small Island Developing States. For more information, contact: the Department of Economic and Social Affairs; tel: +1-212-963-2803; fax: +1-212-963-4260; e-mail: dsd@un.org; Internet: <http://www.un.org/esa/sustdev/csd/csd12/csd12.htm>

WORKSHOP ON INTRODUCTION TO BIOSAFETY AND RISK ASSESSMENT FOR THE ENVIRONMENTAL RELEASE OF GMOS: THEORETICAL APPROACH AND SCIENTIFIC BACKGROUND: The workshop, organized by the International Centre for Genetic Engineering and Biotechnology (ICGEB), will be held from 19-23 April 2004, in Trieste, Italy. For more information, contact: Programme and Training Unit, ICGEB; tel: +39-040-375-7333; fax: +39-040-226-555; e-mail: courses@icgeb.org; Internet: <http://www.icgeb.org/~bsafesrv/bsfn0309.htm#anchor442802>

UNEP-GEF SUBREGIONAL WORKSHOP ON DEVELOPMENT OF NATIONAL BIOSAFETY FRAMEWORKS FOR FRANCOPHONE AFRICA: This workshop is tentatively scheduled for 20-23 April 2004, in Ouagadougou, Burkina Faso. This workshop aims to help participants acquire a better understanding of the different options for regulatory regimes and administrative systems for biosafety, as well as legal and administrative requirements of the Cartagena Protocol. For more information, contact: Christopher Briggs; tel: +41-22-917-8411; fax: +41-22-917-8070; e-mail: chris.briggs@unep.ch; Internet: <http://www.unep.ch/biosafety/devsubregwrkshops.htm>

EUROPEAN BIOSAFETY ASSOCIATION SEVENTH ANNUAL CONFERENCE: The seventh annual conference of the European Biosafety Association will convene from 13-14 May

2004, in Prague, Czech Republic. It will consider biosafety risk assessment, containment and safe disposal. For information, contact: Mireille De Cré; tel +32-1-571-1037; fax +32-1-571-3189; e-mail: Mdc@ebsa.be; Internet: <http://www.ebsa.be>

INTERNATIONAL MEETING TO REVIEW THE IMPLEMENTATION OF THE BARBADOS PROGRAMME OF ACTION FOR THE SUSTAINABLE DEVELOPMENT OF SMALL ISLAND DEVELOPING STATES: This meeting will take place from 30 August to 3 September 2004, in Mauritius. For more information, contact: Diane Quarless, UN SIDS Unit; tel: +1-212-963-4135 fax: +1-917-367-3391; e-mail: mauritius2004@sidsnet.org; Internet: <http://www.sidsnet.org>

FIFTH CONGRESS OF THE EUROPEAN SOCIETY FOR AGRICULTURAL AND FOOD ETHICS: The Congress, organized by the European Society for Agricultural and Food Ethics, will convene from 2-4 September 2004, in Leuven, Belgium. For more information, contact: Centre for Agricultural Bio- and Environmental Ethics; tel: +32-1-632-1734; fax: +32-1-632-1994; e-mail: cabme@agr.kuleuven.ac.be; Internet: <http://www.kuleuven.ac.be/cabme/page.php?LAN=E&FILE=subject&ID=100&PAGE=1>

SECOND MEETING OF THE CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES TO THE CARTAGENA PROTOCOL ON BIOSAFETY: The Biosafety Protocol COP/MOP-2 will be held in the second quarter of 2005. Unless an offer to host the meeting is received, it will take place in Montreal, Canada. For more information, contact: the CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; Internet: <http://www.biodiv.org>

EIGHTH CONFERENCE OF THE PARTIES OF THE CONVENTION ON BIOLOGICAL DIVERSITY: CBD COP-8 will take place in 2006 in Brazil. For more information, contact: the CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; Internet: <http://www.biodiv.org>



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