



**FIRST MEETING OF THE WORKING GROUP OF LEGAL AND TECHNICAL EXPERTS ON LIABILITY AND REDRESS AND SECOND MEETING OF THE PARTIES TO THE CARTAGENA PROTOCOL ON BIOSAFETY:
25 MAY – 3 JUNE 2005**

The first meeting of the *Ad Hoc* Open-ended Working Group of Legal and Technical Experts on Liability and Redress in the context of the Cartagena Protocol on Biosafety begins today and will continue until 27 May 2005, in Montreal, Canada. It will be followed by the second meeting of the Conference of the Parties to the Convention on Biological Diversity (CBD) serving as the Meeting of the Parties to the Cartagena Protocol on Biosafety (COP/MOP-2), which will convene from 30 May to 3 June 2005.

Pursuant to Article 27 of the Protocol, the *Ad Hoc* Group on Liability and Redress was established by COP/MOP-1 to: review information relating to liability and redress for damage resulting from transboundary movements of living modified organisms (LMOs); analyze general issues relating to the potential and/or actual damage scenarios of concern, and application of international rules and procedures on liability and redress to the damage scenarios; and elaborate options for elements of rules and procedures on liability and redress, including definition and nature of damage, valuation of damage to biodiversity and to human health, threshold of damage, causation, channeling of liability, roles of Parties of import and export, standard of liability, mechanisms of financial security and right to bring claims. The Group shall report on its activities to the COP/MOP and complete its work in 2007.

COP/MOP-2 will consider: options for implementing notification requirements; risk assessment and risk management; handling, transport, packaging and identification (HTPI); socioeconomic considerations; and public awareness and participation. It will also address a number of standing issues, including: the report of the Compliance Committee; operations and activities of the Biosafety Clearing-House (BCH); the status of capacity-building activities and the use of the roster of experts; the financial mechanism and resources; cooperation with other organizations; and a report of the Executive Secretary on the administration of the Protocol and on budgetary matters.

A BRIEF HISTORY OF THE CARTAGENA PROTOCOL ON BIOSAFETY

The Cartagena Protocol on Biosafety 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 procedure for imports of LMOs for intentional introduction into the environment, and also incorporates the precautionary approach 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. The Biosafety Protocol entered into force on 11 September 2003, 90 days after receipt of its 50th instrument of ratification. There are currently 119 Parties to the Protocol.

NEGOTIATION PROCESS: 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 resulting from biotechnology that may have an adverse effect on biodiversity and its components. A Biosafety Working Group (BSWG) was established to this end at COP-2 (November 1995, Jakarta, Indonesia).

The BSWG held six meetings between 1996 and 1999. The first two meetings identified elements for the future protocol and helped to articulate positions. BSWG-3 (October 1997, Montreal, Canada) developed a consolidated draft text to serve as the 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 and submit the draft protocol to the first Extraordinary Meeting of the COP (ExCOP), convened immediately following BSWG-6. Despite intense negotiations, delegates could not agree on a compromise package that would finalize the protocol, and the meeting was suspended. Outstanding issues included: the scope of the protocol; its relationship with other agreements, especially those related to trade; the treatment of LMOs for food, feed or processing (LMO-FFPs); its reference to precaution; and documentation requirements.

Following suspension of the ExCOP, three sets of informal consultations were held, involving the five negotiating groups that had emerged during the Cartagena meetings: the Central and Eastern European Group; the Compromise Group (Japan, Mexico, Norway, Republic of Korea and Switzerland, joined later by New Zealand and Singapore); the EU; the Like-minded Group (the majority of developing countries); and the Miami Group (Argentina, Australia, Canada, Chile, the US and Uruguay). Compromise was reached on the outstanding issues, and the resumed ExCOP (January 2000, Montreal, Canada) adopted the Cartagena Protocol on Biosafety on 29 January 2000. The meeting also 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 development of a BCH. During a special ceremony held at COP-5 (May 2000, Nairobi, Kenya), 67 countries and the European Community signed the Protocol.

ICCP PROCESS: The ICCP held three meetings, and deliberations focused on: information sharing and the BCH; capacity building and the roster of experts; decision-making procedures; compliance; HTPI; monitoring and reporting; and liability and redress.

COP/MOP-1: COP/MOP-1 (February 2004, Kuala Lumpur, Malaysia) adopted decisions on: decision-making procedures; information sharing and the BCH; capacity building; HTPI; compliance; liability and redress; monitoring and reporting; the Secretariat; guidance to the financial mechanism; and the medium-term work programme. The meeting agreed on documentation of LMO-FFPs, and an expert group was established to further elaborate specific identification requirements. Agreement was also reached on more detailed documentation requirements for LMOs destined for direct introduction into the environment. The meeting established a 15-member Compliance Committee, and launched an *Ad Hoc* Open-ended Working Group of Legal and Technical Experts on Liability and Redress.

INTERSESSIONAL HIGHLIGHTS

27TH SESSION OF THE CODEX ALIMENTARIUS COMMISSION: At its 27th session (28 June-3 July 2004, Geneva, Switzerland), the Codex Alimentarius Commission re-established the *Ad Hoc* Intergovernmental Task Force on Foods Derived from Biotechnology for a four-year period to develop standards, guidelines or recommendations on the basis of scientific evidence and risk analysis, with regard, where appropriate, to other legitimate factors relevant to consumers' health and the promotion of fair practices in food trade.

EXPERT GROUP ON LIABILITY AND REDRESS: Convened to undertake preparatory work for the first meeting of the *Ad Hoc* Group on Liability and Redress, the Technical Group of Experts on Liability and Redress in the context of the Biosafety Protocol (18-20 October 2004, Montreal, Canada) identified information gaps and requested additional information on: the scientific analysis and assessment of risks involved in the transboundary movement of LMOs; determination of damage to the conservation and sustainable use of biodiversity, and of socioeconomic damage; availability of financial security to cover liability; the status of treaties providing for third-party liability; and relevant developments in international law. The Expert Group also identified a list of scenarios, options, approaches and issues for further consideration by the *Ad Hoc* Group on Liability and Redress.

WORKSHOP ON IMPLEMENTATION OF ART.

18.2: The Workshop on Capacity Building and Exchange of Experiences as related to the Implementation of Article 18.2 of the Biosafety Protocol (1-3 November 2004, Bonn, Germany) aimed to facilitate discussions on documentation requirements and their appropriate implementation. Participants heard and discussed presentations on existing documentation systems and their use in implementing the identification requirements of the Biosafety Protocol regarding LMO-FFPs, LMOs intended for contained use, and those destined for intentional introduction into the environment. Participants also discussed national and regional experiences in implementing existing documentation systems, capacity needs of developing countries, and the use of unique identifiers in documentation accompanying LMOs.

THIRD IUCN WORLD CONSERVATION CONGRESS: Convening on the theme "People and Nature – only one world," the third IUCN World Conservation Congress (17-25 November 2004, Bangkok, Thailand) approved 118 resolutions and recommendations addressing a series of topics, including: a

call for a moratorium on further release of genetically modified organisms; the establishment of the World Conservation Learning Network to build the capacity of conservation and development professionals; actions that contribute to combating poverty through nature conservation; conservation and sustainable management of high seas biodiversity; and work with indigenous peoples, particularly in the establishment and management of protected areas.

INTERNATIONAL CONFERENCE ON BIODIVERSITY: The International Conference on Biodiversity (24-28 January 2005, Paris, France) convened on the theme "Biodiversity: Science and Governance." Plenary sessions addressed: challenges of biodiversity, science and governance; the status and trends of the world's biodiversity; social and ecological benefits of biodiversity; and management of living resources. Workshop topics included: governance; biodiversity and agriculture; challenges to achieving the 2010 target to significantly reduce biodiversity loss; indicators and the 2010 target; and sustainable management of tropical and subtropical biodiversity, including islands and forests. The Conference produced the Paris Declaration on Biodiversity, an appeal by scientists regarding biodiversity, and the Conference Statement.

SBSTTA-10: The tenth meeting of the CBD Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA-10) (7-11 February 2005, Bangkok, Thailand) established a technical expert group on biodiversity and climate change, and adopted a series of recommendations to COP-8, including on: a work programme on island biodiversity; the suitability of various indicators for an assessment of progress towards the 2010 target; the integration of global outcome-oriented targets into CBD work programmes; steps for the review of implementation of the Global Taxonomy Initiative programme of work; options for a cross-cutting initiative on biodiversity for food and nutrition; and proposals for the application of ways and means to remove or mitigate perverse incentives.

ABS-3: The third meeting of the CBD *Ad Hoc* Open-ended Working Group on Access and Benefit-sharing (ABS) (14-18 February 2005, Bangkok, Thailand) initiated negotiations on an international regime on ABS, as mandated by COP-7. The Working Group also considered: additional approaches to complement the Bonn Guidelines on ABS, such as an international certificate of origin/source/legal provenance; measures to ensure compliance with the prior informed consent of Parties providing genetic resources and of indigenous and local communities providing associated traditional knowledge; and options for indicators for ABS to be used for evaluating progress in the implementation of the CBD Strategic Plan.

MEETING OF THE COMPLIANCE COMMITTEE: In its first meeting (14-16 March 2005, Montreal, Canada), the Compliance Committee established under the Biosafety Protocol approved its rules of procedure and a work plan, and noted the importance of assisting Parties in the preparation and timely submission of their interim national reports.

EXPERT GROUP ON IDENTIFICATION REQUIREMENTS OF LMO-FFPs: The Open-ended Technical Expert Group on Identification Requirements of LMO-FFPs (16-18 March 2005, Montreal, Canada) discussed issues related to: information to be provided in the accompanying documentation, including information on the LMOs; a statement to be incorporated in documentation, and contact information; the extent and modality of using unique identifiers; thresholds for adventitious or unintentional presence, including thresholds for approved and unapproved LMOs; and available LMO sampling and detection techniques, with a view to harmonization. The Expert Group did not reach agreement on a draft decision for COP/MOP-2 consideration and decided to forward a Chair's text acknowledging that it does not represent consensus.