

FOURTH MEETING OF THE OPEN-ENDED AD HOC WORKING GROUP OF LEGAL AND TECHNICAL EXPERTS ON LIABILITY AND REDRESS IN THE CONTEXT OF THE CARTAGENA PROTOCOL ON BIOSAFETY: 22-26 OCTOBER 2007

The fourth meeting of the Open-ended *Ad Hoc* Working Group of Legal and Technical Experts on Liability and Redress in the context of the Cartagena Protocol on Biosafety (hereafter, the Working Group) is taking place from 22 to 26 October 2007 in Montreal, Canada.

The Working Group was established pursuant to Article 27 (Liability and Redress) of the Cartagena Protocol on Biosafety by the first 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-1) in 2004. Its mandate is to:

- review information relating to liability and redress for damage resulting from transboundary movements of living modified organisms (LMOs);
- analyze general issues relating to potential and/or actual damage scenarios of concern; and
- elaborate options for elements of rules and procedures on liability and redress.

At its fourth meeting, the Working Group is expected to focus on the elaboration of options for rules and procedures referred to in Article 27 of the Protocol. Discussions will be focused on a working draft prepared by the Co-Chairs René Lefeber (the Netherlands) and Jimena Nieto (Colombia), synthesizing submissions of operational texts with respect to approaches and options identified pertaining to liability and redress in the context of Article 27 of the Protocol (UNEP/CBD/BS/WG-L&R/4/2).

After its fourth meeting, the Working Group is scheduled to hold one more meeting prior to reporting to COP/MOP-4 in May 2008.

A BRIEF HISTORY OF THE CARTAGENA PROTOCOL

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 includes an

advance informed agreement procedure for imports of LMOs intended for intentional introduction into the environment, and incorporates the precautionary approach and mechanisms for risk assessment and risk management. The Protocol establishes a Biosafety Clearing-House (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 Protocol entered into force on 11 September 2003 and currently has 143 parties.

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 for this purpose 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 articulate positions. BSWG-3 (October 1997, Montreal, Canada) developed a consolidated draft text to serve as the basis for negotiation. BSWG-4 and BSWG-5 focused on reducing and refining options for each article of the draft protocol. BSWG-6 (February 1999, Cartagena, Colombia), was mandated to complete negotiations and submit the draft protocol to the first Extraordinary Meeting of the COP (ExCOP), convened immediately following BSWG-6. However, 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); 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 European Union (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 between December 2000 and April 2002, focusing on: information sharing and the BCH; capacity building and the roster of experts; decision-making procedures; compliance; handling, transport, packaging and identification (HTPI); monitoring and reporting; and liability and redress.

COP/MOP-1: COP/MOP-1 (February 2004, Kuala Lumpur, Malaysia) adopted decisions on: information sharing and the BCH; capacity building; decision-making procedures; HTPI; compliance; liability and redress; monitoring and reporting; the Secretariat; guidance to the financial mechanism; and the medium-term work programme. The meeting agreed that documentation of LMO-FFPs, pending a decision on detailed requirements, would: use a commercial invoice or other document to accompany the LMO-FFPs; provide details of a contact point; and include the common, scientific and commercial names, and the transformation event code of the LMO or its unique identifier. 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 the Working Group on Liability and Redress under Article 27 of the Protocol.

WORKING GROUP ON LIABILITY AND REDRESS-1: At its first meeting (May 2005, Montreal, Canada) the Working Group heard presentations on: scientific analysis and risk assessment; state responsibility and international liability; and expanded options, approaches and issues for further consideration in elaborating international rules and procedures on liability and redress.

COP/MOP-2: COP/MOP-2 (May/June 2005, Montreal, Canada) achieved progress towards the Protocol's implementation, adopting decisions on capacity building, and public awareness and participation. It engaged in constructive discussions on risk assessment and risk management, and agreed to establish an intersessional technical expert group. However, COP/MOP-2 did not reach agreement on the detailed requirements for documentation of LMO-FFPs that were to be approved "no later than two years after the date of entry into force of this Protocol."

WORKING GROUP ON LIABILITY AND REDRESS-2: At its second meeting (February 2006, Montreal), the Working Group focused on a Co-Chairs' working draft synthesizing proposed texts and views submitted by governments and other stakeholders on approaches, options and issues pertaining to liability and redress in the context of Article 27 of the Protocol. The Working Group considered all options identified in the Co-Chairs' text and also produced a non-negotiated and non-exhaustive, indicative list of criteria for the assessment of the effectiveness of any rules and procedures referred to under Article 27 of the Protocol.

COP/MOP-3: COP/MOP-3 (March 2006, Curitiba, Brazil) considered various issues relating to the Protocol's operationalization, including funding for the implementation

of national biosafety frameworks, risk assessment, the rights and responsibilities of transit parties, the financial mechanism and capacity building. The main outcome of COP/MOP-3 was agreement on detailed requirements for documentation and identification of LMO-FFPs (Article 18.2(a)).

WORKING GROUP ON LIABILITY AND REDRESS-3: At its third meeting (February 2007, Montreal, Canada) the Working Group continued analytical work, focusing on a working draft prepared by the Co-Chairs synthesizing proposed texts and views submitted by governments and other stakeholders on approaches, options and issues pertaining to liability and redress in the context of Article 27 of the Protocol. At the meeting, delegates worked through the elements and options included in the Co-Chairs' synthesis, were asked to submit operational text, held regional meetings and consulted informally to formulate and clarify their positions. The Co-Chairs presented the Working Group with a blueprint for a COP/MOP decision on international rules and procedures in the field of liability and redress. The blueprint, annexed to the meeting's report, contains a matrix of elements to structure and guide future deliberations and to be taken into account in developing one or more annexes to a possible COP/MOP decision. Many participants felt that the Working Group's third meeting had achieved progress towards entering the negotiating phase, expected to begin at this meeting.

INTERSESSIONAL HIGHLIGHTS

LIAISON GROUP ON CAPACITY-BUILDING FOR BIOSAFETY: The fourth meeting of the Liaison Group on Capacity-Building for Biosafety was held in Lusaka, Zambia, from 1 to 2 March 2007. Eighteen participants attended the meeting. Delegates discussed draft criteria and minimum requirements for experts to be listed on the roster; possible elements and operational modalities of a quality control mechanism for the roster; and other measures for improving the effectiveness and use of the roster.

BIOSAFETY PROTOCOL COMPLIANCE COMMITTEE: The Compliance Committee under the Protocol held its third meeting from 5-7 March 2007, in Kuala Lumpur, Malaysia. The Committee made a number of suggestions regarding completing and updating the document prepared by the Secretariat on repeated non-compliance (UNEP/CBD/BS/CC/3/2), and noted that no case of non-compliance was brought to its attention since it assumed its functions. It agreed to propose, for the consideration of the COP/MOP, an indicative list of measures that may be taken in cases of repeated non-compliance, including measures such as suspension of trade and/or suspension of rights or privileges.

SECOND INTERNATIONAL MEETING OF ACADEMIC INSTITUTIONS AND ORGANIZATIONS INVOLVED IN BIOSAFETY EDUCATION AND TRAINING: This meeting was held 16-18 April 2007 in Kuala Lumpur, Malaysia. The main objective of the meeting was to identify ways and means of promoting long-term formal education and training in biosafety, pursuant to decisions BS III/3 (paragraph 11) and BS-III/11 (paragraphs 16 and 17) of the COP-MOP. The principal substantive items discussed were: strategies and mechanisms for enhancing formal education and training in biosafety; and measures for promoting South-South and North-South cooperation between institutions involved in biosafety education and training.