

FOURTH MEETING OF THE PARTIES TO THE CARTAGENA PROTOCOL ON BIOSAFETY: 12 – 16 MAY 2008

The fourth 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 4) opens today in Bonn, Germany, and will continue until 16 May 2008. It will be immediately followed by the ninth meeting of the Conference of the Parties (COP 9) to the CBD.

COP/MOP 4 is mandated to finalize and adopt an international regime on liability and redress in the context of the Protocol. The meeting will also consider reports on a number of ongoing activities and address substantive issues set out in the medium term programme of work and previous COP/MOP decisions, including: handling, transport, packaging and identification (HTPI) of living modified organisms (LMOs); risk assessment and risk management; subsidiary bodies; monitoring and reporting; assessment and review; socioeconomic considerations; and public awareness and participation.

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 adverse effects 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 for intentional introduction into the environment, and also 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 147 parties.

NEGOTIATION PROCESS: In 1995, COP 2, held in Jakarta, Indonesia, established a Biosafety Working Group (BSWG) to comply with Article 19.3 of the CBD, which requests 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 adverse effects on biodiversity and its components.

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 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 attempted 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; its reference to precaution; the treatment of LMOs for food, feed or processing (LMO-FFPs); liability and redress; 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 negotiations: the Central and Eastern European Group; the Compromise Group (Japan, Mexico, Norway, the Republic of Korea and Switzerland, joined later by New Zealand and Singapore); the European Union; 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 adopted the Cartagena Protocol on Biosafety on 29 January 2000 in Montreal, Canada. 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; HTPI; monitoring and reporting; and liability and redress.

COP/MOP 1: At its first meeting (February 2004, Kuala Lumpur, Malaysia), the COP/MOP 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. 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 (WGLR), co-chaired by Jimena Nieto (Colombia) and René Lefeber (the Netherlands), under Article 27 of the Protocol, which requires the elaboration of international rules and procedures in the field of liability and redress for damage resulting from transboundary movements of LMOs, within four years after the Protocol's entry into force.

WGLR 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: At its second meeting (May/June 2005, Montreal, Canada), the COP/MOP adopted decisions on capacity building, and public awareness and participation; and agreed to establish an intersessional technical expert group on risk assessment and risk management. COP/MOP 2 did not reach agreement on 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."

WGLR 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 for liability and redress; and 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: At its third meeting (March 2006, Curitiba, Brazil), the COP/MOP adopted detailed requirements for documentation and identification of LMO-FFPs, and 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.

INTERSESSIONAL HIGHLIGHTS

WGLR 3: At its third meeting (February 2007, Montreal, Canada), the Working Group considered a working draft text synthesizing views submitted by governments and other stakeholders on approaches, options and issues regarding liability and redress. 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.

THIRD COORDINATION MEETING FOR GOVERNMENTS AND ORGANIZATIONS IMPLEMENTING OR FUNDING BIOSAFETY

CAPACITY-BUILDING ACTIVITIES: This meeting (February 2007, Lusaka, Zambia) addressed capacity-building needs and priorities for the implementation of the Protocol and adopted draft guidance for promoting regional and subregional initiatives and approaches to capacity building.

WORKSHOP ON RISK ASSESSMENT FOR EMERGING APPLICATIONS OF LIVING MODIFIED ORGANISMS:

This workshop (June 2007, Montreal, Canada), discussed environmental risk assessments, research needs and knowledge gaps regarding emerging applications of LMOs including transgenic fish, transgenic trees, pharmaplants, and genetically modified viruses in the management of animal populations.

WGLR 4: At its fourth meeting (October 2007, Montreal, Canada), the Working Group focused on the elaboration of options for rules and procedures for liability and redress, based on a working draft synthesizing submissions with respect to approaches and options on liability and redress in the context of Article 27. Delegates focused on streamlining options for operational text related to damage, administrative approaches and civil liability resulting in a consolidated text to be used for further negotiations.

FOURTH AND FIFTH MEETINGS OF THE LIAISON GROUP ON CAPACITY BUILDING FOR BIOSAFETY: These meetings (February 2007, Lusaka, Zambia and February 2008, New Delhi, India) considered, among other issues: draft criteria and minimum requirements, elements of a quality control mechanism, and measures for further improvement of the roster of experts on biosafety; and indicators for monitoring implementation of the Capacity-Building Action Plan.

WGLR 5: At its fifth meeting (March 2008, Cartagena de Indias, Colombia), the Working Group continued the elaboration of options for rules and procedures for liability and redress based on a revised working draft compiled by Co-Chairs. Delegates agreed on certain core elements, including the definition of damage and further streamlined the remaining options. The Working Group decided to convene a Friends of the Chair group immediately before COP/MOP 4 to consider outstanding issues, including standard of liability, causation and the choice of instrument.

FRIENDS OF THE CHAIR GROUP: From 7 to 10 May 2008, delegates convened in Bonn, Germany, for regional consultations and in the Friends of the Chair group to continue negotiating an international regime on liability and redress. On Wednesday, in an open session, delegates discussed a detailed draft of a compact proposed by six major agricultural biotechnology companies, constituting a mutually binding contract to cover actual damage to biodiversity, subject to proof of harm. On Thursday, the Friends of the Chair group engaged in closed door negotiations of proposed operational texts on liability and redress as contained in Annex II (UNEP/CBD/BS/COP-MOP/4/11). On damage, delegates agreed on one consolidated definition of damage to the conservation and sustainable use of biodiversity. The Friends of the Chair group then further refined operational texts on the elements of the administrative approach, and extensively discussed additional elements in regard to exemptions or mitigation; limitation of liability; and coverage. The group then considered whether key elements of civil liability should be determined according to domestic law, including the forms of damage to be covered, valuation of damage, and the burden of proof for causation. In closing, the group further consolidated the definition of scope and achieved a reduction of the operational text in this section from four pages to one. The outcomes of the Friends of the Chair group are expected to be tabled in plenary today.