

SUMMARY OF THE 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) was held from 12-16 May 2008 in Bonn, Germany. Approximately 1200 participants representing parties to the Protocol and other governments, UN agencies, intergovernmental and non-governmental organizations, academia and industry attended the meeting.

COP/MOP 4 adopted 18 decisions on: the Compliance Committee; handling packaging, transport and identification (HTPI) of living modified organisms (LMOs); the Biosafety Clearing-House (BCH); capacity building; notification requirements; socioeconomic considerations; cooperation with other organizations; public awareness and participation; risk assessment and risk management; monitoring and reporting; financial mechanism and resources; the roster of biosafety experts; assessment and review; subsidiary bodies; liability and redress; and the budget.

The meeting was dominated by discussions on liability and redress. While COP/MOP 4 did not complete its mandate to adopt an international regime on liability and redress in the context of the Protocol, it achieved a political compromise that will pave the way towards adopting a legally binding regime, which was hailed by most participants as a major step forward. The compromise envisions a legally binding supplementary protocol focusing on an administrative approach but including a provision on civil liability that will be complemented by non-legally binding guidelines on civil liability.

On many other items, delegates agreed to defer consideration to a later stage, due to the lack of information and national experience. Delegates did however feel that the meeting took important steps towards improving this situation, by mandating an *ad hoc* technical expert group (AHTEG) to consider risk assessment and risk management.

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 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.

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NEGOTIATION PROCESS: In 1995, the second Conference of the Parties (COP 2) to the CBD, 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.

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.

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.

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 a 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 7-10 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.

COP/MOP 4 REPORT

On Monday, Raymundo Rocha Magno (Brazil), on behalf of COP/MOP 3 President Marina Silva, welcomed delegates and underscored that COP/MOP 4 constitutes an opportunity for reaching agreement on rules and procedures for liability and redress. Ursula Heinen, German Federal Ministry of Food, Agriculture and Consumer Protection, described the Protocol as a historic step towards the sustainable use of modern biotechnology.

Speaking on behalf of UNEP Executive Director Achim Steiner, Maryam Niamir-Fuller detailed technical and financial assistance provided by UNEP to developing countries to implement biosafety frameworks, and outlined Global Environment Facility (GEF) funding available under its biosafety programme. Ahmed Djoghlaif, CBD Executive Secretary, highlighted progress made by the Friends of the Chair group on liability and redress, which preceded COP/MOP 4 and urged parties to complete negotiations by Friday.

Alexander Schink, Ministry of the Environment and Conservation, Agriculture and Consumer Protection of the German State of North Rhine-Westphalia, described its policies on protected areas and reducing the impact of economic development. Joachim Flasbarth, German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety, stated that regulating genetically modified organisms is a political priority due to their wide use.

Wolfgang Koehler (Germany) COP/MOP 4 President, reminded delegates that the COP Bureau serves as the COP/MOP Bureau, noting that bureau members from non-parties, namely Canada and Chile, would be replaced by Norway and Mexico. Delegates elected Deon Stewart (Bahamas) as Rapporteur and approved the meeting's agenda and organization of work (UNEP/CBD/BS/COP-MOP/4/1 and Add.1). Delegates then elected Beate Berglund Ekeberg (Norway) and Reynaldo Alvarez Morales (Mexico) as Chairs of Working Group I and Working Group II (WG I and II), respectively.

Jaime Cavelier, GEF, reported on the implementation of the strategy to support activities for building capacities for the effective implementation of the Protocol.

Jimena Nieto, Co-Chair of the *Ad hoc* Open-ended Working Group on Liability and Redress, presented the Working Group's final report (UNEP/CBD/BS/COP-MOP/4/11). She noted that the Friends of the Chair group had produced a streamlined compilation of proposed operational texts on approaches and options for rules and procedures for liability and redress (UNEP/

CBD/BS/COP-MOP/4/11/Add.1). A contact group, co-chaired by Nieto and René Lefeber (the Netherlands) was established to meet throughout the week in order to finalize the negotiations by Thursday, 15 May.

In their opening statements, many delegates stressed reaching agreement on liability and redress as a priority, with several parties stating their positions regarding the nature of the future regime. Several parties also highlighted the need to strengthen implementation through capacity building and the Biosafety Clearing-House (BCH).

The following report is organized according to the order of the agenda. Unless otherwise stated, the COP/MOP decisions were adopted during the final plenary with no or minor editorial amendments.

COMPLIANCE COMMITTEE

Compliance Committee Chair Veit Koester (Denmark) presented the Compliance Committee report and a report on experiences of other multilateral environmental agreements regarding non-compliance (UNEP/CBD/BS/COP-MOP/4/2 and Add.1) in plenary on Monday, highlighting the low number of national reports on the Protocol's implementation. The issue was further considered in WG I on Monday and Wednesday. Discussion focused on measures to address the low number of national reports submitted to date, but delegates could not agree to state that failure to report constitutes non-compliance. Developing country parties called for facilitated access to GEF support for national reporting; and for capacity building on: reporting, sampling and detection and for addressing illegal transboundary movements of LMOs.

Noting that no cases of non-compliance had yet been submitted to the Committee, delegates decided to postpone discussion of procedures for addressing repeated non-compliance, and to leave it to the discretion of the Committee whether to meet less than twice a year. A number of parties supported a reference urging parties remove brackets around Rule 18 (voting) of its Rules of Procedure to allow decisions by two-thirds majority. Delegates furthermore accepted two additional proposals: to develop a mechanism to replace Committee members who resign during the intersessional period; and to invite parties to submit views on how to improve the supportive role of the Committee.

During the final plenary session delegates elected the following new members of the Compliance Committee: Tewolde Berhan Gebre Egziabher (Ethiopia) and Mary Fosi (Cameroon), for Africa; Ranjini Warriar (India), Ping-Man So (China) and Pongthong Onoora (Thailand), for Asia; Raymundo Santos Rocha Magno (Brazil), Michael Lionel (Antigua and Barbuda) and Juan Carlos Menendez (Cuba), for Latin America and the Caribbean; Ruben Dekker (the Netherlands) and Jürg Bally (Switzerland), for Western Europe and Others; and Sergiy Gubar (Ukraine), Liina Eek (Estonia) and Galya Tonkovska (Bulgaria), for Central and Eastern Europe. As alternate members they elected Zourata Lompo Ouedraogo (Burkina Faso) and Abisai Mafa (Zimbabwe), for Africa; Pedro Andrade (Brazil) for Latin America and the Caribbean; and Angela Lozan (Moldova) and Dubravka Stepic (Croatia) for Central and Eastern Europe.

COP/MOP Decision: In its decision (UNEP/CBD/BS/COP-MOP/4/L.2) the COP/MOP, *inter alia*:

- reminds parties of their obligation to adopt appropriate domestic measures addressing illegal transboundary movements of LMOs and report the occurrence of such movements to the BCH;
- calls upon each regional group to consider and apply mechanisms to replace members of the Compliance Committee who resign during the intersessional period or who are unable to complete their term of office;
- decides to defer consideration of measures on repeated cases of non-compliance until such time as experience may justify the need for developing and adopting such measures;
- urges parties to renew efforts to facilitate agreement on Rule 18 (voting) of the Compliance Committee Rules of Procedure;
- encourages the Compliance Committee to meet less than twice a year, as appropriate, and within the budget adopted by the COP/MOP; and
- invites parties to submit for COP/MOP 5 their views on how the supportive role of the Compliance Committee could be improved.

BIOSAFETY CLEARING-HOUSE.

On Monday and Tuesday, delegates in WG II commented on the operation and activities of the BCH (UNEP/CBD/BS/COP-MOP/4/3). On Wednesday, WG II Chair Morales presented a draft decision on the BCH, which was approved with amendments.

Many interventions focused on the lack of information provided by parties, and the need for continued capacity-building projects. Slovenia, for the European Union (EU), proposed standardization and structuring of data, and making the interface more user-friendly. New Zealand, opposed by many, proposed the deletion of a paragraph requesting the Executive Secretary to improve electronic tools and undertake additional activities. The paragraph was retained. Regarding urging the GEF to extend the UNEP-GEF BCH project for capacity building for effective participation in the BCH, the EU, opposed by Qatar, Zimbabwe, Ecuador and Mexico, suggested adding “providing it receives a positive mid-term review.” The EU subsequently withdrew its proposal. Japan and New Zealand, opposed by many, maintained that the paragraph should be considered under the agenda item on the financial mechanism and resources. The Secretariat clarified that all the GEF-related decisions would be reflected in the decision on the financial mechanism and resources, and it was decided that the paragraph would be maintained.

COP/MOP Decision: In its decision (UNEP/CBD/BS/COP-MOP/4/L.5), the COP/MOP reminds parties to submit complete information on LMOs for the BCH, and requests the CBD Executive Secretary to, *inter alia*:

- improve electronic tools available for analysis of search results;
- include electronic links to national reports in country profile pages;
- undertake additional activities such as introduction of online tools for statistical analysis;
- improve the structure of common formats and simplify registration procedures;
- implement a procedure for validation of information;
- assist national nodes that are interlinked and interoperable with the central portal; and

- commission a study of users and potential users to assess what information would be useful.

In addition, the decision calls on donors to provide financial support, particularly to extend the UNEP-GEF BCH project for capacity building for effective participation in the BCH.

CAPACITY BUILDING

On Monday and Tuesday, WG II discussed the status of capacity-building activities (UNEP/CBD/BS/COP-MOP/4/4 and Add.1). On Wednesday, WG II Chair Morales presented a draft decision on capacity building, which was approved with some amendments.

Many parties emphasized the importance of capacity building for effective implementation of the Protocol. The African Group called for the integration of biosafety into broader sustainable development strategies and donor programmes. Norway emphasized civil society participation. Iran underlined the lack of risk assessment experts and called for financial and intellectual support for risk assessment and management.

There were extensive discussions regarding the revised set of indicators developed by the Liaison Group for the Action Plan for Building Capacities. New Zealand, supported by Brazil, the EU, Cuba, Venezuela and Thailand, proposed developing a shorter list and consolidating decision text on the indicators. The longer list was retained pending review by the Liaison Group. Donor countries recommended setting priorities on funding for capacity-building activities, while developing countries preferred to leave the question of funding open.

COP/MOP Decision: In the decision (UNEP/CBD/BS/COP-MOP/4/L.6), the COP/MOP urges parties, other governments, donors and relevant organization to provide new and additional financial resources and information to the BCH on implementation of the Capacity-Building Action Plan and requests the CBD Executive Secretary to, *inter alia*:

- develop a web-based reporting format to report this information;
- prepare a synthesis of information provided by parties and place it on the BCH;
- encourage relevant organizations and donor agencies to support the Coordination Mechanism; and
- prepare a synthesis report on the experiences with and lessons learned from the revised set of indicators for monitoring implementation of the Action Plan for Building Capacities for the Effective Implementation of the Protocol. An annex contains a list of these indicators.

In addition, the COP/MOP calls upon parties and donors to, *inter alia*:

- complete and return to the Secretariat the biosafety training needs assessment matrix developed by the second international meeting of academic institutions and organizations involved in biosafety education and training;
- collaborate with academic institutions and other relevant organizations in the development and/or expansion of biosafety academic programmes;
- provide financial and other support to enable universities and relevant institutions to develop and/or expand existing biosafety academic programmes;

- submit to the Executive Secretary information on their experiences with, and lessons learned from, use of the revised set of indicators; and
- undertake stocktaking assessments or compile information to establish capacity-building baselines.

ROSTER OF BIOSAFETY EXPERTS

This item (UNEP/CBD/BS/COP-MOP/4/4/Add.2) was introduced on Monday in WG II and a draft decision was considered and approved on Thursday. Several delegates expressed general support for the selection criteria for the roster of biosafety experts proposing minor changes, while others said they should be streamlined.

COP/MOP Decision: The decision (UNEP/CBD/BS/COP-MOP/4/L.15) consists of three annexes: criteria and minimum requirements for different categories of experts to be nominated to the roster; guidelines for the roster of biosafety experts; and a nomination form for the biosafety roster of experts. The COP/MOP requests parties and governments to make first time nominations in accordance with new criteria and minimum requirements, using the revised nomination form; and requests the Executive Secretary to remove all existing records in the roster within three months and review the roster with those experts who are nominated or re-nominated by parties and governments. The COP/MOP decides that experts shall be maintained on the roster for four years, after which they will be deleted from the roster unless re-nominated.

Regarding the voluntary fund for the roster of experts, the COP/MOP decides to revitalize the pilot phase and invites developed country parties and other donors to make contributions, reminding parties that without funds the roster cannot operate.

FINANCIAL MECHANISM AND RESOURCES

On Tuesday, financial mechanism and resources (UNEP/CBD/BS/COP-MOP/4/5) was discussed in WG-II. On Thursday, a draft decision was introduced and adopted. Many delegates mentioned that the GEF planning process requires systematic input from the CBD, and suggested that the Secretariat compile a decision document that includes all requests for funding discussed under agenda items. Chair Morales said that the Secretariat would compile such a document. The EU, supported by Norway, emphasized that strategic programming for the fifth GEF replenishment needs to address implementation of legal and administrative systems, enhancing decision making based on risk assessment, and the implementation of the liability and redress regime.

COP/MOP Decision: In the decision (UNEP/CBD/BS/COP-MOP/4/L.14), the COP/MOP, *inter alia*, requests the GEF to:

- assess the impact of the Resource Allocation Framework on the implementation of the Protocol, and propose measures that can minimize potential resource limitations;
- cooperate with and support developing country parties in their efforts to build capacities in the area of sampling and detection of LMOs; and
- consider programme funding priority needs for biosafety during the period of its fifth replenishment (2010-2014) for four areas: implementation of notification procedures, risk assessment and risk management; implementation of

enforcement measures; and implementation of liability and redress measures.

The COP/MOP also urges the GEF to: make financial resources available with a view to enable eligible parties to prepare their national reports; and extend the UNEP-GEF BCH project as a global project with a view to ensuring sustainability of national BCH nodes and providing more capacity-building support.

COOPERATION WITH OTHER ORGANIZATIONS, CONVENTIONS AND INITIATIVES

The draft decision on cooperation with other organizations, conventions and initiatives (UNEP/CBD/BS/COP-MOP/4/6) was introduced in the final plenary on Friday and adopted without discussion or amendment.

COP/MOP Decision: In its decision (UNEP/CBD/BS/COP-MOP/4/L.10), the COP/MOP, *inter alia*: requests the Executive Secretary to further intensify efforts to gain observer status in the World Trade Organization Committees on Sanitary and Phytosanitary Measures and Technical Barriers to Trade.

The COP/MOP requests the Executive Secretary to:

- continue pursuing, reinforcing or intensifying cooperative agreements with all the organizations referred to in decision BS-II/6 (Cooperation);
- further explore the potential of relevant organizations and processes that can contribute to Protocol implementation, in particular with regard to capacity building in developing countries; and
- report to COP/MOP 5 on the implementation of the present decision.

BUDGET

The budget for the biennium 2009-2010 was discussed in plenary on Monday and in a contact group from Tuesday to Friday. On Monday, CBD Executive Secretary Ahmed Djoghlafl reported on the administration of the Protocol and the proposed budget for the biennium 2009-2010 (UNEP/CBD/BS/COP-MOP/4/7), emphasizing the need to increase staff to implement Protocol activities. He explained why a zero growth budget would be inadequate. In response, Japan noted that its policy of zero nominal growth is supported by other delegations, while Norway expressed concern that this would reduce activities on biosafety. The EU called for a realistic budget reflecting policy decisions in the context of the declining value of the dollar.

The budget contact group, chaired by Sem Shikongo (Namibia), based its discussion on two different scenarios presented by the Secretariat. Option 1 provided for a 17.9% nominal increase in the programme budget; while option 2 was based on a 0% nominal increase. In order to accommodate the demand for zero budget growth, delegates decided to develop a budget including a substantial contribution drawn from the Protocol's reserves, in order to cover increasing expenditures while avoiding an increase in parties' assessed contributions. In view of the significant amount of reserves accumulated, all delegates accepted this proposal.

Delegates spent considerable time estimating the cost implications of the decisions being discussed in the two WGs, as required by CBD COP Decision VII/10 (Operations of the Convention). Delegates discussed the difficulties of deriving

such estimates while decisions are still being revised and decided to provide a preliminary overview of cost implications, which was presented in plenary on Thursday and further revised by the contact group for decision by plenary on Friday.

In his report to plenary on Friday, Chair Shikongo noted that the group encountered several important issues which should be added to the COP/MOP 4 report: requesting UNEP to administer the Protocol's trust funds efficiently, and keeping the Executive Secretary informed on the status of income and expenditure; inviting the host country to consider resuming its past practice of providing free office space to the Secretariat; and requesting the full implementation of the memorandum of understanding between the Secretariat and the International Civil Aviation Organization acting as lead agency of the UN system in Montreal. The budget was adopted with editorial amendments.

COP/MOP Decision: In its decision (UNEP/CBD/BS/COP-MOP/4/L.19), the COP/MOP, *inter alia*:

- approves a core programme budget of US\$2,611,800 for the year 2009 and of US\$2,880,900 for the year 2010;
- approves a drawing of US\$740,000 from unspent balances or contributions from previous financial periods;
- adopts the scale of assessments for the apportionment of the 2009-2010 Protocol's core budget; and
- agrees to share the common costs for Secretariat services between the Convention and the Protocol on a ratio of 85:15 for 2009-2010.

HANDLING, TRANSPORT, PACKAGING AND IDENTIFICATION

There were three agenda items relating to handling, transport, packaging and identification of LMOs (HTPI) (UNEP/CBD/BS/COP-MOP/4/8 and 9), all of which were discussed in WG I.

DOCUMENTATION: This issue was first discussed on Monday and the draft decision was approved on Wednesday. Delegates discussed the use of a stand-alone document or existing documentation to fulfill identification requirements of Article 18 paragraphs 2(b) and (c). Japan, New Zealand and the Global Industry Coalition preferred using existing documentation. The EU and Cuba suggested deferring further discussion until a review can be undertaken on the basis of the second national reports. Norway opposed this, suggesting collection of further information for consideration by COP/MOP 5. Delegates decided to defer consideration of identification requirements to COP/MOP 6, in line with the timing of the second national reports.

COP/MOP Decision: In the decision (UNEP/CBD/BS/COP-MOP/4/L.3), the COP/MOP requests parties and relevant organizations to continue to implement requirements under Article 18.2(b) and 2(c) and associated decisions of the COP/MOP, and decides to review this matter at COP/MOP 6 in light of the review of experience based on the analysis of the second national reports.

STANDARDS: This issue was first discussed on Monday, the draft decision was amended on Wednesday, and a revised draft decision was discussed on Thursday. Many parties called for increased cooperation between the CBD and other international organizations and supported the idea of an online conference to consider this issue. New Zealand and the EU proposed specifying that the conference should identify standards and

gaps, and develop modalities for developing necessary standards. A number of delegates rejected the establishment of a subsidiary body under the Protocol to consider scientific issues such as HTPI. Malaysia, supported by Ethiopia, suggested revising a provision requesting the Executive Secretary to prepare a compilation on gaps in standards prior to COP/MOP 5. The EU, Brazil and India opposed, noting the complexity of the task and the proposal was deleted.

COP/MOP Decision: In the decision (UNEP/CBD/BS/COP-MOP/4/L.4), the COP/MOP:

- decides to continue to gain experience in the implementation of the Protocol's provisions regarding HTPI and requests the Executive Secretary to collaborate with relevant organizations in this regard;
- encourages parties to participate in ongoing work on standards on HTPI of LMOs in other relevant organizations and decides to consider the need for and modalities of developing necessary standards if gaps are identified, in particular by referring such gaps to other relevant international organizations; and
- requests the Executive Secretary to organize an online conference to identify relevant standards and gaps and suggest possible modalities to fill the gaps.

SAMPLING AND DETECTION: This issue was first discussed on Monday, the draft decision was amended on Wednesday, a revised draft decision was discussed on Thursday and the decision was adopted in plenary on Friday.

On a preambular paragraph noting the importance of reference materials, EGYPT called for reference to LMOs intended for future placement on the market, and delegates agreed to compromise text referencing "LMOs that are placed on the market." Delegates also discussed the establishment of an AHTEG to consider the issue, which was opposed by the EU, Colombia, Brazil and New Zealand, pointing towards ongoing work in other fora. On a paragraph on accreditation of laboratories involved in sampling and detection of LMOs, New Zealand stressed the "need for" the laboratories, and a number of countries supported Brazil's suggestion to reference capacity building in this regard. Delegates agreed on a compromise to reference capacity building and setting up of laboratories in one paragraph and accreditation of laboratories in another. The EU, opposed by Ethiopia, proposed a paragraph on information exchange on the establishment and implementation of national standards for acceptable levels of co-mingling and it was deleted.

COP/MOP Decision: In the decision (UNEP/CBD/BS/COP-MOP/4/L.8), the COP/MOP notes the important work being done by relevant organizations such as Codex Alimentarius and the International Organization for Standardization and encourages parties to participate in and share information with these and other relevant standard-setting bodies and utilize, as appropriate, criteria or methods for sampling and detection. The COP/MOP requests parties and encourages other relevant organizations, as well as the GEF, to cooperate with and support developing country parties in their efforts to build up their capacities in the area of sampling and detection of LMOs, including setting up laboratory facilities and training of local regulatory and scientific personnel.

RISK ASSESSMENT AND RISK MANAGEMENT

This matter (UNEP/CBD/BS/COP-MOP/4/10) was discussed in WG II on Tuesday, Wednesday and Thursday. A draft decision was adopted after protracted discussion late on Thursday night.

Many delegates supported organizing more regional workshops and training, while others suggested improving guidance and information on risk assessment and risk management. Cooperation with other UN agencies, and the consideration of existing expertise in other international bodies such as the International Plant Protection Convention and the Codex Alimentarius Commission was also highlighted.

During consideration of preambular text on recalling that risk assessment should be carried out in a scientifically sound manner, extended debate centered on whether to make reference to the provisions in the Biosafety Protocol and an annex on risk assessment, and whether to include socioeconomic considerations and language on a precautionary approach. These references were not included.

New Zealand and Brazil, opposed by many, suggested deleting language on: submitting information on the identification of LMOs or specific traits that may have adverse effects on sustainable use of biodiversity; and on requesting the Executive Secretary to prepare a synthesis report. They subsequently agreed to retain the language after proposing that information be submitted to an AHTEG rather than COP/MOP 5. A proposal by the EU inviting parties, other governments and relevant organizations to submit to the Executive Secretary relevant information for consideration by the AHTEG resulted in a lengthy discussion of whether an AHTEG or an open-ended working group should be established. Bolivia, Belize, Malaysia, Uganda, Ecuador and others favored the latter, with Mexico, the EU, the Philippines, Norway, Japan, New Zealand and India expressing preference for the former. After informal consultations, delegates agreed to a compromise text, including reference to the establishment of an AHTEG.

Delegates then addressed the annexed terms of reference for the AHTEG and New Zealand proposed several additions. The EU, opposed by Uganda and others, suggested deleting reference to risk management from the terms of reference, the rationale being that the AHTEG would be overburdened, and delegates decided to retain reference to risk management.

COP/MOP Decision: In the decision (UNEP/CBD/BS/COP-MOP/4/L.12), containing an annexed terms of reference for the AHTEG on risk assessment and management, the COP/MOP:

- decides to establish an AHTEG on risk assessment and risk management;
- requests the Executive Secretary to convene, prior to COP/MOP 5, two meetings of the AHTEG on risk assessment and management;
- requests the Executive Secretary to convene with relevant regional organizations a subregional workshop on capacity building and exchange of experiences on risk management of LMOs in the Pacific subregion; and
- requests parties and invites other governments and relevant organizations to submit to the Executive Secretary, at least three months prior to the first AHTEG meeting, scientifically sound information on the identification of LMOs or specific traits that may have adverse effects on the conservation and

sustainable use of biodiversity, also taking into account risks to human health.

The annexed terms of reference for the AHTEG on risk management and risk assessment outlines the activities to be undertaken by the AHTEG at its first and second meetings, and the selection of experts based on a standardized common format for submission of CVs, respecting geographical representation, in accordance with the consolidated *modus operandi* of the CBD Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA).

LIABILITY AND REDRESS

Liability and redress was the most contentious issue addressed at COP/MOP 4. The negotiations on liability and redress had two separate tracks: a political debate about the choice of instrument, and the substantive deliberations on operational texts. Delegates conducted a first reading of the operational texts, as contained in the outcome document of WGLR 5 (UNEP/CBD/BS/COP-MOP/4/11 Annex II). Meanwhile, the debate about the choice of instrument was marked by protracted efforts, often through bilateral consultations, towards finding a compromise. The result was an agreement to work towards a legally binding instrument focusing on the administrative approach, but also including a legally binding provision on civil liability to be complemented by non-legally binding guidelines.

The following is a summary of both the political and substantive negotiations on liability and redress in chronological order.

Immediately preceding COP/MOP 4, delegates convened for regional consultations and in the Friends of the Chair group established at WGLR 5 (March 2008, Cartagena, Colombia) to continue negotiating an international regime on liability and redress. At that meeting delegates 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 group also refined operational texts on the elements of the administrative approach, and extensively discussed additional elements with 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. Delegates also 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 Monday, the final report of the *Ad hoc* Open-ended Working Group on Liability and Redress (UNEP/CBD/BS/COP-MOP/4/11) was presented in plenary. Co-Chair Jimena Nieto (Colombia) also introduced a streamlined compilation of proposed operational texts on approaches and options for rules and procedures for liability and redress (UNEP/CBD/BS/COP-MOP/4/11/Add.1). A contact group with the same membership as the Friends of the Chair group, also co-chaired by Nieto and René Lefeber (the Netherlands), was established

and met throughout the week, with a mandate to finalize the negotiations by Thursday. During the meetings only members of the group could take the floor, although some sessions were open to observers and non-parties. The group consisted of: six members each from the Asia Pacific region, the African region and the Latin America and Caribbean region; two members each from the EU and Central and Eastern Europe; and New Zealand, Japan, Norway and Switzerland.

The contact group met Monday through Friday, and began its deliberations with a formal discussion of the choice of instrument. This was considered the most controversial issue, which would also inform choices in the other substantive sections. Delegates debated the following options: non-legally binding guidelines; a legally binding regime; and a two step-approach consisting of developing one or more non-binding instruments, evaluating the effects of the instrument(s), and then considering developing one or more legally binding instruments. Pointing to divergence of views and differences in domestic laws, some delegates opposed a legally binding regime, underscoring the lack of time and the complexity of such a regime. Many supported a legally binding instrument to encompass civil liability, while some proposed only making the administrative approach legally binding. Several delegates noted that the administrative approach had been proposed by countries opposed to a civil liability regime and, since it did not address certain important elements, making the administrative approach binding would not constitute a sufficient compromise. The meeting was suspended on Monday evening to allow for parties interested in forming a like-minded group in support of a legally binding civil liability regime at COP/MOP 4 (the Like-Minded Friends) to consult. Over the week this group grew to include 82 members, the majority from developing countries.

On Tuesday, the contact group was presented with a compromise prepared by the Like-Minded Friends supporting a legally binding regime to be adopted at COP/MOP 4. This compromise proposal entailed three points:

- a legally binding provision on civil liability in the legally binding regime setting out minimum core elements and referencing non-legally binding guidelines on liability and redress;
- a legally binding provision on enforcement of judgments on damage from transboundary movement of LMOs that meet the minimum standards in the guidelines and the provisions on enforcement of foreign judgments under domestic law; and
- a review process, with the possibility of making other elements of civil liability legally binding on the basis of experience gained.

Some delegates expressed concern with referencing non-legally binding guidelines in a legally binding regime and stressed the need for flexibility in the guidelines. A contentious discussion ensued regarding enforcement of foreign judgments, described as the core of the proposal, with some delegates pointing to complexities in developing regulations on enforcing judgments, and others mentioning that it is usually concurrent with harmonization of substantive law.

Co-Chair Lefebvre then invited delegates to consider the Like-Minded Friends' proposal together with a legally binding instrument focusing on the administrative approach, terming it a

“compromise in the making,” on the basis of which the contact group would continue its negotiations. At this point he explained that finalizing a legally binding instrument at COP/MOP 4 would be impossible, due to the requirement to circulate a draft instrument for six months and the convening of a legal drafting committee. He suggested that COP/MOP 4 focus on reaching political agreement on all the issues and to convene a drafting committee before the end of 2008 followed by an ExCOP to adopt the legally binding instrument. Some parties noted that drafting would have to be completed before they would be in a position to decide whether they could support the instrument. Delegates agreed to continue negotiating on the basis of this understanding.

In the afternoon delegates considered the supplementary compensation scheme. Regarding residual state liability, the majority of delegations supported deletion of the section, but some insisted on its retention and it was agreed to retain two operational texts pending the outcome on other issues. Regarding a reference to private sector initiatives, delegates were divided on whether to refer to the compact by six major agricultural biotechnology providers or to private sector initiatives more generally, or not to include any reference. On supplementary collective compensation arrangements, delegates debated whether to have no arrangement, a compulsory arrangement, or a voluntary arrangement, with the majority of delegates preferring the latter and debating possible modalities at length. In the evening, delegates discussed settlement of claims. They agreed to delete the section on inter-state procedures, and discussed possible wording for an enabling clause on private international law in the part on civil procedures and a special tribunal and standing/right to bring claims.

Delegates then considered the section of the streamlined compilation of proposed operational texts on approaches and options for rules and procedures on complementary capacity-building measures. Most delegates preferred a more detailed provision on capacity-building measures with some amendments, while others preferred a more concise formulation. Regarding an institutional arrangement, many delegates saw the value in such an arrangement and discussed possible measures, while others opposed, citing funding concerns.

Delegates returned to debating the written proposal of the Like-Minded Friends, raising a number of concerns, including that the binding provisions might infringe on states' sovereign right to determine national laws and policies. Regarding the proposed core elements for guidelines, some delegates expressed concern with the prescriptive language and some of the elements, with others making the point that the list was meant to be flexible and the guidelines would be non-legally binding even if annexed to a supplementary protocol. On the enforcement of foreign judgments, some delegates expressed concern that special provisions in relation to LMOs might be required. Delegates sought further clarification on the status of the compromise proposal, and how it relates to the substantive operative texts on the draft rules and procedures on liability and redress that had been revised in a first reading by the Friends of the Chair group and the contact group over the past week. Other delegates asked about the procedure for continuing the negotiations, with

proposals including a second reading of the operative texts, bilateral discussions, or other means to overcome the impasse.

At this stage the discussions seemed to be unraveling. Co-Chair Nieto inquired whether there were delegates who did not wish to engage on the basis of the compromise proposed by the Like-Minded Friends with a view to reaching agreement on the text: two delegates signaled their objection.

In the evening, delegates reconvened in a closed session to consider two interlinked questions: (1) whether there were any objections to working towards a legally binding instrument on an administrative approach, and (2) whether there were any objections to working towards including one article on civil liability in such a legally binding approach. When two delegates objected to the first question, they were invited to bilateral consultations with the Co-Chairs. Many delegates objected to a third question regarding whether there was agreement to work exclusively towards a non-legally binding approach. The meeting was suspended for bilateral consultations. When the group reconvened no delegates objected to the first question, but one delegation objected to the second question, noting that they could not agree to a provision on civil liability in a legally binding instrument. Delegates agreed to address those concerns in bilateral consultations with the Co-Chairs, which continued late into the night.

On Thursday, in an open session of the contact group, Co-Chair Lefeber reported on those bilateral consultations, explaining that they had agreed to introduce a reference into the compromise proposal of the Like-Minded Friends, stating that parties may or may not develop a civil liability system or may apply their existing one in accordance with their needs to deal with LMOs. The proposal was to integrate this provision and the compromise proposal into the newly structured, previously discussed operational texts on liability and redress. The integrated document has three sections on: working towards legally binding provisions on both the administrative approach and civil liability; working towards non-legally binding provisions on civil liability; and other provisions, namely supplementary compensation scheme, settlement of claims, and complementary capacity building measures.

The Co-Chairs then asked if delegates agreed to work on the basis of this integrated document and were ready to conduct a second reading of the operational texts. Noting the "sense of common direction," many delegates expressed their commitment to work on the basis of the integrated document and specifically the common understanding enshrined in the subsection on legally binding provisions on civil liability. Importantly, delegates agreed to proceed on the basis that "nothing is agreed until everything is agreed," but were warned by the Co-Chairs that if they did not want to commit to working towards a legally binding approach, they should make that explicit at this stage. Two delegations requested time to consider the integrated text and were given until Friday. Before adjourning, they considered the procedure for completing this process and the Co-Chairs undertook to reflect those views in a draft recommendation for consideration by the contact group on Friday morning.

On Friday, the contact group first agreed to proceed on the basis of the revised proposal of the Like-Minded Friends and then moved on to a first reading of that text. After some

discussion about the need for the chapeau specifying that parties may or may not develop a civil liability system or apply their existing one, delegates decided to bracket the text. On a paragraph stating that the rules and procedures will not prejudice the right of parties to have in place or develop their own domestic civil liability regimes, one party proposed alternative language mandating parties to "ensure that their civil liability rules and procedures provide for redress to damage resulting from the transboundary movement of LMOs." Regarding the list of elements that the law or policy should include, access to justice and procedural rules that provide for due process were bracketed; and it was not limited to strict liability. On the enforcement of foreign judgments, there was consensus that the issue required careful consideration and, with this in mind, the text was bracketed and one delegate proposed simplified alternative text. One party bracketed the specification that the guidelines would be reviewed no later than three years after entry into force.

Delegates then turned to the draft decision. After a debate as to the correct technical name for the group tasked with continuing the negotiations, it was decided to call it the "Group of the Friends of the Co-Chairs." Delegates decided it should have the same composition as the contact group. Before concluding the work of the contact group, the Co-Chairs commented that the agreement about the basis on which to proceed is a major achievement and called on parties to appreciate and respect the compromises made on all sides.

In the final plenary, Co-Chair Nieto introduced the draft decision of the contact group, drawing attention to the choice of instrument and the process. Malaysia and Mexico offered to host meetings of the Group of the Friends of the Co-Chairs, and Japan pledged funding. Brazil stated that the work of the contact group constituted an important step towards implementing Article 27 (Liability and Redress). Venezuela called for further efforts to be made on the working document, and Peru underscored its commitment to the process. The report was adopted without amendment.

COP/MOP Decision: In its decision (UNEP/CBD/BS/COP-MOP/4/L.18), the COP/MOP requests the CBD Executive Secretary to establish a Group of the Friends of the Co-Chairs, Jimena Nieto and René Lefeber, concerning liability and redress in the context of the Cartagena Protocol on biosafety, with the following terms of reference:

- to hold one meeting in early 2009 and, if deemed necessary by the Co-Chairs, another meeting in early 2010 prior to COP/MOP 5;
- to further negotiate international rules and procedures in the field of liability and redress on the basis of the annex;
- the composition of the group will be: six representatives of the Asia-Pacific region; two representatives of the EU; two representatives of Central and Eastern Europe; six representatives of the African Group; six representatives of the Latin American and Caribbean Group; and New Zealand, Norway, Switzerland and Japan;
- advisors are selected by the Friends of the Co-Chairs and their participation may be facilitated subject to the availability of funds;

- observers may be invited to be participants in the meetings at the discretion of the Co-Chairs; and
- the outcome will be presented to COP/MOP 5 for its consideration.

It also calls on parties to consider providing voluntary contributions to organize these meetings and to facilitate participation by representatives.

The annex to the decision contains three parts: working towards legally binding provisions; working towards non-legally binding provisions on civil liability; and other provisions.

1. Working towards legally binding provisions: This part contains two sections; the first section on the administrative approach has four subsections on state responsibility, scope, damage and the primary compensation scheme.

The subsection on state responsibility contains two alternative operational texts setting out that the rules and procedures will not affect the rights and obligations of states.

The subsection on scope contains headings on:

- functional scope, specifying the LMOs referred to are intended for direct use as food or feed or for processing, destined for contained use, and intended for intentional introduction into the environment; and that the rules apply to intentional and unintentional transboundary movement of LMOs;
- geographical scope, stating the rules and procedures apply to areas within the limits of national jurisdiction;
- limitation in time, containing alternative texts, the first proposing the application to cases of damage once the rules and procedures have been implemented in domestic law and the other starting with the entry into force of these rules;
- limitation to the authorization at the time of the import of the LMOs; and
- non-parties, stipulating that national rules on liability and redress implementing these rules and procedures should also cover damage resulting from the transboundary movements of LMOs from non-parties.

The subsection on damage contains a broad definition of damage to conservation and sustainable use of biological diversity, with bracketed text with regard to: damage to human health, consequential loss to a state, and loss of income. The provision on valuation of damage remains bracketed in its entirety. The provision on causation sets out that a causal link must be established between the damage and the activity in question in accordance with domestic law.

The subsection on the primary compensation scheme contains headings elaborating elements of the administrative approach based on allocation of costs of response measures and restoration measures, and additional elements of an administrative approach, including: exemptions or mitigation; recourse against a third party by the person who is liable on the basis of strict liability; limitation of liability both with regard to time and amount; and coverage.

The second section on the civil liability approach contains the revised proposal of the Like-Minded Friends. It has a bracketed chapeau setting out that parties may or may not develop a civil liability system or may apply their existing one in accordance with their needs to deal with LMOs. It further sets out that nothing in these rules and procedures shall prejudice

the right of parties to have or develop their own domestic law or policy in the field of civil liability and redress for damage from transboundary movements of LMOs consistent with the Biosafety Protocol and the supplementary protocol on liability and redress. It invites parties to ensure that their national civil liability rules specifically provide for damage resulting from transboundary movements of LMOs.

The next provision foresees that any law or policy shall include, *inter alia*, the following elements, taking into account the guidelines on civil liability to be annexed to the supplementary protocol on liability and redress:

- damage;
- standard of liability, that may include strict, fault-based or mitigated liability;
- channeling of liability;
- financial security, where feasible or compensation schemes;
- access to justice or the right to bring claims; and
- procedural rules that provide for due process.

The provision dealing with enforcement of foreign judgments foresees that these shall be recognized and enforced in accordance with the applicable rules of procedure of domestic courts governing the enforcement of foreign judgments within the scope of the supplementary protocol and the annexed guidelines on civil liability. It further sets out that this provision does not require any change in domestic law and does not in itself constitute a treaty on reciprocal enforcement of foreign judgments. It invites parties whose domestic law requires bilateral reciprocity agreements for recognition of foreign judgments to extend their domestic law for reciprocal enforcement to parties not presently covered by it. The alternative formulation simply foresees that parties may, in accordance with domestic law, recognize and enforce foreign judgments arising from the implementation of the guidelines on civil liability.

The final provision foresees that the guidelines shall be reviewed no later than three years after the entry into force of this instrument, with a view to consider elaborating a more comprehensive binding regime in civil liability or making the guidelines binding, in the light of experience gained. Following a first reading, those provisions remain heavily bracketed.

2. Working towards non-legally binding provisions on civil liability (guidelines): This part contains similar operational texts as the part on the administrative approach. It contains sections on state responsibility, scope, damage, causation, and the primary compensation scheme. The last section contains subsections on civil liability with headings on: the standard and channeling of liability maintaining the options of strict liability, mitigated strict and fault-based liability; the provision of interim relief; and additional elements of civil liability, including: exemptions or mitigation, recourse against third parties by the person who is liable on the basis of strict liability, joint and several liability, apportionment of liability, limitation of liability in regard to both time and amount, and coverage.

3. Other provisions: This part contains sections on the supplementary compensation scheme, settlement of claims and complementary capacity-building measures. The supplementary compensation scheme contains subsections on residual state liability and the supplementary collective compensation

arrangements. The section on settlement of claims contains subsections on civil procedures, a special tribunal (such as the Permanent Court of Arbitration), and standing/right to bring claims. The section on complementary capacity-building measures contains alternative provisions on general capacity-building measures, one more concise and the other more detailed. It also contains a provision on possible institutional arrangements for capacity building.

The operational texts that had been consolidated and revised by the WGLR were subject to one further reading during the Friends of the Chair group convened prior to COP/MOP 4 and the COP/MOP 4 contact group. Some parts remain bracketed.

SUBSIDIARY BODIES

Options for the establishment of subsidiary bodies under the Protocol (UNEP/CBD/BS/COP-MOP/4/12) were discussed in WG II on Tuesday. A draft decision was discussed on Thursday, when it was forwarded to plenary with brackets.

El Salvador, the African Group, Cuba, Malaysia, Zimbabwe, Thailand and Tunisia supported the creation of a permanent subsidiary body on scientific, technical and technological advice (SBSTTA) with meetings scheduled in conjunction with meetings of the CBD's SBSTTA. China, the EU, India, Ecuador, Japan and others, however, preferred establishing AHTEGs for advice on specific issues, maintaining that these would be less costly.

Plenary was adjourned on Friday to enable a Friends of the Chair group, comprising Uganda, Zimbabwe, the EU, New Zealand and Brazil, to reach consensus on bracketed language. Bracketed text referring to the establishment of an AHTEG as an appropriate mechanism for the provision of scientific and technical advice to the COP/MOP, and the provision of funding from the core programme budget of the Secretariat for the work of the AHTEGs, was subsequently deleted and the decision adopted in plenary, as amended.

COP/MOP Decision: In the decision (UNEP/CBD/BS/COP-MOP/4/L.17), the COP/MOP decides to: establish, as necessary, AHTEGs with specific mandates to address one or more scientific and technical issues and to make recommendations to the COP/MOP. The COP/MOP agrees to consider, at its sixth meeting, the need to establish an open-ended subsidiary body for scientific and technical advice under the Protocol.

MONITORING AND REPORTING

Monitoring and reporting (UNEP/CBD/BS/COP-MOP/4/13 and INF/11) was discussed in WG II on Tuesday and Wednesday, when a draft decision was approved with some amendments.

Many parties highlighted the low rate of national reporting, and called for strengthening reporting capacities and improving the reporting format. The African Group requested funding for developing countries to prepare their national reports. The EU and Norway supported recommendations of the Compliance Committee to facilitate access to GEF funding to meet Protocol obligations including reporting requirements. Malaysia favored addressing non-compliance through the provision of technical and financial assistance.

COP/MOP Decision: In its decision (UNEP/CBD/BS/COP-MOP/4/L.13), the COP/MOP requests the CBD Executive Secretary to, *inter alia*:

- repeat the analysis of the first national reports submitted after the deadline, and make the analysis available through the BCH; and
- propose improvements in the reporting format based on experiences gained through the analysis of the first national reports.

In addition, the COP/MOP urges the GEF to make financial resources available with a view to enable parties to prepare their national reports.

ASSESSMENT AND REVIEW

This matter (UNEP/CBD/BS/COP-MOP/4/14) was addressed in WG II on Tuesday and Thursday, when a draft decision was forwarded to plenary with brackets. Cuba, Mexico and India were in favor of requesting an AHTEG to assess the effectiveness of the Protocol. The EU, New Zealand and Colombia opposed this, noting that parties' national reports could be used as basis for assessment as long as sufficient national reports are submitted.

Plenary was adjourned on Friday to enable a Friends of the Chair group, comprising Uganda, Zimbabwe, the EU, New Zealand and Brazil, to reach consensus on bracketed language. Bracketed text referring to: convening an AHTEG; requesting parties to submit views and information on the lack of submissions relating to compliance by parties; and requesting the compliance committee to provide guidance on compliance procedures, taking into account experiences and compliance mechanisms of other multilateral environmental agreements, was subsequently deleted and the decision was adopted in plenary on Friday.

COP/MOP Decision: In its decision (UNEP/CBD/BS/COP-MOP/4/L.16), the COP/MOP: requests the Executive Secretary to develop a sound methodological approach to contribute to an effective second assessment and review of the Protocol; invites parties to make submissions on a strategic plan for the Protocol; and requests the Executive Secretary to present a draft strategic plan for consideration at COP/MOP 5.

SOCIOECONOMIC CONSIDERATIONS

Delegates considered socioeconomic considerations (UNEP/CBD/BS/COP-MOP/4/15) in WG I on Monday, Tuesday and Wednesday. Discussions focused on research and information sharing, capacity building, the establishment of an AHTEG to consider research needs, and integration into decision making. Many supported further research and information sharing through the BCH, with several noting the need for objective criteria for scientific research, coordination with other fora, guidance for assessing socioeconomic impacts, and taking into account local conditions and impacts.

Many developing country parties called for increased capacity building for research on socioeconomic impacts. Delegates debated whether the recommendations should be addressed by the next meeting of the Coordination Meeting of Governments and Organizations Implementing and/or Funding Capacity-Building Activities, which had been established by COP/MOP 1, or an AHTEG. Delegates eventually agreed that it was premature to establish an AHTEG and decided to retain the reference to the coordination meeting. Some NGO representatives said that

socioeconomic consideration under the Protocol should be limited to impacts on the conservation and sustainable use of biodiversity.

Regarding integration of socioeconomic considerations in national decision making on LMOs, suggestions included integration based on sound science and subject to national discretion; and integration into national biosafety frameworks and into decision making on LMO imports and protection of human health, indigenous peoples and traditional knowledge. Two issues were left outstanding during the reading of the draft decision, which were resolved during the final plenary. On integration of socioeconomic considerations, Brazil, opposed by Ethiopia, Uganda, Norway and the EU, requested deleting reference to “methods for integrating research results in decision making.” On this issue, delegates agreed to a compromise text by Norway to make reference to “experience in taking into account socioeconomic impacts.” On related discussions under the CBD, China, opposed by many, requested deletion of a reference to CBD work on genetically modified trees. This issue was resolved by making general reference to “related discussions” taking place under the CBD. The final plenary adopted the decision with these amendments.

COP/MOP Decision: In its decision (UNEP/CBD/BS/COP-MOP/4/L.9), the COP/MOP recognizes divergent views and the complexity of the issue; takes note of the importance of cooperation and the need for further study and research; and notes related discussions taking place under the CBD.

The COP/MOP:

- requests the next Coordination Meeting of Governments and Organizations Implementing and/or Funding Capacity-Building Activities to further consider possibilities for cooperation in identifying needs for capacity for research and information exchange of socioeconomic impacts of LMOs and to submit any recommendation for COP/MOP 5;
- invites parties, other governments and relevant organizations to continue the sharing of research, research methods and experience in taking into account socioeconomic impacts through the BCH; and
- agrees to review the item at COP/MOP 6 based on information provided in the second national reports.

PUBLIC AWARENESS AND PARTICIPATION

This item (UNEP/CBD/BS/COP-MOP/4/16) was considered by delegates in WG II on Tuesday and a bracketed draft decision was forwarded to plenary on Thursday.

While several delegations requested increased funding for public awareness and participation, others highlighted the importance of providing sound scientific information on positive aspects of LMOs.

Plenary was adjourned on Friday to enable a Friends of the Chair group, comprising Uganda, Zimbabwe, the EU, New Zealand and Brazil, to reach consensus on bracketed language. Bracketed text referring to: establishing an AHTEG on public awareness, education and participation; requesting the Executive Secretary to organize a meeting of the AHTEG before COP/MOP 5; and taking into account the deliberations of the AHTEG was subsequently deleted. The annexed terms of reference for the AHTEG on public awareness, education and participation were also deleted and the decision was adopted, as amended.

COP/MOP Decision: In its decision (UNEP/CBD/BS/COP-MOP/4/L.11), the COP/MOP decides: to develop a programme of work on public awareness, education and participation concerning the safe transfer, handling and use of LMOs; invites parties, other governments and relevant organizations to submit to the Executive Secretary before COP/MOP 5 their views on the possible elements of a programme of work on public awareness, education and participation concerning the safe transfer, handling and use of LMOs; and requests the Executive Secretary to prepare a synthesis of the views in the submissions made by parties and other relevant organizations.

The COP/MOP also requests the Executive Secretary to prepare, taking into account submissions made, a programme of work on public awareness, education and participation.

NOTIFICATION REQUIREMENTS

Delegates addressed the review of options for implementation of notification requirements (UNEP/CBD/BS/COP-MOP/4/17) in WG I on Tuesday. Delegates agreed that documented experiences are not sufficient to develop modalities for implementing notification requirements, but were divided on the way forward, with some favoring deferring the issue to a future COP/MOP, while others preferred establishing a subsidiary body that would also address notification requirements. Several suggested an AHTEG to consider notification requirements along with risk assessment and management. Other issues discussed included: responsibilities regarding prior risk assessments by exporting countries and differentiated requirements for shipments intended for field trials.

COP/MOP Decision: In its decision (UNEP/CBD/BS/COP-MOP/4/L.7), the COP/MOP, *inter alia*: recognizes that information made available by parties demonstrates the existence of no or limited experiences in implementing notification requirements; and decides to review the item at COP/MOP 6 based on experiences that may be communicated through the second national reports.

CLOSING PLENARY

The closing plenary convened at 3:00 pm on Friday. It was adjourned for several hours to allow for informal consultations to resolve outstanding bracketed text in decisions on subsidiary bodies, public awareness, education and participation, and assessment and review, and the finalization of the decision on the budget.

Delegates adopted the WG reports (UNEP/CBD/BS/COP-MOP/4/L1/Add.1 and Add.2) and the COP/MOP 4 report (UNEP/CBD/BS/COP-MOP/4/L.1) with editorial changes. Executive Secretary Ahmed Djoghlaif congratulated parties for successful completion of all agenda items, and paid tribute to the Chairs and Co-Chairs of working and contact groups. He thanked the Government of Germany, the interpreters and local staff for their efforts. Japan also congratulated parties for a successful conference, applauded Germany for hosting the meeting, and announced its offer to host COP/MOP 5 in Nagoya, Japan. Greenpeace International thanked the Co-Chairs for their work on liability and redress, and encouraged parties to join the Like-Minded Friends in their support for a binding instrument. COP/MOP President Wolfgang Koehler closed the meeting at 8:25 pm.

A BRIEF ANALYSIS OF COP/MOP 4

COP/MOP 4 in Bonn can be described the amalgamation of two meetings running on different tracks. On one track were the working group sessions dealing with standing and substantive issues arising from the medium-term work programme, while the second track focused on the liability and redress negotiations. The development of rules and procedures on liability and redress is the last outstanding substantive issue and without it the Biosafety Protocol remains incomplete and, so to say, lacks its “(bio)safety net.” As a result, these negotiations were the main focus of attention at COP/MOP 4. In the working groups, however, many of the other issues on the agenda suffered from lack of substantive information, national experience and scientific advice. This analysis describes the two tracks, with a main focus on how the liability and redress negotiations unfolded, while also assessing other key challenges for fully operationalizing the Biosafety Protocol.

DIFFERENT DIRECTIONS ON LIABILITY AND REDRESS

The development of rules and procedures on liability and redress is the last major issue whose completion was mandated directly in the Biosafety Protocol. Article 27 (liability and redress) of the Protocol mandates the development of rules and procedures on liability and redress by COP/MOP 4. It should be recalled that this article was in itself a compromise to facilitate adoption of the Biosafety Protocol in 2000, when positions on liability and redress were diametrically opposed. Many developed countries insisted at that time and right up until they arrived in Bonn that they could not support any legally binding provisions on liability and redress, whereas many developing countries had long insisted on a legally binding civil liability approach. Much of the power in the negotiating game was therefore held by those developing countries who had not yet declared their positions on this critical issue; since by opting against a legally binding regime, they would break apart the like-minded group of countries that had been so effective in the negotiations of the Biosafety Protocol itself.

With the deadline for completion of negotiations at the end of COP/MOP 4, delegates had no choice but to embark on the long-avoided debate on the choice of instrument and finally put their positions on the record. On the first day of the COP/MOP delegates streamed to the smallest room in the conference center to witness the most important debate of the week – the “face-off” over the choice of instrument. One party after another, mainly from developing countries, called for a legally binding instrument with a focus on civil liability. Some warned that a legally binding approach on the administrative approach alone, which had been introduced by some developed countries opposed to a civil liability regime, could not constitute a compromise, since the concept was alien to many developing countries. They were supported by some developed countries with a civil liability approach enshrined in their legal systems, who also expressed readiness to compromise. In turn, parties who had long opposed a legally binding approach were joined by some developing country parties who had not previously tabled their position. As the opponents of civil liability put their cards on the table, it became clear that several of these parties would not be in the

position to accept any reference that might eventually lead to legally binding elements on civil liability.

A TRAIN HEADING FOR A LEGALLY BINDING REGIME ON LIABILITY AND REDRESS

The moment when all positions had finally been tabled constituted a turning point in the negotiations, which created the political space for new coalitions to emerge. Once it was evident that certain regional groups, such as the Latin American and Caribbean Group, could no longer work together on the key question of the choice of instrument, the group of “Like-Minded Friends” of a legally binding civil liability regime was formed. Ironically, although the group’s members were united by their intention to work towards a comprehensive legally binding regime on civil liability, their first step was to abandon that position in order to table a proposal that could be politically acceptable. The compromise they tabled consisted of a legally binding instrument based mainly on the administrative approach, which included one provision on civil liability. This provision is meaningful in that it introduces the core elements of a civil liability approach into a legally binding instrument and thus “opens the door” towards providing international recognition for civil liability.

The most substantive part of the provision is a reference to enforcement of foreign judgments regarding damage from transboundary movements of LMOs. This provision could potentially become the most controversial part of the compromise proposal once negotiations begin on the details. Mindful of this, the Like-Minded Friends made it clear from the outset that this provision was at the core of their proposed compromise. With a view to strengthening the legally binding system in the long term, the compromise proposal foresees a review provision that allows for the introduction of further legally binding provisions on civil liability once the current scheme has been tested. By tabling this compromise, the Like-Minded Friends challenged other delegations to reach a political compromise. At this stage the Co-Chairs asked a series of strategic questions with a view to revealing the bottom line of parties’ instructions. After numerous bilateral consultations, all parties signed on to the compromise and “boarded the same train heading towards a legally binding instrument on liability and redress,” as one delegate put it.

This political commitment of parties to work towards a legally binding liability and redress regime consisting mainly of an administrative approach but referencing civil liability provisions constituted the main achievement of COP/MOP 4. Without this commitment, the extension of the mandate to develop a detailed regime and funding for the process would have been in jeopardy and the liability and redress negotiations could have been derailed. COP/MOP 4 clearly charted the course for the continuation of the negotiations in the Friends of the Chair group and its final destination towards a legally binding liability and redress regime.

“NOTHING IS AGREED UNTIL EVERYTHING IS AGREED” AND “NOTHING CAN BE DONE UNTIL SOMETHING IS DONE”

Negotiations will continue under the caveat that “nothing is agreed until everything is agreed” and the final decision on

whether to support and adopt a regime will now be taken at COP/MOP 5. Many of the details regarding the future regime still need to be considered. Some of the most controversial elements include: the scope and inclusion of derivatives; definition of damage and whether it should take into account damage to human health; and the definition of operator. Most of these elements are characterized not only by political uncertainty regarding the solution that will be negotiated; what may be more important is overcoming the scientific and technical uncertainty attached to them. For many countries it is difficult at this point to estimate what consequences different options on scope, damage and operator will have domestically. The lack of capacity and experience necessary is important in two ways. As countries develop a better understanding of these issues they may adjust their positions, which could upset the delicate balance of the compromise achieved in Bonn.

This is the point where the two tracks at COP/MOP 4 are intersecting, since many of the substantive items discussed in the working groups relate to capacity building, research, and sharing of information and experience relating to the activities necessary to implement the Protocol. A Catch-22 situation often prevailed, where it was difficult to engage meaningfully on a number of agenda items (such as compliance, HTPI, notification, assessment and review and monitoring and reporting) due to lack of research and national and international experience. The Compliance Committee, for example, has yet to be presented with a case of non-compliance. Consequently delegates considered reducing the frequency of sessions to one per year, eventually deciding to leave it to the committee's discretion. Many documents for consideration by the working groups were based on limited submissions by governments, leading delegates to comment on the need for review of sources and independent research and scientific advice. Nevertheless, the debate over establishing a subsidiary body for scientific, technical and technological advice (SBSTTA) was extremely contentious, with many parties preferring to continue convening AHTEGs for specific issues, because of the funding implications, since it is more costly to establish a permanent body than to convene meetings on an *ad hoc* basis.

The discussion on the establishment an open-ended SBSTTA under the Protocol has now been postponed until COP/MOP 6. The circuitous debates in the working groups serve as an example of the quandary confronting implementation of the Biosafety Protocol. While experience and scientific advice is required to allow for the substantive consideration of key issues, there is a lack of commitment to contributing the funds required to implement activities and establish the necessary institutional arrangements.

The background to this reluctance to come forward with funding is, according to number of delegates, that most donor countries do not need the Protocol. The EU and many other donors already have biosafety regulations in place. With regard to liability and redress, those countries are aiming for an international framework that does not require any change in their national and regional regimes or an increase in long-term funding commitments. While this constellation of interests could trap the biosafety process in a no-win situation, the biotechnology industry is rapidly evolving, and the gap resulting

from the lack of up-front investment in research and capacity building will only widen unless parties commit to and invest in a strong biosafety framework.

Yet, in spite of some shortcomings, most importantly COP/MOP 4 laid the track towards completing the biosafety framework by convincing all parties to take the same train heading towards a legally binding liability and redress regime. This renewed commitment led many delegates to express their confidence that the Protocol will soon be fully operational.

UPCOMING MEETINGS

CBD COP 9: The ninth Conference of the Parties to the Convention on Biological Diversity is being held from 19-30 May 2008, in Bonn, Germany. A high-level segment will be held from 28-30 May. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@cbd.int; internet: <http://www.cbd.int/doc/meeting.aspx?mtg=COP-09>

IN SAFE HANDS – AGRICULTURAL BIODIVERSITY FAIR: This event will take place from 19-21 May 2008, in Bonn, Germany, and focuses on genetic diversity for food sovereignty and food security and demonstrates how agricultural biodiversity is linked with cultural diversity. For more information, contact Ursula Groehn-Wittern, BUKO Agrar Koordination; tel: +49-40-392-526; e-mail: Ursula.Groehn-Wittern@bukoagr.de; internet: http://www.bukoagr.de/fileadmin/dateiupload/PDF-Dateien/H_ndeAufBlattInEnglish.pdf

URBAN BIODIVERSITY AND DESIGN: IMPLEMENTING THE CONVENTION ON BIOLOGICAL DIVERSITY IN TOWNS AND CITIES: This Conference, which will take place from 21-24 May 2008, in Erfurt, Germany, is organized by the Competence Network Urban Ecology. Main topics include: biodiversity of urban-industrial areas and its evaluation; cultural aspects of urban biodiversity; social aspects of urban biodiversity; urban biodiversity and climate change; and design and future of urban biodiversity. For more information, contact: Hildegard Feldmann; e-mail: feldfrau@fu-confirm.de; internet: <http://www.urban-biodiversity-erfurt-2008.de>

INTERNATIONAL DAY FOR BIOLOGICAL DIVERSITY: "Biodiversity and Agriculture" has been selected as the theme of International Day for Biological Diversity, to be celebrated on 22 May 2008. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@cbd.int; internet: <http://www.cbd.int/ibd/2008/>

GLOSSARY

AHTEG	<i>Ad hoc</i> technical expert group
BCH	Biosafety Clearing-House
GEF	Global Environment Facility
HTPI	Handling, transport, packaging and identification
LMO	Living modified organism
SBSTTA	Subsidiary Body on Scientific, Technical and Technological Advice
WGLR	<i>Ad hoc</i> Open-ended Working Group on Liability and Redress