

SECOND MEETING OF THE FRIENDS OF THE CO-CHAIRS ON LIABILITY AND REDRESS IN THE CONTEXT OF THE CARTAGENA PROTOCOL ON BIOSAFETY: 8–12 FEBRUARY, 2010

The second meeting of the Group of the Friends of the Co-Chairs on Liability and Redress in the context of the Cartagena Protocol on Biosafety opens today at the Putrajaya International Convention Center, Putrajaya, Malaysia, and will continue until 12 February. The meeting will continue negotiations on a supplementary protocol on international rules and procedures on liability and redress for damage resulting from transboundary movements of living modified organisms (LMOs) in the context of the Cartagena Protocol. This meeting is the last opportunity to conclude the negotiation of a supplementary protocol before the fifth Meeting of the Conference of the Parties serving as the Meeting of the Parties to the Protocol (COP/MOP5) to be held 11-15 October 2010 in Nagoya, Japan. During the week-long meeting, parties are expected to address a number of outstanding issues with regard to an administrative approach to liability and redress, including definitions, procedures of the primary compensation scheme, and nature and competencies of the national competent authority; as well as guidelines for developing legislation on civil liability.

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 advanced 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 157 parties.

NEGOTIATION PROCESS: In 1995, the second Conference of the Parties (COP2) to the Convention on Biological Diversity (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 for 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. BSWG3 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 BSWG6. 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/MOP1, and requested the CBD Executive Secretary to prepare work for development of a BCH. During a special ceremony held at COP5 (May 2000, Nairobi, Kenya), 67 countries and the European Union signed the Protocol.

ICCP PROCESS: The ICCP held three meetings between December 2000 and April 2002, focusing on: information sharing and the BCH; capacity building and the roster of experts;

decision-making procedures; compliance; handling, transport, packaging and identification (HTPI) of LMOs; 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 Lefebvre (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.

WGLR1: 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/MOP2: 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/MOP2 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."

WGLR2: 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/MOP3: 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.

WGLR3: 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.

WGLR4: 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.

WGLR5: At its fifth meeting (March 2008, Cartagena, 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 the 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 Co-Chairs Group immediately before COP/MOP4 to consider outstanding issues, including standard of liability, causation and the choice of instrument.

COP/MOP4: The fourth meeting of the COP/MOP (May 2009, Bonn, Germany) marked the deadline for adopting a decision on international rules and procedures for liability and redress. While the meeting did not adopt an international regime, delegates decided to reconvene the Friends of the Co-Chairs Group to complete negotiations on an international regime on liability and redress based on a compromise that 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. COP/MOP4 also adopted decisions on, among other issues: the Compliance Committee; HTPI of LMOs; the BCH; capacity building; socioeconomic considerations; risk assessment and risk management; financial mechanism and resources; and subsidiary bodies.

CPLR1: At the first meeting of the Group of Friends of the Co-Chairs on Liability and Redress under the Cartagena Protocol on Biosafety (February 2009, Mexico City, Mexico) all parties agreed for the first time to negotiate a supplementary protocol on liability and redress to the Biosafety Protocol. The meeting produced a draft protocol text that lays out an administrative approach to liability and redress and contains an enabling clause on civil liability. The administrative approach consists of definitions such as "damage," "imminent threat of damage," and "significant adverse effect;" scope and limitations of the supplementary protocol; and a primary compensation scheme. The text, which still contains numerous references in brackets and alternative options, will serve as basis for the further elaboration of the supplementary protocol during the second meeting of the Friends of the Co-Chairs.

INTERSESSIONAL HIGHLIGHTS

AHTEG ON RISK ASSESSMENT: The *Ad Hoc* Technical Expert Group on Risk Assessment and Risk Management under the Cartagena Protocol, held 20-24 April 2009 (Montreal), developed an initial draft of a roadmap for risk assessment.

OTHER MEETINGS: Also in the intersessional period, the sixth meeting of the Compliance Committee under the Cartagena Protocol was held 4-6 November 2009 (Montreal) and the sixth Coordination Meeting for Governments and Organizations Implementing or Funding Biosafety Capacity-building Activities was held 1 - 3 February 2010 (Siem Reap, Cambodia) and was immediately followed by the seventh meeting of the Liaison Group on Capacity-building for Biosafety, held 4-5 February 2010.