

FIFTH MEETING OF THE CARTAGENA PROTOCOL ON BIOSAFETY: 11-15 OCTOBER, 2010

The fifth meeting of the Conference of the Parties of the Convention on Biological Diversity (CBD) serving as Meeting of the Parties to the Cartagena Protocol on Biosafety (COP/MOP 5) opens today in Nagoya, Aichi Prefecture, Japan, and will continue until 15 October, 2010. The meeting was preceded by the fourth meeting of the Group of Friends of the Co-Chairs on Liability and Redress (CCLR 4) in the context of the Biosafety Protocol, and will be immediately followed by the tenth meeting of the Conference of the Parties (COP 10) to the CBD.

COP/MOP 5 will address a number of issues relating to the Protocol's implementation, including: compliance; the Biosafety Clearing House (BCH); capacity building; financial mechanisms and resources; and cooperation with other organizations, conventions and initiatives. The meeting will also consider substantive issues arising from the Medium-term Work Programme and previous COP/MOP Decisions, namely: handling, transport, packaging and identification (HTPI) of LMOs; risk assessment and risk management; liability and redress; assessment and review; and public awareness and participation.

CCLR 4 convened from 5-10 October to address outstanding issues with regard to the draft supplementary protocol on liability and redress in the context of the Biosafety Protocol, namely financial security, the definition of "LMOs and products thereof," and the preamble, as well as the draft COP/MOP decision adopting the supplementary protocol and the supplementary protocol's title. Originally scheduled for three days, the meeting was extended throughout the weekend with informal consultations continuing into the night on Sunday. Delegates agreed on an enabling clause on financial security and resolved all issues with regard to the preamble and the COP/MOP decisions. Negotiations on the definition of LMOs and products thereof continued on Sunday night.

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 of LMOs. It includes an advance informed agreement (AIA) 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 160 parties.

NEGOTIATION PROCESS: In 1995, CBD COP 2, held in Jakarta, Indonesia, established a Biosafety Working Group (BSWG) to comply with Article 19.3 of the CBD, which requests parties to consider the need for, and modalities of, a protocol setting out procedures in the field of the safe transfer, handling and use of LMOs resulting from biotechnology that may have adverse effects on biodiversity and its components.

The BSWG held six meetings between 1996 and 1999. The first two meetings identified elements for the future protocol and helped to articulate positions. BSWG 3 developed a consolidated draft text to serve as the basis for negotiation. The fourth and fifth meetings focused on reducing and refining options for each article of the draft protocol. At the final meeting of the BSWG (February 1999, Cartagena, Colombia), delegates attempted to complete negotiations and submit the draft protocol to the first Extraordinary Meeting of the COP (ExCOP), convened immediately following BSWG 6. Despite intense negotiations, delegates could not agree on a compromise package that would finalize the protocol, and the meeting was suspended. Outstanding issues included: the scope of the protocol; its relationship with other agreements, especially those related to

trade; its reference to precaution; the treatment of LMOs for food, feed or processing (LMO-FFPs); liability and redress; and documentation requirements.

Following suspension of the ExCOP, three sets of informal consultations were held, involving the five negotiating groups that had emerged during the negotiations: the Central and Eastern European Group; the Compromise Group (Japan, Mexico, Norway, the Republic of Korea and Switzerland, joined later by New Zealand and Singapore); the European Union; the Like-minded Group (the majority of developing countries); and the Miami Group (Argentina, Australia, Canada, Chile, the US and Uruguay). Compromise was reached on the outstanding issues, and the resumed ExCOP adopted the Cartagena Protocol on Biosafety on 29 January 2000 in Montreal, Canada. The meeting also established the Intergovernmental Committee for the Cartagena Protocol on Biosafety (ICCP) to undertake preparations for COP/MOP 1, and requested the CBD Executive Secretary to prepare work for development of a BCH. During a special ceremony held at COP 5 (May 2000, Nairobi, Kenya), 67 countries and the European Community signed the Protocol.

ICCP PROCESS: The ICCP held three meetings between December 2000 and April 2002, focusing on: information sharing and the BCH; capacity building and the roster of experts; decision-making procedures; compliance; HTPI; monitoring and reporting; and liability and redress.

COP/MOP 1: At its first meeting (February 2004, Kuala Lumpur, Malaysia), the COP/MOP adopted decisions on: information sharing and the BCH; capacity building; decision-making procedures; HTPI; compliance; liability and redress; monitoring and reporting; the Secretariat; guidance to the financial mechanism; and the medium-term work programme. Delegates also agreed on elements of documentation of LMOs for food, feed, and processing (FFP), pending a decision on detailed requirements; and also reached agreement on more detailed documentation requirements for LMOs destined for direct introduction into the environment. The meeting established the Compliance Committee, and launched the Working Group on Liability and Redress (WGLR), co-chaired by Jimena Nieto (Columbia) and René Lefeber (the Netherlands), to elaborate international rules and procedures in the field of liability and redress for damage resulting from transboundary movements of LMOs in the context of the Protocol.

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 continued its work based on the draft synthesis text. 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 streamlining options for operational text related to damage, administrative approaches and civil liability resulting in a consolidated text to form the basis of 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 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 Group of Friends of the Co-Chairs immediately before COP/MOP 4 to consider outstanding issues, including standard of liability, causation and the choice of instrument.

COP/MOP 4: The fourth meeting of the COP/MOP (May 2008, 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 Group of Friends of the Co-Chairs to complete negotiations on an international regime on liability and redress based on a compromise that envisioned a legally-binding supplementary protocol focusing on an administrative approach but including a legally-binding provision on civil liability that will be complemented by non-legally-binding guidelines on civil liability. COP/MOP 4 also adopted decisions on, among other issues: the Compliance Committee; HTPI; the BCH; capacity building; socioeconomic considerations; risk assessment and risk management; financial mechanism and resources; and subsidiary bodies.

INTERSESSIONAL HIGHLIGHTS

LIABILITY AND REDRESS: The Group of Friends of the Co-Chairs (CCLR) met four times to further negotiate international rules and procedures on liability and redress. At the first meeting (February 2009, Mexico City, Mexico) parties agreed to negotiate a supplementary protocol and developed

a draft protocol text that laid out an administrative approach to liability and redress and included an enabling provision on civil liability. The second meeting (February 2010, Putrajaya, Malaysia) achieved significant progress on the elaboration of a legally-binding provision on civil liability but did not conclude negotiations on this and other outstanding issues, including the definitions of “operator,” “products” of LMOs and “imminent threat of damage,” the supplementary protocol’s objective, and financial security. The third meeting (June 2010, Kuala Lumpur, Malaysia), reached agreement on civil liability as well as a number of other issues including: relationship with other agreements; “imminent threat of damage;” and the definition of “operator.” Delegates decided to reconvene the CCLR directly prior to COP/MOP 5 to address outstanding issues with regard to the definition of “products” of LMOs and financial security.

RISK ASSESSMENT AND RISK MANAGEMENT: Risk assessment and risk management was addressed by two meetings of an *Ad hoc* Technical Expert Group (AHTEG), each informed by a series of online consultations. The first meeting (April 2009, Montreal, Canada) developed a draft roadmap of steps for risk assessments for all types of LMOs and a list of priority topics for the development of guidance materials for specific types of LMOs. The second meeting (April 2010, Ljubljana, Slovenia) revised the roadmap and developed guidance for specific types of LMOs, including LMOs with stacked genes or traits, genetically-modified crops with tolerance to abiotic stress, and genetically-modified mosquitoes.

CAPACITY BUILDING: Intersessional activities for capacity building included an online forum on capacity building for integration of biosafety into national development plans, two meetings of the Liaison Group on capacity building and a series of regional Training of Trainers’ Workshops on identification and documentation of LMOs.

COMPLIANCE: The Compliance Committee held three meetings (November 2008, Kuala Lumpur, Malaysia; and November 2009 and September 2010 in Montreal, Canada). It considered, among other matters, general issues relating to compliance emerging from the updated first national reports, compliance with the obligation to make information available to the BCH, and how to improve the committee’s supporting role for implementation.

HTPI: An online forum on standards for HTPI was held in May/June 2009 to consider existing standards and standard-setting bodies, possible gaps in the standards, and gaps with regards to specific types of LMOs and in relation to the Protocol’s objective.

CCLR 4 REPORT

Co-Chair, Jimena Nieto (Colombia) opened the meeting on Wednesday, 5 October 2010, urging participants to reach consensus on pending issues in order to present a final draft supplementary protocol for adoption at COP/MOP5. Charles Gbedemah, on behalf of CBD Executive Secretary Ahmed Djoghlaif, said the supplementary protocol’s adoption would be

a gift for the International Year of Biodiversity. Delegates then adopted the meeting’s agenda and organisation of work (UNEP/CBD/BS/GF-L&R/4/1 and 1/Add.1).

SUPPLEMENTARY PROTOCOL ON LIABILITY AND REDRESS

Delegates discussed outstanding issues on the basis of the revised draft supplementary text contained in Annex I of the report of the third meeting of the Group of Friends of the Co-Chairs (UNEP/CBD/BS/GF-L&R/4/2). Co-Chair René Lefeber (the Netherlands) said the Co-Chairs would make proposals on outstanding issues with regard to headings and preambular text aimed at preserving the consistency of the text in order to ensure that the supplementary protocol can be adopted during the COP/MOP 5.

DEFINITION OF “LMOs AND “PRODUCTS THEREOF” IN RELATION TO SCOPE (ARTICLE 3.2):

Co-Chair Lefeber suggested inserting language from the Biosafety Protocol Annex III (Risk Assessment), which defines products of LMOs as “processed materials that are of LMO origin, containing detectable novel combinations of replicable genetic material obtained through the use of modern biotechnology” into the provision on scope. He added that this would apply only to damages from LMOs which find their origin in transboundary movements. Bolivia, Japan and Malaysia opposed the proposal, with Bolivia noting that the term “products thereof” should only apply to living materials. Co-Chair Lefeber recalled that there was an understanding that “products thereof” would also refer to dead material.

Bolivia, supported by Ecuador and Mexico, proposed using the Co-Chairs’ proposal as a self-standing definition, with Mexico adding “and which can replicate in the environment” in order to refine the definition. Ukraine noted that LMO products able to replicate in a laboratory should also be considered. The Philippines said he would support Mexico’s proposal if the definition could be qualified to prevent misinterpretation of “replication.” Mexico noted that a definition of “products thereof” was not necessary since the Biosafety Protocol refers only to LMOs. With regard to the proposed definition he said that the term “replicable genetic material” in the context of risk assessments refers to a wide range of materials, including products of LMOs, and supported by Ukraine, emphasized the need to refine it.

The African Group supported the Co-Chairs’ proposal, while the EU said they could agree to the suggestions made by Mexico and Bolivia provided the definition is added to the article on scope. The EU raised concerns that using the language from the Annex on risk assessment, which is relevant in the context of the advance informed agreement (AIA) procedure, could broaden the supplementary protocol’s scope giving rise to numerous legal issues and preventing practical management of the supplementary protocol. Malaysia replied that using the language would not necessarily imply a link to the AIA procedure since the same language also appears in other parts of the Biosafety Protocol. Bolivia cautioned against narrowing

down the supplementary protocol's scope and, citing advances in technology, suggested addressing the issue at the national scale when implementing the supplementary protocol.

Japan said damages caused by LMOs cannot be addressed without referencing the idea of products of LMOs and proposed as alternative language "LMOs including LMOs contained in products."

On Thursday morning, delegates continued discussions on the basis of three proposals: the Co-Chairs' proposal, the Bolivian proposal as amended by Mexico; and the Japanese proposal. Japan, supported by the EU, opposed the use of the term "products thereof" explaining that it was inadequate in describing LMOs found in products that are not necessarily products of LMOs. The EU underlined the need for legal clarity. Ukraine said the language from the Biosafety Protocol encompasses Japan's concerns since it refers also to LMOs used in processing industries. South Africa, Malawi, Ecuador and Brazil expressed willingness to support the Bolivian-Mexican proposal, despite having similar reservations with regard to "products thereof." Namibia noted that the Co-Chairs' proposal seemed to emphasize the term "products thereof." The Co-Chairs withdrew their proposal.

Several delegates, including Malaysia, the Philippines and Bolivia stressed the importance of a definition that relates to Biosafety Protocol Annex I (information required in notifications under the AIA procedure). Mexico asked for clarification on what substances required regulation. Bolivia said that regulation was for LMOs and products derived from LMOs that have potential to affect sustainable use of biodiversity taking into account human health, adding that this was consistent with text from the Biosafety Protocol. Cameroon responded that it was not necessary to redefine the provisions of the Biosafety Protocol but to introduce relevant language into the supplementary protocol to enable redress where there is damage. Colombia suggested rephrasing the Bolivian-Mexican proposal as a definition of "products" and deleting reference to replication in the environment, in order to combine it with the Japanese proposal.

After informal consultations, Malaysia presented a compromise proposal consisting of an amendment to the Bolivian-Mexican proposal stating that "products thereof" include materials that "are capable of replicating in the environment." Paraguay, South Africa, India and China requested time to consider the proposal, with India and China, noting that the decision would change the scope of the Biosafety Protocol and requesting to postpone decision until COP/MOP 5.

Japan, Brazil, the EU, Norway, Switzerland, Ukraine and the African Group accepted the proposal, with: Japan requesting that the meeting report reflect its understanding that the definition refers to LMOs; Brazil asking to clarify the difference between "are capable of replication" and the earlier formulation "can replicate;" and the EU noting that this definition does not provide for legal clarity. The Philippines suggested referring to LMOs that are capable of "naturally reproducing in the environment" to clarify the definition. Paraguay expressed willingness to consider the proposal.

On Friday afternoon, Co-Chair Lefeber asked whether all parties could accept the compromise proposal, including the Philippines amendment. Malaysia explained that the compromise was reached after difficult negotiations involving concessions from all sides and should not be amended. Namibia explained that the amendment would introduce a new distinction between living and non-living modified organism, deviating from that used in the Biosafety Protocol, which uses the term replication. Expressing concern about diverging interpretations of the definition, the EU asked for clear arguments by those who opposed the term "naturally reproducing." Paraguay noted that he had received instructions to accept the compromise proposal with the Philippine's amendment and, with India, urged the Philippines not to withdraw the proposal.

After a further round of informal consultations, Co-Chair Lefeber suggested that those countries that had difficulty with the compromise language, register their understanding in the meeting's report or in a footnote to the definition. India proposed two footnotes: the first stating that China, India, Japan, Paraguay and the Philippines are of the understanding that "replicating" means "naturally reproducing LMOs;" and the second stating that Paraguay reserves its right to reopen the debate at COP/MOP 5. Malaysia requested stating in the meeting's report that the language on "products of LMOs" was agreed to after protracted negotiations and reflects the compromise of a large number of countries with the aim to give maximum leeway for parties to fully implement the liability and redress provisions.

Bolivia, Ukraine, the Republic of Korea, Peru, and the African Group except South Africa wished to be associated with the Malaysian statement in the report, whereas the EU, Switzerland, Norway, Mexico, Ecuador, Guatemala and South Africa requested to be added to the first footnote suggested by India. Brazil, supported by the EU, Switzerland and New Zealand cautioned against registering diverging understandings of a definition. Delegates then discussed several options to resolve the issue, without reaching agreement. Further informal consultations were held on Friday evening and throughout the day on Saturday.

On Saturday afternoon, Malaysia suggested deleting both the proposed definition of "products thereof" and to replace the reference to "products thereof" with "LMOs in the context of the Biosafety Protocol." India, Paraguay, China and the Philippines proposed "as defined in the Biosafety Protocol" instead, noting the need for clear reference to the definition of LMOs. Colombia proposed "as referred to" as a compromise, which was opposed by India. The EU and New Zealand stressed the importance of transmitting clean text to the COP/MOP and, with Brazil and Norway indicated that they could accept all three proposals.

Informal consultations continued on Sunday. On Sunday evening, Co-Chair Lefeber invited the Philippines, India, China, Paraguay, Japan, the African Group with the exception of South Africa, Bolivia, Malaysia and Peru to conduct another round of informal consultations focusing on building understanding of each others' positions. He announced that the meeting would

reconvene later in the evening to resolve the issue in plenary and adopt the meeting's report. Consultations continued into the night.

FINANCIAL SECURITY (ARTICLE 10): On Wednesday, delegates discussed at length whether to include an enabling provision allowing countries to require an operator to establish financial security. Paraguay, Brazil, Mexico, and South Africa requested deleting the text, while Malaysia, Bolivia, Cameroon, Peru, India, Ukraine, and Norway insisted on its inclusion.

In lieu of keeping the provision, Brazil proposed inserting language in the preamble reflecting the importance of financial security and requesting the Secretariat to prepare a technical paper on the consequences of a financial security scheme. Mexico added that it is impractical to identify an operator for financial security, and noted that the current provision is inconsistent with other parts of the supplementary protocol. South Africa questioned the need for a provision on financial security. The African Group except South Africa opposed to deleting the text, noting that this would mean that the supplementary protocol is adopted without an operative reference to financial security and that such a reference could not be added after the supplementary protocol's adoption. With Bolivia, Peru, India, Malaysia, and Ukraine, he supported retaining the text, pointing out that the provision would not impose a financial security obligation, but would simply enable countries to provide for such in their national legislation. Malaysia recalled previous concessions on this issue and objected to the "general infringement on national sovereignty" implied by deleting the text.

In further discussion, Mexico, Paraguay, and Brazil expressed concern that a provision on financial security would negatively affect international trade. A number of countries urged for compromise for the sake of reaching agreement on the supplementary protocol. Noting limited flexibility of many countries on the issue, Co-Chair Lefebvre suggested a series of bilateral "confessional" meetings during which each party would confidentially reveal the bottom line in their instructions to the Co-Chairs, allowing them to determine whether there was room for agreement.

On Thursday, Co-Chair Lefebvre reported that Brazil, Mexico, Paraguay and South Africa had indicated that they could not accept a reference to financial security in the operative text and that he had invited them to provide an alternative compromise solution. Brazil, supported by Paraguay, restated his proposal to include a preambular reference and to conduct a technical study, explaining that the study could analyze relevant commercial and economic issues. Malaysia strongly opposed, noting that "commerce cannot destroy biodiversity," and that the provision must be included in the operative text. Responding that "biodiversity cannot destroy commerce," Brazil, with Mexico, suggested informal consultations to reach compromise. Malaysia agreed to informal consultations on the condition that parties must be willing to discuss inclusion of the provision in the operative text. Namibia asked why this particular provision

was subject to such scrutiny when other clauses were accepted despite similar acknowledged uncertainty regarding their implementation.

Delegates in favor of deleting the provision outlined their concerns that the insurance industry currently did not provide appropriate insurance products to protect the environment. Citing examples where governments or universities hold responsibility for compensation as operators, Switzerland said there are possibilities for addressing the lack of insurance products. Namibia added that there is always an entrepreneurial spirit to create such products.

Delegates then continued negotiations in an informal meeting between Paraguay, Brazil, Mexico and South Africa on one side and the rest of African Group, Malaysia, Bolivia, and Peru on the other. The group met on Thursday afternoon and throughout the day on Friday.

On Friday afternoon, Malaysia reported that parties had agreed to compromise language stating that: parties retain the right to provide for financial security in their domestic law; they should exercise this right in a manner consistent with their rights and obligations under international law, taking into account the final three preambular paragraphs of the Biosafety Protocol. They further agreed that the first COP/MOP after the supplementary protocol's entry into force should request the Executive Secretary to undertake a study of the modalities of financial security mechanisms and assess the environmental, economic and social impacts, particularly to developing countries, as well as identify the appropriate entities to provide financial security. He explained that this text would replace the original provision in Article 10 and that the article on assessment and review (Article 13) would be amended to state that the first review of the supplementary protocol should include a review of the effectiveness of this article.

Japan proposed qualifying financial security by stating "which is necessary and reasonable for the implementation of response measures under this supplementary protocol." New Zealand proposed reference to "reasonable financial security." Upon strong opposition by Brazil, Paraguay, and Malaysia, both proposals were withdrawn.

Delegates then adopted the provision after making several editorial changes to the final paragraph.

Outcome: The new text of Article 10 states that parties retain the right to provide in their domestic law for financial security; they should exercise this right in a manner consistent with their rights and obligations under international law, taking into account the final three preambular paragraphs of the Biosafety Protocol; and that the first COP/MOP after the supplementary protocol's entry into force should request the Executive Secretary to undertake a study of the modalities of financial security mechanisms and assess the environmental, economic and social impacts, particularly to developing countries, as well as identifying the appropriate entities to provide financial security. Article 13 on assessment and review now includes references stating that the first review of the supplementary protocol's effectiveness shall include a review of the effectiveness of Article 10.

PREAMBLE: On Saturday evening delegates agreed to introduce a new preambular paragraph that takes into account Principle 13 of the Rio Declaration on the Environment and Development. On Sunday, after informal consultations, delegates agreed to a reference noting initiatives by the private sector concerning recourse in the event of damage to biological diversity caused by LMOs.

TITLE: On Sunday afternoon, the Co-Chairs proposed that the title of the supplementary protocol be: "The Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety," which delegates agreed to.

COP/MOP DECISION: The draft COP/MOP decision on liability and redress which addresses the supplementary protocol, guidelines on civil liability, additional supplementary compensation measures, and complementary capacity building measures was addressed briefly on Wednesday and again on Saturday night and Sunday. On Wednesday morning, delegates decided not to consider the guidelines at this meeting and tentatively agreed that they would be removed during the COP/MOP.

On Sunday, delegates discussed additional and supplementary compensation measures in informal consultations. Malaysia reported on the compromise language stating that situations where the costs of response measures to redress damage have not been redressed by response measures as defined in the supplementary protocol, may be addressed by additional or supplementary compensation measures which may include arrangements to be addressed by the COP/MOP. A second paragraph states that these measures may include a supplementary collective compensation arrangement whose terms of reference will be decided during the COP/MOP.

On the first paragraph, Namibia said that the text should reflect the fact that the inability to redress damage by competent authorities was due to either lack of inadequate finances or inability to recover costs incurred from the responsible party. Cameroon proposed referring to costs and damage not redressed as "not recovered" or "insufficient." The EU proposed "have not been adequately covered," and Malaysia asked for deletion of "adequately."

South Africa asked for examples of existing supplementary compensatory measures. Co-Chair Lefebvre noted that, while none existed for cases of trans-boundary movements of LMOs, the mechanisms of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal had elaborated decisions on compensatory measures. Participants agreed on a final text to read: "Where the costs of response measures to damage as provided for in the supplementary protocol have not been recovered, such a situation may be addressed by additional and supplementary compensation measures."

IN THE CORRIDORS

Many delegates were exasperated by the difficulty of agreeing on two main outstanding issues in the text of the supplementary protocol on liability and redress: financial security and the definition of LMOs and products thereof. Speculations revolved around different theories to explain why negotiations turned

out to be so difficult. Some blamed it on the complex challenge of keeping the supplementary protocol's scope in line with the Biosafety Protocol, while also addressing future developments such as synthetic biology or LMOs using binary transfers. Others guessed that the growing influence of the biotechnology industry was driving some countries to assume more polarized positions: some countries wanting to ensure that they have sufficient leeway to implement the domestic biosafety legislation that they consider appropriate to effectively implement the Biosafety Protocol; others showing more interest in preserving leeway for the industry's activities. Some lawyers in the room noted that, from a legal perspective, the remaining differences between the proposals appeared to be rather small. They explained that the contentions resulted from the growing mistrust between parties: "each side is accusing the other of trying to trick them and both sides are reading things into the proposals that anybody who wasn't in the room here will ever see." Preliminary appraisals of the outcome reflected parties' positions during the negotiation: while one side mourned that most of the substance of the supplementary protocol had been lost during the negotiations, the other lauded the outcome as reasonable and not overly restrictive. Nevertheless, both sides shared concerns about remaining instances of "lack of legal clarity," noting that some of these will hopefully be addressed by the legal drafting group expected to meet during the first half of COP/MOP 5.

As the opening of the COP/MOP approached, the corridors were buzzing with comments on the decision to reconvene the Interregional Negotiating Group (ING) on Access and Benefit-Sharing (ABS) during the last three days of the COP/MOP. While the proposal to do so had been almost unanimously rejected by the ING delegates meeting in Montreal in mid-September, it was reversed by ministers attending the UN high-level event on biodiversity in New York, just two weeks prior to the COP/MOP. Reactions ranged from confusion to concern, with some openly expressing their discontent, in particular those from countries with small delegations. Many COP/MOP delegates who also participate in the ABS negotiations could not see how the ING meetings could be scheduled without interfering with COP/MOP proceedings. Others suggested this could be done in evening and night sessions, but nevertheless worried about the impact on the COP/MOP negotiations. "There are only so many night sessions you can do without losing it," one said. Some felt that the convening of the ING could be an incentive to work swiftly through the COP/MOP 5 agenda, yet again others stated: "Our priority this week is biosafety! There is no way that we will compromise the COP/MOP discussions for ABS."