

## 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."



## COP/MOP 5 HIGHLIGHTS: MONDAY, 11 OCTOBER 2010

The fifth 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 5) opened in Nagoya, Aichi Prefecture, Japan on Monday, 11 October. In a morning plenary, delegates heard opening statements and reports on the Compliance Committee, financial mechanisms and resources, cooperation administration and budgetary matters, and liability and redress. In the afternoon, delegates convened in two working groups (WGs). WG I addressed compliance, rights and obligations of parties of transit of living modified organisms (LMOs), assessment and review and monitoring and reporting. WG II considered the Biosafety Clearing-House (BCH) and capacity building.

### OPENING PLENARY

Wolfgang Köhler, Federal Ministry of Food, Agriculture and Consumer Protection of Germany and COP/MOP 4 President, said the time was right to adopt the supplementary protocol on liability and redress and other matters such as a decision on public awareness and education. Assuming the Presidency of COP/MOP 5, Michihiko Kano, Minister for Agriculture, Forestry and Fisheries, Japan, stressed the importance of achieving tangible results, especially regarding liability and redress, and called for capacity building for the Protocol's implementation.

Masaaki Kanda, Governor of Aichi Prefecture, said that biodiversity conservation should be embraced and owned by people around the world. He called on the citizens of Nagoya to learn from discussions on the transboundary movement of LMOs and genetically modified organisms. Takashi Kawamura, Mayor of Nagoya, gratefully acknowledged that the supplementary protocol on liability and redress will be co-named after his city. He highlighted the quality of the city's headwaters and progress made in the restoration of the Horikawa river. Balakrishna Pisupati, on behalf of UNEP Executive Director Achim Steiner, drew attention to UNEP's role in supporting the development of national biosafety frameworks and access to the BCH.

CBD Executive Secretary Ahmed Djoghlaif lauded the agreement reached on liability and redress, noting that the proposed name, the Nagoya-Kuala Lumpur protocol, highlights the need for a strong North-South partnership to save life on earth. He urged action on the COP/MOP's remaining challenges, including risk assessment. A group of children from Aichi Prefecture presented handmade wooden nameplates crafted by the Lumberkids Program, which seeks to increase awareness about forest and biodiversity conservation.

**ORGANIZATIONAL MATTERS:** Hidenori Murakami, advisor to the Japanese Minister of Agriculture, Forestry and Fisheries, speaking for the COP/MOP 5 President, noted that the Bahamas had replaced Haiti in the COP/MOP Bureau and invited Snežana Prokić (Serbia) to serve as the COP/MOP 5 rapporteur. Delegates adopted the agenda and organization of work (UNEP/CBD/BS/COP-MOP/5/1 and 1/Add.1), and approved Darja Stanič Racman (Slovenia) and James Seyani (Malawi) as Chairs of WG I and WG II, respectively.

**REPORTS:** Delegates then heard reports on: the Compliance Committee (UNEP/CBD/BS/COP-MOP/5/2); financial mechanisms and resources (UNEP/CBD/BS/COP-MOP/5/5 and UNEP/CBD/COP/10/6); cooperation with other organizations, conventions and initiatives (UNEP/CBD/BS/COP-MOP/5/6); and the Protocol's administration and budgetary matters and the proposed budget and work programme for the biennium 2011-2012 (UNEP/CBD/BS/COP-MOP/5/7 and 7/Add.1). The Global Environment Facility (GEF) reported on support provided for the Protocol's implementation. The COP/MOP established a budget contact group, chaired by Conrad Hunte (Antigua and Barbuda).

**LIABILITY AND REDRESS:** Jimena Nieto (Colombia), Co-Chair of the Group of Friends of the Co-Chairs on Liability and Redress, presented the group's report (UNEP/CBD/BS/COP-MOP/5/11), recalling that parties' decision to not adopt guidelines on civil liability does not preclude their potential elaboration at a later stage. Co-Chair René Lefeber (the Netherlands) expressed hope that the supplementary protocol, being the first agreement to be adopted in years, would provide an important impetus to multilateral environmental negotiations. He thanked all participants in the negotiations, the CBD Secretariat, and the *Earth Negotiations Bulletin* for their work during the negotiations. Delegates established a legal drafting group, co-chaired by Jimena Nieto and René Lefeber, to revise the text for clarity and consistency.

**STATEMENTS:** Indonesia, for the ASIA-PACIFIC GROUP, prioritized: a comprehensive and applicable Strategic Plan, coordination among parties, capacity building for developing countries and the financial mechanism, noting that the Strategic Plan must be fully financed. Malawi, for the AFRICAN GROUP, stressed further assistance, capacity building and financial resources to implement COP/MOP 5 decisions; technology transfer; information sharing and exchange of lessons learned. Ukraine, for CENTRAL AND EASTERN EUROPE (CEE), stressed compliance, capacity building, and improvements to the financial mechanism. The EU highlighted the Protocol's Strategic Plan. KENYA said that rich countries should not stand in the way of innovations like LMOs which can provide basic

needs for millions. INDIA offered to share knowledge and experience on capacity building and LMO regulation, inviting delegates to COP/MOP 6 to be held in India.

#### WORKING GROUP I

**COMPLIANCE:** Delegates considered the report of the Compliance Committee (UNEP/CBD/BS/COP-MOP/5/2) and a compilation of views on how to improve its supportive role (UNEP/CBD/BS/COP-MOP/5/2/Add.1). The EU supported a more active role of the Committee in cases where national reports are not submitted or reveal difficulties to comply. BRAZIL, ARGENTINA and CANADA emphasized the supportive role of the Committee and the non-adversarial nature of compliance procedures. Cameroon, on behalf of the AFRICAN GROUP, supported by INDIA and NORWAY, stressed capacity building, with JAPAN and NORWAY pointing out the limited availability of funds. MALAYSIA proposed wording on a GEF pilot project. COLOMBIA cautioned against making GEF funding conditional on compliance with reporting requirements.

**TRANSIT OF LMOs:** Delegates considered the rights and/or obligations of parties of transit of LMOs (UNEP/CBD/BS/COP-MOP/5/10). Cameroon, on behalf of the AFRICAN GROUP, highlighted that the lack of submissions by African states is due to the lack of experience and existence of national biosafety frameworks. KENYA said that national, regional and international requirements regarding transit of LMOs should be enforced.

**MONITORING AND REPORTING:** Delegates considered UNEP/CBD/BS/COP-MOP/5/14/Rev.1 including a new format for national reporting. Given the limited rate of submissions for the first national report, NEW ZEALAND cautioned that the increased information requirements in the new format could be challenging. The EU called for consistency across agenda items regarding calls on GEF to support national reports. CUBA, LIBERIA and the EU raised concerns on the time frames to submit the second national report considering the proposed information requirements. INDIA said information requirements on liability and redress should only apply after the supplementary protocol enters into force. GUATEMALA, supported by MALAYSIA and UGANDA, emphasized timely access to financial support to prepare national reports. ARGENTINA said that non-parties should be allowed to present voluntary national reports.

**ASSESSMENT AND REVIEW:** Delegates discussed the approach and criteria for assessment and review (UNEP/CBD/BS/COP-MOP/5/15). On criteria for selecting participants for an expert group to evaluate the Protocol's effectiveness, MEXICO proposed expertise, experience and regional representation, noting that the process should be transparent. BRAZIL suggested separate indicators to assess compliance with domestic frameworks and the Advanced Informed Agreement (AIA) procedure. The Public Research and Regulation Initiative (PRRI) proposed inquiring why some parties have not established domestic biosafety procedures.

#### WORKING GROUP II

**BCH:** The Secretariat introduced UNEP/CBD/BS/COP-MOP/5/3 on BCH operation and activities, highlighting improvements made to the BCH. Several developing country parties called for enhanced financial support for building capacities in using the BCH. Uganda, on behalf of the AFRICAN GROUP, MEXICO and JORDAN, called for expanding the number of parties participating in the UNEP-GEF BCH project.

INDIA, MEXICO and ARGENTINA recommended developing synergies between related databases, with ARGENTINA suggesting an expert group to standardize information. JAPAN and CHINA stressed that the BCH's priority is providing information to parties, while CHINA stressed it should make available information on LMOs from all countries. NORWAY urged countries to be mindful of budgetary

implications in making suggestions to improve the BCH. The EU stressed the timely manner of information reporting, particularly for risk assessment of LMOs and the AIA procedure.

The REPUBLIC OF KOREA proposed encouraging training activities on the national and sub-regional level. COLOMBIA stressed building capacities of customs and environmental agencies and training the public on providing and using information relevant to their countries. ARGENTINA offered to share its experience in online training. PRRI stressed the importance of accurate and complete information for public research and called on countries to provide information to the BCH.

#### CAPACITY BUILDING: Status of capacity-building

**activities:** The Secretariat introduced relevant documents (UNEP/CBD/BS/COP-MOP/5 and INF/3,4,7,8 and 9). The EU stressed identification and prioritization of capacity-building needs, regional capacity-building projects and toolkits for regional and sub-regional approaches. VIETNAM called for GEF support for capacity building. MEXICO and COLOMBIA called for broader developing country participation in online fora.

The EU, NEW ZEALAND, INDONESIA, ARGENTINA and the REPUBLIC OF KOREA considered it premature to convene an *ad hoc* expert group (AHEG) on capacity-building needs for research and information exchange on socio-economic impacts of LMOs, with the EU preferring to convene only an online forum. INDIA suggested narrowing the AHEG's mandate from "developing" to "documenting" criteria for evaluating which socio-economic criteria to include in their national decision-making frameworks.

The AFRICAN GROUP requested that the AHEG meet at least once before COP/MOP 6, with NIGERIA stressing the need to consider socio-economic issues. BOLIVIA recommended the creation of a working group focused on the value of LMOs with respect to their impacts on local communities. ARGENTINA referenced the challenges of including the issue in risk analysis. The REPUBLIC OF KOREA asked for more time for research. CHINA said the AHEG's terms of reference should be further discussed.

**Roster of Biosafety Experts:** Delegates considered UNEP/CBD/BS/COP-MOP/5/4/Add.1. The EU recognized the importance of assessing the roster. KENYA, supported by UGANDA, suggested awareness-raising at the experts' home institutions to facilitate their release. SOUTH AFRICA noted that some nominated experts are not employed by governments, making it difficult for them to assume responsibilities under the Protocol. UGANDA also proposed that parties furnish the Secretariat with experiences gained and challenges met in nominating experts, and requested that the nomination process be participatory. PRRI inquired about the vetting of nominated experts.

#### IN THE CORRIDORS

Only a few hours after the breakthrough on liability and redress, COP/MOP 5 opened in positive spirits despite the fact that numerous delegates were still bleary-eyed from the series of pre-meeting late night sessions to resolve the impasse over references to LMOs and their products. After spending several days defending their positions with regard to the supplementary protocol, delegates were relieved to switch to cooperative mode and to work together to enhance the Biosafety Protocol's effectiveness. One delegate quipped that "it feels like we are a family again."

In Working Group I, delegates raced through the text, finishing in a few hours that led some to wonder whether there was some mystery behind the "silent" solidarity in the meeting room. Others optimistically suggested the issues were not contentious because countries' contributions had already been reflected in the documents. One smiling delegate attributed the general lack and lag of response to jetlag, sleep deprivation and/or celebratory *sake*. Was finishing Liability a liability?



## COP/MOP 5 HIGHLIGHTS: TUESDAY, 12 OCTOBER 2010

COP/MOP 5 delegates met in two Working Groups (WGs) throughout the day. WG I discussed assessment and review and the Strategic Plan. WG II addressed: the biosafety roster of experts; handling, transport, packaging and identification (HTPI) of living modified organisms destined for food, feed and for processing (LMO-FFPs); risk assessment; and public awareness, education and participation.

### WORKING GROUP I

**ASSESSMENT AND REVIEW:** Delegates discussed possible indicators and tools to be utilized for the second evaluation of the effectiveness of the Protocol contained in document UNEP/CBD/BS/COP-MOP/5/15. The AFRICAN GROUP requested including the development of indicators for socio-economic impacts of LMOs in the recommendations. UGANDA proposed reviewing the number of parties reporting damages from LMOs or illegal introductions of LMOs, as well as those parties with systems for risk management, impact assessment, and legal and administrative procedures for liability and redress. MEXICO suggested eliminating indicators on the amount of funding made available, while retaining an indicator on efficient use of financial resources. The PUBLIC RESEARCH AND REGULATION INITIATIVE (PRRI) said there were no verifiable negative effects of LMOs to the environment or human health and voiced concerns that indicators made the consideration of socio-economic impacts prescriptive.

**STRATEGIC PLAN:** Delegates discussed document UNEP/CBD/BS/COP-MOP/5/16 on the Strategic Plan for the Period 2011-2020, including a draft multi-year programme of work (MYPOW). On the Strategic Plan objectives and linkages, the AFRICAN GROUP proposed streamlining the strategic objectives with the Convention and discussions in parallel processes, such as on the supplementary protocol on liability and redress. Colombia, for GRULAC, supported by SOUTH AFRICA, said linkages with the CBD Strategic Plan should be strengthened. NORWAY, supported by ARGENTINA, said socio-economic considerations should be included. Many countries highlighted the importance of capacity building.

On reviews of the Strategic Plan, VIETNAM called for a mid-term review in 2015, while MALAYSIA supported minor reviews at every COP/MOP meeting. On financial resources, SOUTH AFRICA, supported by UGANDA and YEMEN, highlighted that the implementation of the Strategic Plan required specific financial resources. SUDAN called for a special biosafety fund to support national strategies and initiatives. JAPAN, supported by KENYA, the EU and

NEW ZEALAND, said implementation should be supported by existing GEF funds. On the Strategic Plan indicators, the EU stressed that indicators should be measurable and relate to practical impact. VIETNAM suggested adding quantitative indicators, while the AFRICAN GROUP supported strengthening qualitative assessment.

On the draft MYPOW, BURKINA FASO requested that capacity building be included in subsequent COP/MOP meetings. The EU said that the development of tools and guidance on contained use of LMOs should be addressed earlier than COP/MOP 7, adding that the programme of work for both COP/MOP 7 and COP/MOP 8 would require revision after the completion of the second evaluation of the Protocol. She remarked that planning for COP/MOP 9 and COP/MOP 10 was premature.

### WORKING GROUP II

**BIOSAFETY ROSTER OF EXPERTS:** Delegates continued the consideration of UNEP/CBD/BS/COP-MOP/5/4/Add.1. MALAYSIA said only one expert in the roster specializes in legal issues and none are socio-economic experts, and, with MEXICO and JORDAN, called for enabling the release of experts. To refine the roster selection process, MEXICO suggested investigating why the roster was not used by certain parties. Noting that he was one of the members of the roster, the WASHINGTON BIOTECHNOLOGY ACTION COUNCIL suggested enabling ways to update roster entries.

**HANDLING, TRANSPORT, PACKAGING AND IDENTIFICATION OF LMO-FFPs: Experiences with LMO-FFP documentation:** Delegates considered UNEP/CBD/BS/COP-MOP/5/8. Many countries supported deferring a decision on more detailed documentation requirements from COP/MOP 7 to COP/MOP 8 citing limited experience and lack of capacity to provide necessary information. NORWAY and BOLIVIA preferred not to postpone accelerating the implementation of documentation requirements. SOUTH AFRICA and ARGENTINA cautioned against documentation requirements becoming a barrier to trade. Delegates also called for further capacity building, including for the use of existing documentation and sampling and detection. The THIRD WORLD NETWORK reiterated the need for detailed documentation requirements and a stand-alone document for LMO-FFPs.

**Standards:** The AFRICAN GROUP, IRAN, NEW ZEALAND and BOLIVIA, opposed by the EU, PARAGUAY, the PHILIPPINES and ARGENTINA, supported establishing an *Ad Hoc* Technical Expert Group (AHTEG), with the AFRICAN GROUP and BOLIVIA insisting that it should consist of both parties and relevant organizations, while PARAGUAY preferred

that it consist of standard-setting experts. NEW ZEALAND added that the AHTEG should collect information but not elaborate standards.

IRAN, the REPUBLIC OF KOREA, and the AFRICAN GROUP called for a stand-alone document containing more specific guidelines on HTPI; the PHILIPPINES said it was unnecessary. INDIA and PARAGUAY proposed removing reference to providing recommendations to the UN Sub-Committee of Experts on the Transport of Dangerous Goods, with the AFRICAN GROUP adding that this should be under the Secretariat's mandate. ARGENTINA cautioned against using the word "dangerous" to apply to all LMOs. The GLOBAL INDUSTRY COALITION highlighted the efforts of the private sector to create synergies around this issue.

The AFRICAN GROUP called for resources to develop capacity and build LMO detection facilities, while ARGENTINA said capacity building should not be limited to detection only. INDIA supported developing a document on phytosanitary terminology, but NEW ZEALAND said the activity was already available under the International Plant Protection Convention.

#### RISK ASSESSMENT AND RISK MANAGEMENT:

##### Further guidance on specific aspects of risk assessment:

The Secretariat introduced document UNEP/CBD/BS/COP-MOP/5/12, and Helmut Gaugitsch, Chair of the AHTEG on Risk Assessment and Risk Management, presented the AHTEG's outcomes (UNEP/CBD/BS/COP-MOP/5/INF/13). The AFRICAN GROUP called for the extension of the AHTEG's mandate, and asked to make the online forum more accessible for African countries. INDIA requested that the AHTEG's recommendations be more specific with regard to geographical requirements.

On the guidance materials, many called for their rapid translation into all UN languages, with ECUADOR requesting translation into additional languages. IRAN proposed revising the priorities for future guidance materials and suggested that other topics can be added.

JAPAN stressed prioritization of further work taking into account risk assessment frameworks developed in other fora. The PHILIPPINES, the EU and the US prioritized revising and testing current guidance, with the PHILIPPINES calling for general guidance rather than sets of specific guidance. The EU proposed a revised format and clear rules for posting background materials on the BCH.

MEXICO, NIGER and NEW ZEALAND supported the roadmap but emphasized increased peer review and testing, with CAMBODIA calling for testing at regional and sub-regional levels. MEXICO said relevant organizations should be associated with LMO evaluation, peer review and risk assessment. The AFRICAN GROUP, with ARGENTINA, endorsed continued work of the AHTEG on capacity building for policy and decision-makers. UKRAINE supported the AHTEG's work, particularly on long-term assessments. PARAGUAY requested that the AHTEG be comprised of risk assessment experts.

CHINA stressed the need for continued financial support for training workshops on risk assessment. NORWAY said that the AHTEG should focus on revising the roadmap on risk assessment of LMOs. BRAZIL suggested that the AHTEG's output be referred to as a report and not a guidance document. PALAU called for training of personnel in Pacific island nations on risk assessment and management. MALAYSIA suggested that the guidance document incorporate lessons learned from recent regional training exercises.

UNIVERSITY OF MOLINA suggested making the guidance documents available at the national level. The THIRD WORLD NETWORK called for further development of guidance related to specific types of LMOs and traits. PRRI criticized that the experience gained in 25 years of research on this issue is not adequately reflected in the document. GREENPEACE INTERNATIONAL urged parties to address the issue of genetically modified fish.

**Capacity building:** The AFRICAN GROUP, INDIA and the PHILIPPINES stressed the importance of capacity building for risk assessment, calling for South-South collaboration and information exchange. The EU stressed capacity for evaluating risk assessment reports. The PHILIPPINES suggested channelling more resources towards developing online materials.

**LMOs that may have/are not likely to have adverse impacts:** Many argued that LMO impacts are environment-specific and cannot be determined globally. They prioritized additional research and information sharing, ahead of further discussion. NORWAY and others rejected developing lists of LMOs that will be exempted from the AIA Procedure. On LMOs that may have adverse impacts, many favored a case-by-case approach. While calling for additional information sharing and training, several opposed an AHTEG due to limited funds. IRAN requested that LMO reference materials be made available. PRRI said adverse impacts can never be ruled out, and offered providing evidence of LMOs that are less likely to have impacts than their non-LMO counterparts.

#### PUBLIC AWARENESS, EDUCATION AND

**PARTICIPATION:** HONDURAS said information on LMO benefits is lacking. MALAYSIA encouraged increased use of radio as an outreach tool. The REPUBLIC OF KOREA supported education centered on using the BCH. JAPAN and KENYA asked for clarity on the criteria for the informal advisory committee and for prioritization of activities. INDIA requested that public consultations be held on a case-by-case basis, noting that these should not prejudice activities within the law.

The EU, opposed by SOUTH AFRICA, did not support the recommendation that the GEF provide additional financial resources. COLOMBIA called for additional funding for the effective implementation of the Programme of Work. The MALDIVES gave a brief presentation on lessons learned from a recent Joint CBD-Aarhus Convention Workshop.

#### IN THE CORRIDORS

COP/MOP delegates continued to work swiftly though the COP/MOP agenda and, with WG I finishing ahead of schedule, many participants appreciated a few hours off. While less rapid, WG II saw a rare accumulation of kudos for the Secretariat and the improvements made to the Biosafety Clearing House. Some visibly impressed delegates gushed that "it's amazing when technology and the UN meet. Just imagine the possibilities."

However, the arrival of more and more ABS delegates led some to wonder whether this was not just the calm between two storms, since the ABS group is set to continue its work during COP/MOP from Wednesday onwards. Some delegates were seen focusing on ABS documentation, on which others commented; "No wonder there is no controversial discussions in the working groups, delegates are just reading out their statements and going back to ABS preparations." Looking at the diverging statements on risk assessment and the Strategic Plan, another added "We should have used the time to continue discussions in a contact group."

Some delegates used the free time to conduct a thorough analysis of the outcome on liability and redress. The solution to remove the controversial reference to products of LMOs from the text was described by some civil society representatives as the "very sad story of watering down an already diluted compromise." Others pointed out that the supplementary protocol nevertheless applies to "processed materials" when a causal link to an LMO can be established, according to what parties registered in the report of the Friends of the Co-Chairs Group. "The rest will depend on the understanding of the lawyers who will have the hard task of dealing with such cases, for better or for worse" pondered another seasoned participant.



## COP/MOP 5 HIGHLIGHTS: WEDNESDAY, 13 OCTOBER 2010

COP/MOP 5 delegates met in a morning plenary to take stock of progress. In the afternoon, WG I considered draft decisions on the Compliance Committee, rights and/or obligations of parties of transit of LMOs, monitoring and reporting, assessment and review, and the Strategic Plan. WG II completed the first reading of public awareness, education and participation and of financial mechanisms and resources, and considered revised draft decisions on: the Biosafety Clearing-House (BCH), capacity building; and handling, transport, packaging and identification (HTPI) of LMOs for food feed and for processing (LMO-FFPs). Unless otherwise stated, draft decisions were approved as amended.

### PLENARY

Delegates heard progress reports of the two WGs, the budget group and the legal drafting group on liability and redress. The REPUBLIC OF KOREA lauded the agreement on the draft supplementary protocol on liability and redress.

**COOPERATION WITH OTHER ORGANIZATIONS, CONVENTIONS AND INITIATIVES:** The EU, with CROATIA and TURKEY, called for cooperation, national communication and further coordination at the national and international level to ensure biosafety issues are addressed in a coherent manner. The AFRICAN UNION emphasized regional and international collaboration, noting that its Executive Council recently called for the development of national biosafety frameworks. The WASHINGTON BIOTECHNOLOGY ACTION COUNCIL recalled the relevance of the *Codex Alimentarius* to cooperation with other organizations.

### WORKING GROUP I

**COMPLIANCE COMMITTEE:** Delegates approved the draft decision without amendment.

**RIGHTS AND/OR OBLIGATIONS OF PARTIES OF TRANSIT OF LMOs:** NEW ZEALAND, supported by KENYA and JAPAN, said the request for the Compliance Committee to address issues related to LMOs based on information from national reports was unnecessary as it will be addressed at COP/MOP 8.

**MONITORING AND REPORTING:** Delegates considered a draft decision on the format for the Second National Report. The AFRICAN GROUP raised concerns over the deletion of the timeframe to submit the reports, suggesting to postpone

the deadline for submission from 2011 to 2012. The EU, with CROATIA and TURKEY, suggested an online forum for sharing best practices, advice and expertise. NEW ZEALAND, supported by MALAYSIA, said requesting the Executive Secretary to adjust the format of the third and subsequent national reports is premature and should be deferred to COP/MOP 7.

The AFRICAN GROUP questioned the deletion of a section on financial mechanisms to which the Secretariat explained that these were already elaborated under capacity building. MEXICO requested that comments be allowed when reporting on the status of ratification and that a country's capacity to detect and identify LMOs may be rated as intermediate.

**ASSESSMENT AND REVIEW:** Delegates considered a draft decision on the framework and methodology for the second assessment of the Protocol. The EU proposed to provide funds for external assistance to the Secretariat in collecting and compiling data and to perform the analysis of results at COP/MOP, rather than convening an AHTEG. The AFRICAN GROUP, supported by CUBA, preferred to convene an AHTEG, stressing that it should be regionally balanced. WG I Chair Stanič Racman proposed making the AHTEG subject to the availability of funds. The Public Research and Regulation Initiative (PRRI) proposed adding an indicator on changes in the use of pesticides, fertilizers, fossil fuels and soil erosion resulting from the introduction of genetically modified crops. MEXICO suggested measuring both the amount of funding for capacity-building activities and their "financial impact." ARGENTINA preferred "inviting" to "urging" other governments and international organizations to contribute to data collection.

### STRATEGIC PLAN AND MULTI-YEAR PROGRAMME OF WORK (MYPOW):

Delegates considered a draft decision on the Strategic Plan (2011-2020) and the associated MYPOW of the COP/MOP. The EU, with TURKEY and CROATIA, suggested language concerning the prioritization of focal areas in provisions on interpretation and with regard to the financial resources for the implementation of the Strategic Plan. The AFRICAN GROUP suggested including reference to "capacity" in the mission of the Strategic Plan. Noting that many developing parties are facing difficulties in accessing GEF funds for biosafety matters, she proposed including reference to a biosafety fund which would be a special voluntary fund for parties that want to assist developing countries in implementing the Strategic Plan.



The EU, with TURKEY and CROATIA, suggested deleting reference to risk to human health in the vision section and stressed the need to update the Strategic Plan with other decisions taken at COP/MOP 5. Supported by NORWAY, she also suggested including reference to promoting cooperation on research and exchange of information on socio-economic impacts of LMOs. The AFRICAN GROUP disagreed with the EU proposal, as well as subsequent proposals for new wording on the operational objective on socio-economic considerations. MEXICO and other countries were concerned with streamlining the discussions on LMOs that may have, or are not likely to have, adverse impacts on the environment into the Strategic Plan.

## WORKING GROUP II

**PUBLIC AWARENESS, EDUCATION AND PARTICIPATION:** Delegates continued considering UNEP/CBD/BS/COP-MOP/5/13. IRAN suggested creating an effective public awareness mechanism, and highlighted the difficulties of translating biosafety materials into local languages. ARGENTINA called for effective monitoring by experts to curb the dissemination of false information. BANGLADESH reported that its national biosafety guidelines will be made publicly available through a national BCH. ECOROPA emphasized the need to involve “knowledgeable members of the public” in the creation of effective awareness campaigns. PRRI pointed out that the information about biosafety in the public domain has a negative bias, and supported biosafety education in schools.

**FINANCIAL MECHANISMS AND RESOURCES:** Delegates continued discussion based on UNEP/CBD/BS/COP-MOP/5/5. JORDAN, the AFRICAN GROUP and other developing countries lamented that funding for biosafety activities through the GEF has been decreasing, and called for the establishment of a special voluntary fund on biosafety. SOUTH AFRICA said establishing a fund was premature, but supported the call for additional resources. The EU, with TURKEY and CROATIA, NORWAY, JAPAN and the US opposed the fund, with the EU and the US explaining that countries should prioritize national biosafety actions in order to increase the share of their funding allocation received through the GEF for biodiversity, which includes funding for biosafety. JAPAN offered in-kind contributions to biosafety projects.

**BCH:** Delegates discussed the draft decision on operation and activities of the BCH. MEXICO, with INDIA, asked that governments provide information only on “final decisions pertaining to LMOs.” The EU, with CROATIA and TURKEY, supported by INDIA, proposed that the Secretariat identify obstacles to using the BCH. He also requested that the Secretariat assist parties in submitting and retrieving information from the BCH and that online fora prioritize a common understanding on information sharing under the Protocol, as well as the types of risk assessment necessary for the BCH. MEXICO and UGANDA asked that the fora ensure a “minimal level of regionally-balanced participation.” IRAN offered to host an additional Asia-Pacific sub-regional workshop.

**CAPACITY BUILDING: Status of capacity-building activities:** On the revised draft decision, MEXICO proposed additional text on the timeline for the submission of prioritized needs to the BCH. Delegates agreed to delete text regarding a UNEP toolkit for evaluation of socio-economic assessments. After divergent interventions by the EU, with TURKEY and CROATIA, BOLIVIA, INDIA and others, parties agreed to reformulate text on the work of a proposed AHEG on cooperation and capacity building for research and information exchange with regard to socio-economic impacts of LMOs. The EU, with TURKEY and CROATIA, further added that the

AHEG be created subject to the availability of funds. They also proposed additional text on the creation of an institutional framework to assess relevant information linked to LMOs.

**Roster of Biosafety Experts:** On measures to facilitate the release of experts, SOUTH AFRICA said these should be taken “as appropriate.” On amending the expert nomination form, the AFRICAN GROUP suggested also including views submitted by parties.

**HTPI: Experience gained with implementing Article 18.2(a):** BRAZIL asked to allow for countries to continue using existing systems to confirm that LMO-FFPs are not introduced into the environment. MEXICO suggested that such systems “prevent” introductions into the environment, rather than “confirm” that no introductions occur.

On the decision to postpone consideration of more detailed documentation requirements for shipments of LMO-FFPs, BOLIVIA requested adding reference to the consideration of the need for a stand-alone document. On submitting further information on experiences gained prior to COP/MOP 7, the EU, with CROATIA and TURKEY, suggested also submitting information on obstacles encountered in the implementation of documentation requirements, as well as any specific capacity-building needs.

**Standards:** BOLIVIA proposed that the Executive Secretary also identify gaps in information available and gaps in existing standards, rather than merely follow the development of standards. IRAN proposed adding a request to parties to nominate national and international reference laboratories and establish an electronic network among them for sharing of information and experiences.

## IN THE CORRIDORS

Attendees who had prepared themselves for a plenary showdown over the question of whether or not to convene the ABS negotiating group during COP/MOP were disappointed. While some delegates were still anxious about the scheduling in the morning, even those countries with small delegations agreed to negotiating ABS during the evenings. Perhaps onlookers have been recently conditioned to expect drama, given past procedural quarrels within the process.

The peaceful establishment of the ABS group may have been helped by the fact that many of the issues addressed by the COP/MOP are much less controversial than at past meetings. Many veterans of the process were heard wondering “where is the circus?” And, with far less attendees that expected for the COP/MOP, others were asking “where are the crowds?” One delegate interpreted this as an omen for a major shift in the perceptions around biotechnology. “Maybe GMOs are just becoming too commonplace to compete with climate change for the international limelight.”

WG I participants became so oblivious of potential obstacles that they fell into procedural traps, adjourning without adopting a report. More seriously, one delegate expressed concern that the ambition to complete discussions one day ahead of schedule had invited the “rather unusual practice of approving draft decisions containing unresolved issues.” This was most noted with respect to still diverging views on how to address socio-economic considerations within the Strategic Plan. In the view of some, the issue still merits attention as donor-funded projects have often missed the mark when local input with regard to the impacts of LMOs is not adequately taken into account.

## COP/MOP 5 HIGHLIGHTS: THURSDAY, 14 OCTOBER 2010

COP/MOP 5 delegates met in working groups throughout the day. WG I met briefly in the afternoon to discuss outstanding matters on the Strategic Plan and the COP/MOP multi-year programme of work (MYPOW) and adopt the group's report. WG II revisited the decision on capacity building and considered other draft decisions on handling, transport, packaging and identification (HTPI) of living modified organisms for food, feed and for processing (LMO-FFPs), risk assessment, public awareness, education and participation, and the financial mechanism.

### WORKING GROUP I

**STRATEGIC PLAN AND MYPOW:** On the operational objective regarding socio-economic considerations, after informal consultations with the AFRICAN GROUP, the EU, with TURKEY and CROATIA, proposed new text considering the provision on relevant guidance on socio-economic considerations based on research and information exchange. On a paragraph outlining assumptions regarding the provision of resources, she said that their previous suggestion to delete a reference to "the progressive increase in human resources" had not been considered. After exchanging divergent views, it was agreed that the Strategic Plan, including references to budget and human resources, will be amended and updated with other decisions adopted at COP/MOP 5. The draft decision was thereafter adopted as amended.

Delegates then adopted the report of the WG I (UNEP/CBD/BS/COP-MOP/5/WG.1/L.1).

### WORKING GROUP II

**CAPACITY BUILDING:** The EU, with TURKEY and CROATIA, requested re-opening the discussion on the draft decision on the status of capacity building activities, noting that there was substantive disagreement on the proposal to create an *ad hoc* expert group (AHEG) on socio-economic considerations. An informal group decided not to form an AHEG, but final agreement was left outstanding.

**HTPI: Standards:** Delegates continued discussing the draft decision on standards for HTPI of LMO-FFPs. Debate focused on two issues: whether to form an AHEG and what its terms of reference (TOR) should be. The EU, with TURKEY and

CROATIA, and supported by PARAGUAY, maintained that an AHEG would not be the most effective tool, proposing that the Executive Secretary instead commission a report on standard-setting. The AFRICAN GROUP, with BOLIVIA and NEW ZEALAND, preferred that the TOR of an AHEG include the task of compiling information on standard-setting. MEXICO, with BRAZIL, emphasized that the AHEG would be costly.

After some debate, the EU revised their proposal to include elements of the AHEG's TOR into the study. After informal consultations between the EU, with TURKEY and CROATIA, the AFRICAN GROUP, NEW ZEALAND, MEXICO, BOLIVIA, and JAPAN, the EU presented compromise text requesting the Executive Secretary to commission an analysis of existing standards, methods, and guidance relevant to the HTPI of LMOs, while addressing gaps, cooperation with relevant organizations, guidance on international regulations, and possible elaboration of standards. The draft decision was approved as amended.

**RISK ASSESSMENT: Further guidance on specific aspects of risk assessment:** On the objective of the guidance on risk assessments of LMOs, PARAGUAY suggested reflecting that it is an evolving document. The PHILIPPINES proposed adding "this guidance is not restrictive and does not impose any obligations to parties."

On review and testing of the first version of the guidance on risk assessments, the EU, with TURKEY and CROATIA, said that both reviewing and testing of the guidance were necessary and complementary, adding that they should be conducted in parallel, according to the training manual. The EU, with TURKEY and CROATIA, suggested improving the guidance through the complementary processes of review and testing.

**LMOs that may have/are not likely to have adverse impacts on biodiversity:** PARAGUAY, supported by GUATEMALA, suggested deleting the section, citing incoherence with the Protocol. The Secretariat, supported by the EU and BOLIVIA and others, clarified that it is in line with the Protocol. BOLIVIA proposed text concerning dissemination of information on the identification of LMOs that may have adverse effects during the intersessional period for consideration at COP/MOP 6. PARAGUAY proposed that financial assistance and capacity building also be highlighted as a priority under this section.

The EU, with TURKEY and CROATIA, NIGERIA, NORWAY, MALAYSIA, ECUADOR and others, supported the continuation of the AHTEG on risk assessment and risk management. COLOMBIA, supported by HONDURAS, said that the AHTEG should be composed of scientific experts. MEXICO, supported by PARAGUAY, stressed that the work of the AHTEG be subject to peer review, including scientific review, to test its credibility. MEXICO noted that it may take longer than two years to operationalize the guidance document and the results of the peer review. The PHILIPPINES proposed an expanded AHTEG, with members who have “hands on experience.” Chair Seyani noted that the PHILIPPINES’ proposal would reopen already agreed upon text. Delegates then approved the draft decision as amended.

**PUBLIC AWARENESS, EDUCATION AND PARTICIPATION:** Delegates discussed a draft decision.

The REPUBLIC OF KOREA suggested adding a preambular reference recognizing the central role of the BCH in promoting public awareness, education and participation; and an operative reference encouraging the establishment of an advisory committee or using the informal BCH advisory committee to provide advice and guidance on the implementation of the work programme.

The EU, with TURKEY and CROATIA, opposed by many, requested deletion of a paragraph requesting the GEF to provide financial resources for implementing the work programme, noting that this should be discussed under the decision on the financial mechanism. After a lengthy procedural debate, the EU proposed that GEF “ensure that the programme of work on public awareness, education and participation concerning the safe handling and transport of LMOs is taken into account in activities carried out with GEF funding.” The draft decision was approved as amended.

**FINANCIAL MECHANISM:** Delegates considered a draft decision on financial mechanisms and resources. The EU, with TURKEY and CROATIA, made several proposals which were discussed by WG II, saying they were beyond the mandate of the GEF, or were “too specific,” they proposed deletion of recommendations to the GEF on, *inter alia*: funding biosafety projects outside the System for Transparent Allocation of Resources (STAR); and supporting the building of capacity to implement identification requirements of LMO-FFPs. GUATEMALA, supported by the AFRICAN GROUP, proposed that the GEF consider supporting the implementation of the Cartagena Protocol on Biosafety with the STAR mechanism by defining specific quotas for biosafety for each country, on the basis of the second national report on the implementation of the Cartagena Protocol. The EU noted that some of the proposals contained in the draft decision were tantamount to states “giving up their sovereign right to set priorities.” The decision was approved with text in brackets.

Negotiations on the WG II report continued into the night.

**IN THE CORRIDORS**

As the end of COP/MOP 5 was approaching, some delegates suspected that it was no coincidence that WG I finished its business almost a day ahead of schedule, while WG II had to go into overtime, extending its deliberations into a tiring night session. In their view the existence of an “easy going” and a “heavily loaded” group was the only way to ensure that the Interregional Negotiating Group on Access and Benefit-sharing

(ABS ING) would be allowed to meet during COP/MOP. The drawback however was that some of the draft decisions waved through in a hurry in the WGs came back to haunt delegates in the afternoon and evening as delegates requested re-opening already approved decisions to make “corrections” that threatened to waken some of the ghosts of COP/MOPs past, namely socio-economic considerations and risk assessment.

Others lamented that they were permanently distracted by “urgent matters” while they wished they had had more time to further discuss other items, for example to go beyond just “exploring the feasibility” of establishing special funding for implementing the Strategic Plan. Towards the end of the afternoon, one group was reportedly having problems keeping up with the procedure of approving decisions and addressing linkages with the guidance to the financial mechanisms, since its most experienced negotiators were already back in the ABS negotiations.

The Working Group rooms noticeably emptied as the ABS ING and small groups on ABS-related issues resumed in the afternoon. Discussions focused on the well-known controversies of derivatives, pathogens and the compliance and monitoring provisions of article 13. One delegate expressed satisfaction that “things are moving” and that at the very least, delegates are narrowing down their areas of disagreement. Still, one experienced observer remarked that the draft protocol resembled a “hologram:” it shows two completely different pictures depending on the angle from which you look at it.

Having conducted fruitful discussions on derivatives at recent meetings, delegates seemed close to reaching consensus on the concept of genetic resource utilization and benefit-sharing from derivatives. A main area of disagreement, however, emerged with regard to the conditions for access to derivatives, and specifically whether prior informed consent (PIC) would be required for access to derivatives not containing functional units of heredity, such as biochemical compounds. Delegates struggled to understand research realities, as well as technological advances: one end of the table argued that, for extracting venom from a snake, you have to “get pretty close” to the genetic resource, meaning that you cannot access it without PIC. On the other side of the table, it was reported that the scented air emerging from flowers was being vacuumed by machines to extract their essential oils – an incidence not covered if access to derivatives is not included. Although no consensus was reached, one delegate lauded these discussions for “openly addressing key issues in a technically well-informed way.” Others seemed puzzled, rather than enlightened, as they were having difficulties following the examples given.

Late evening discussions on article 13 reflected persistent divergences with regard to the legal nature of measures to support compliance, such as checkpoints. Would establishment of checkpoints be mandatory, as strongly supported by developing countries, or be left to parties’ discretion as suggested by developed country groups? And could a possible compromise lie in establishing a general mandatory requirement for establishment of checkpoints, leaving parties to select those checkpoints suited to their national conditions and circumstances?

**ENB SUMMARY AND ANALYSIS:** The Earth Negotiations Bulletin summary and analysis of COP/MOP 5 will be available on Monday, 18 October 2010 online at: <http://www.iisd.ca/biodiv/bs-copmop5/>



## SUMMARY OF THE FIFTH MEETING OF THE PARTIES TO THE CARTAGENA PROTOCOL ON BIOSAFETY: 11-15 OCTOBER 2010

The fifth 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 5) was held from 11-15 October 2010 in Nagoya, Aichi Prefecture, Japan. Approximately 1600 participants representing parties to the Protocol and other governments, UN agencies, intergovernmental and non-governmental organizations, academia and industry attended the meeting.

The meeting adopted the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety (the Supplementary Protocol) and 16 other decisions on: the Compliance Committee; the Biosafety Clearing-House (BCH); capacity building; the Roster of Biosafety Experts; experiences with documentation requirements for handling, packaging, transport and identification (HTPI) of living modified organisms (LMOs) for food, feed and processing (LMO-FFPs); HTPI standards; rights and/or obligations of parties of transit of LMOs; monitoring and reporting; assessment and review; the Strategic Plan and multi-year programme of work (MYPOW); cooperation with other organizations, conventions and initiatives; risk assessment and risk management; public awareness and participation; financial mechanism and resources; and the budget.

The adoption of the Supplementary Protocol was hailed as an important success against the background of complex and often protracted negotiations. The Supplementary Protocol fills an important gap in the implementation of the Biosafety Protocol. While some lauded it as a catalyst for action not only on biosafety but also in other areas of liability and redress for damage to the environment, others raised concerns on its questionable legal effectiveness, noting that much of the original substance has been lost in the six-year negotiation processes. Overall, delegates felt that COP/MOP 5 had been quite successful in creating a basis for advancing the implementation of the Biosafety Protocol.

## 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.

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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 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-FFPs, 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 (Colombia) 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; socio-economic considerations; risk assessment and risk management; a financial mechanism and resources; and subsidiary bodies.

**GROUP OF THE FRIENDS OF THE CO-CHAIRS ON 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.” The fourth meeting was convened 6-10 October, 2010 directly before COP/MOP 5 in Nagoya, Japan. Delegates reached agreement on the outstanding issues with regard to the definition of “products” of LMOs and financial security.

### COP/MOP 5 REPORT

On Monday, Wolfgang Köhler, Federal Minister of Food, Agriculture and Consumer Protection of Germany and COP/MOP 4 President, said the time was right to adopt the supplementary protocol on liability and redress. Assuming the Presidency of COP/MOP 5, Michihiko Kano, Minister for Agriculture, Forestry and Fisheries, Japan, stressed the importance of achieving tangible results, especially regarding liability and redress, and called for capacity building for the Protocol’s implementation.

Masaaki Kanda, Governor of Aichi Prefecture, said that biodiversity conservation should be embraced and owned by people around the world. He called on the citizens of Nagoya to learn from discussions on the transboundary movement of LMOs and genetically modified organisms. Takashi Kawamura, Mayor of Nagoya, gratefully acknowledged that the supplementary protocol on liability and redress will be co-named after his city. Balakrishna Pisupati, on behalf of UNEP Executive Director Achim Steiner, drew attention to UNEP’s role in supporting the development of national biosafety frameworks and access to the Biosafety Clearing-House (BCH).

CBD Executive Secretary Ahmed Djoghlaif lauded the agreement reached on liability and redress, noting that the proposed name, the Nagoya-Kuala Lumpur protocol, highlights the need for a strong North-South partnership to save life on earth. A group of children from Aichi Prefecture presented handmade wooden nameplates crafted by the Lumberkids Program, which seeks to increase awareness on forest and biodiversity conservation.

Delegates adopted the agenda and organization of work (UNEP/CBD/BS/COP-MOP/5/1 and 1/Add.1), and approved Darja Stanič Racman (Slovenia) and James Seyani (Malawi) as Chairs of Working Groups (WG) I and II, respectively. The current Bureau members elected at COP 9 are: Fernando Pérez Egert (Chile), Donald Cooper (the Bahamas), for Latin America and the Caribbean, Volodymyr Domashlinets (Ukraine) and Andrea Stefan (Croatia) for Central and Eastern Europe, Karma Nyedrup (Bhutan) and Abdul Haqim Aulaiah (Yemen) for Asia and the Pacific, Mary Fosi Mbantenkhu (Cameroon) and Ositadinma Anaedu (Nigeria) for Africa, and Robert McLean (Canada) and José Luis Sanz (Spain) for Western Europe and Others.

Delegates then heard reports on: the Compliance Committee (UNEP/CBD/BS/COP-MOP/5/2); financial mechanism and resources (UNEP/CBD/BS/COP-MOP/5/5); cooperation with other organizations, conventions and initiatives (UNEP/CBD/BS/COP-MOP/5/6); and the Protocol’s administration and budgetary matters and the proposed budget and work programme for the biennium 2011-2012 (UNEP/CBD/BS/COP-MOP/5/7 and 7/Add.1). The Global Environment Facility (GEF) reported on support provided for the Protocol’s implementation (UNEP/CBD/COP/10/6). The COP/MOP established a budget contact group, chaired by Conrad Hunte (Antigua and Barbuda).

Jimena Nieto (Colombia), Co-Chair of the Group of Friends of the Co-Chairs on Liability and Redress, presented the group’s report (UNEP/CBD/BS/COP-MOP/5/11), recalling that parties’ decision to not adopt guidelines on civil liability does not preclude their potential elaboration at a later stage. Co-Chair René Lefebvre (the Netherlands) expressed hope that the supplementary protocol, being the first agreement to be adopted in years, would provide an important impetus to multilateral environmental negotiations. He thanked all participants in the negotiations, the CBD Secretariat, and the *Earth Negotiations Bulletin* for their work during the negotiations. Delegates established a legal drafting group, co-chaired by Jimena Nieto and René Lefebvre, to revise the text for clarity and consistency.

Indonesia, for the Asia-Pacific Group, prioritized: a comprehensive, applicable and fully-financed Strategic Plan, coordination among parties, capacity building for developing countries and the financial mechanism. Malawi, for the African Group, stressed further assistance, capacity building and financial resources to implement COP/MOP 5 decisions; technology transfer; information sharing and exchange of lessons learned. Ukraine, for Central and Eastern Europe (CEE), stressed compliance, capacity building, and improvements to the financial mechanism. The European Union (EU), speaking on behalf of its 27 member states and Croatia and Turkey highlighted the Protocol’s Strategic Plan. Kenya said that rich countries should not stand in the way of innovations like LMOs, which can provide basic needs for millions. India offered to



share knowledge and experience on capacity building and LMOs, and regulation, inviting delegates to COP/MOP 6 to be held in India in 2012.

The following summary is organized according to the meeting's agenda.

### **COMPLIANCE COMMITTEE**

In Monday's plenary, delegates considered the report of the Compliance Committee (UNEP/CBD/BS/COP-MOP/5/2) and a compilation of views on how to improve its supportive role (UNEP/CBD/BS/COP-MOP/5/2/Add.1). Discussions focused on the need for an active role of the Committee in cases where national reports are not submitted or reveal compliance difficulties; capacity-building needs; and GEF funding for compliance with reporting. The issue was reconsidered in WG I on Wednesday afternoon where delegates approved the draft decision without amendment.

During the final plenary session delegates elected the following new members to the Compliance Committee: Alejandro Hernández (Costa Rica) for the Latin American and Caribbean region; Yousef Saleh Al-Hafedh (Saudi Arabia) for the Asia and Pacific region; Natalya Minchenko (Republic of Belarus) and/or Dubravka Stepic (Croatia) for Central and Eastern Europe; Abisai Mafa (Zimbabwe) for Africa; and Clare Hamilton (UK) for Western Europe and Others.

**COP/MOP Decision:** In its decision (UNEP/CBD/BS/COP-MOP/5/L.3), the COP/MOP decides: that in the event that a party has revealed difficulties with its compliance, the Compliance Committee shall consider measures for advice or assistance and make recommendations to the COP/MOP regarding measures of assistance; that the Compliance Committee may consider taking measures when information within the national reports submitted by countries or information from the BCH show that the party is facing difficulties complying with obligations under the Protocol; and to request the Compliance Committee to carry out its supportive role in confidence and with the cooperation of the concerned party.

### **BIOSAFETY CLEARING-HOUSE**

Delegates in WG II considered UNEP/CBD/BS/COP-MOP/5/3 on Monday. On Wednesday, WG II Chair Seyani presented a draft decision on the BCH, which was approved with amendments.

Interventions focused on expanding the number of parties participating in the UNEP-GEF BCH project; developing synergies between related databases; and the creation of an expert group to standardize information. Delegates also discussed: the BCH's priority to provide information to parties; budgetary implications; and the timely manner of reporting information, particularly for risk assessment of LMOs and the AIA procedure.

In further discussions, the Republic of Korea proposed encouraging training activities at the national and subregional level, while Colombia stressed building capacities of customs and environmental agencies and training the public on providing and using information relevant to their countries. The Public Research and Regulation Initiative (PRRI) stressed the importance of accurate and complete information for public research and called on countries to provide information to the BCH.

On Wednesday, Mexico, with India, asked that governments provide information only on "final decisions pertaining to LMOs." The EU, with Croatia and Turkey, supported by India, proposed that: the Secretariat should identify obstacles to using the BCH and assist parties in submitting and retrieving information from the BCH; and that BCH online forums prioritize a common understanding on information sharing under the Protocol, as well as the types of risk assessment necessary to register in the BCH. Mexico and Uganda asked that the forums ensure a "minimal level of regionally-balanced participation." Iran offered to host an additional Asia-Pacific subregional workshop. The draft decision was approved by WG II.

In plenary on Friday, the African Group proposed an additional preambular clause on making BCH materials available to different stakeholders, and adapting it to local languages and situations. The decision was adopted with the amendment.

**COP/MOP Decision:** In the decision (UNEP/CBD/BS/COP-MOP/5/L.6), the COP/MOP recalls decision BS II/13 on the importance of making information concerning the safe transfer, handling and use of the LMOs available to different stakeholders in comprehensive formats and adapting this information to local languages and situations. The COP/MOP, *inter alia*:

- invites parties and other governments and users of the BCH to continue providing biosafety information available through the Biosafety Information Resource Center;
- requests the Executive Secretary to continue providing assistance and information to parties on how to submit and retrieve information from the BCH;
- invites relevant UN bodies and international organizations to provide funding and to strengthen and expand on initiatives to overcome obstacles encountered by developing country parties in meeting their obligations under Article 20 of the Protocol; and
- requests the GEF to expand its support for capacity building for effective participation of parties in the BCH.

### **CAPACITY BUILDING**

**STATUS OF CAPACITY-BUILDING ACTIVITIES:** WG II considered UNEP/CBD/BS/COP-MOP/4 on Monday. Chair Seyani introduced a draft decision on Wednesday, which was approved on Thursday. Delegates addressed the identification and prioritization of capacity-building needs, development of participation in online forums; regional capacity-building projects; toolkits for regional and subregional approaches; and the need to convene an *ad hoc* expert group (AHEG) on capacity-building needs for research and information exchange on socio-economic impacts of LMOs.

The EU, with New Zealand, Indonesia, Argentina and the Republic of Korea, considered it premature to convene an AHEG, with the EU preferring an online forum.

The African Group requested that the AHEG meet at least once before COP/MOP 6 and stressed the need to consider socio-economic issues. Bolivia recommended the creation of a working group focused on the value of LMOs with respect to their impacts on local communities. Argentina referenced the challenges of including the issue in risk analysis. The Republic of Korea asked for more time for research, with China suggesting that the AHEG's terms of reference should be further discussed.

Discussing the draft decision, Mexico proposed additional text on the timeline for the submission of prioritized needs to the BCH. Parties agreed to reformulate text on the work of the AHEG. The EU, with Turkey and Croatia, further added that the AHEG's creation should be subject to the availability of funds. They also proposed additional text on the creation of an institutional framework to assess relevant information linked to LMOs.

On Thursday, the EU, with Turkey and Croatia, requested re-opening the discussion on the draft decision on the status of capacity-building activities, noting that there was substantive disagreement on the proposal to create an AHEG on socio-economic considerations. An informal group met to discuss this issue, receiving instructions from WG II Chair Seyani to report the results of their deliberations to the plenary.

In plenary on Friday, Zimbabwe, for the African Group, with the EU presented a compromise proposal to delete reference to the AHEG and, instead, convene online conferences. The compromise text also entails workshops on socio-economic considerations, with Norway donating US\$75,000 to support these activities. The final decision was adopted with these amendments.

**COP/MOP Decision:** The decision on the status of capacity-building activities (UNEP/CBD/BS/COP-MOP/5/L.5) contains five sections, namely: the status of the Capacity-Building Action Plan's implementation and country capacity needs; biosafety education and training; a comprehensive review of the Action Plan and approaches to capacity building; cooperation on identification of capacity-building needs for research and information exchange on socio-economic considerations; and an annex containing the terms of reference for the comprehensive review of the updated Capacity-Building Action Plan. In the preambular section, the COP/MOP, *inter alia*, recognizes the need for cooperation among parties in the development of capacities for the implementation of the Cartagena Protocol, and emphasizes the need to maximize synergies and efficient use of the limited available resources.

On the status of the Capacity-Building Action Plan implementation and country capacity needs, the COP/MOP, *inter alia*: invites developed country parties, other governments and relevant organizations to take into account the specific capacity needs identified by parties, targeting assistance to where resources are needed for the Protocol's implementation; invites the GEF to ensure the inclusion of biosafety-related elements in the terms of reference for national capacity self-assessments and other assessment initiatives carried out with GEF funding; and requests the Executive Secretary to undertake a comprehensive needs assessment every four years, and publish a toolkit on regional and subregional approaches to capacity building.

On biosafety education and training, the COP/MOP, *inter alia*: invites parties and other governments to: support existing biosafety education and training initiatives and establish coordination mechanisms for biosafety education and training at national, subregional and regional levels.

On the comprehensive review of the Action Plan and approaches to capacity building, the COP/MOP, *inter alia*: endorses the terms of reference (ToR) for the comprehensive

review of the updated Action Plan and requests the Executive Secretary to prepare a working document to facilitate the comprehensive review of the Action Plan.

On cooperation on identification of capacity-building needs for research and information exchange on socio-economic considerations, the COP/MOP, *inter alia*, requests: the Executive Secretary to convene workshops on capacity building; parties to submit their capacity-building needs and priorities regarding socio-economic considerations to the BCH; and the Secretariat to synthesize the outcomes of the online conferences and workshops and submit this to COP/MOP 6 for consideration of further steps.

The annex contains ToRs for the comprehensive review of the updated Action Plan, including an introduction, the objectives of the review, the scope and schedule of activities to be undertaken, information sources for the comprehensive review and expected outcomes of the review.

**BIOSAFETY ROSTER OF EXPERTS:** On Monday and Tuesday, WG II considered UNEP/CBD/BS/COP-MOP/5/4/Add.1. On Wednesday, parties discussed and approved a draft decision on this item. Discussion focused on the importance of assessing the roster; awareness-raising at the experts' home institutions; and the need to share experiences gained and challenges met in nominating experts. Some delegates were concerned about the vetting of nominated experts; the small number of legal and socio-economic experts on the roster; and reasons why the roster was not used by certain parties.

**COP/MOP Decision:** The decision (UNEP/CBD/BS/COP-MOP/5/L.6) contains two sections on: the status and use of the Roster of Experts and a Pilot Phase of the Voluntary Fund for the Roster of Experts.

On the status and use of the Roster of Experts, the COP/MOP, *inter alia*: urges governments who have not done so to nominate experts to the roster; urges parties and other governments to facilitate the release of experts on the Roster; and invites parties and other governments to submit information on experiences and challenges in nominating and using experts to the Executive Secretary.

On the use of the Roster of Experts and a Pilot Phase of the Voluntary Fund for the Roster of Experts, the COP/MOP, *inter alia*: invites developed country parties and other donors to make contributions; and requests the Executive Secretary to propose amendments to the Interim Guidelines for the Pilot Phase for the consideration of parties at COP/MOP 6.

### **FINANCIAL MECHANISM AND RESOURCES**

Plenary heard a report on matters related to the financial mechanism and financial resources on Monday, with WG II considering UNEP/CBD/BS/COP-MOP/5/5 on Wednesday and a revised draft decision on Thursday.

In their opening statements, the Asia-Pacific Group, the African Group and CEE highlighted the need for improvements to the financial mechanism. Subsequent discussions focused on funding provided through the GEF biodiversity window for biosafety and whether a special fund for biosafety should be established.

The African Group and other developing countries called for the establishment of a special voluntary fund on biosafety. This was opposed by the EU, with Turkey and Croatia, Norway, Japan and the US. South Africa said establishing a fund was premature, but supported a call for additional resources.

Guatemala, supported by the African Group, proposed that the GEF consider defining specific quotas funding biosafety activities for each country within the System for Transparent Allocation of Resources (STAR). The EU, with Turkey and Croatia, proposed deletion of specific recommendations to the GEF on, *inter alia*: funding biosafety projects outside the STAR and supporting capacity building to implement identification requirements of LMO-FFPs.

Adopting the decision in closing plenary on Friday, text calling on the GEF to make funds available for the publication of BCH materials in languages other than the official UN languages was deleted. The word "additional" was deleted in an invitation to developed country parties to respond to needs for "financial and technological resources" by other parties.

**COP/MOP Decision:** The decision on the financial mechanism and resources (UNEP/CBD/BS/COP-MOP/5/L.16) urges parties to give priority to biosafety when applying for GEF funding and recommends that the COP/MOP, in its guidance to the financial mechanism urge the GEF to: consider defining specific quotas for biosafety for each country, on the basis of the second national reports, within the STAR and in the context of the sixth replenishment process; and ensure that identification requirements of paragraph 2(a) of Article 18 of the Biosafety Protocol are taken into account in activities carried out with GEF funding.

Moreover, the Secretariat is requested to further explore means for mobilizing additional financial resources and report back to COP/MOP 6.

### **COOPERATION WITH OTHER ORGANIZATIONS, CONVENTIONS AND INITIATIVES**

The report on this item (UNEP/CBD/BS/COP-MOP/5/6) was presented to delegates in plenary on Monday and discussed on Wednesday. The EU, with Croatia and Turkey, called for cooperation, national communication and further coordination at the national and international level to ensure biosafety issues are addressed in a coherent manner. The African Union emphasized regional and international collaboration, noting that its Executive Council recently called for the development of national biosafety frameworks. The Washington Biotechnology Action Council recalled the relevance of the *Codex Alimentarius* to cooperation with other organizations.

**COP/MOP Decision:** In its decision (UNEP/CBD/BS/COP-MOP/5/L.12), the COP/MOP requests the Executive Secretary to: intensify efforts in gaining observer status in the World Trade Organization Committees on Sanitation and Phytosanitary Measures and Technical Barriers to Trade; subject to availability of funds, pursue memoranda of understanding with the International Organization for Standardization and the International Seed Testing Association for cooperation; initiate or continue participating in relevant meetings of international organizations; cooperate with other organizations, conventions

and initiatives that are developing work on information-sharing mechanisms; and maintain cooperation involved in packaging and transport rules and standards.

### **BUDGET**

The budget for the biennium 2011-12 was discussed in plenary on Monday and in a contact group from Tuesday to Friday. Chaired by Conrad Hunte (Antigua and Barbuda), the budget contact group met six times throughout the week, and decided that by drawing on existing reserves it was possible to increase the Secretariat's budget for the biennium 2011-12 by 3.4%, as compared to the biennium 2009-10. An *Ad Hoc* Technical Expert Group (AHTEG) on risk assessment and management is the only expert group meeting for which funding could be secured through the core budget.

**COP/MOP Decision:** In its decision on the budget (UNEP/CBD/BS/COP-MOP/5/L.17), the COP/MOP approves: a core programme budget of US\$2,597,800 for the year 2011 and US\$3,102,600 for the year 2012; and a drawing of US\$850,000 from unspent balances or contributions from previous financial periods.

### **HANDLING, TRANSPORT, PACKAGING AND IDENTIFICATION (HTPI)**

#### **EXPERIENCES GAINED WITH LMO**

**DOCUMENTATION REQUIREMENTS:** Delegates in WG II considered UNEP/CBD/BS/COP-MOP/5/8. Chair Seyani introduced a draft decision, which was adopted without amendment in plenary on Friday.

Many countries supported deferring a decision on more detailed documentation requirements from COP/MOP 7 to COP/MOP 8, citing limited experience and lack of capacity to provide necessary information, while others preferred to accelerate the implementation of documentation requirements. Delegates also called for further capacity building using documentation and on sampling and detection. South Africa and Argentina cautioned against documentation requirements that could impose barriers to trade. The Third World Network reiterated the need for detailed documentation requirements and a stand-alone document for LMO-FFPs.

Brazil asked to allow countries to continue using their existing systems to confirm that LMO-FFPs are not introduced into the environment, and Mexico suggested that such systems "prevent" introductions into the environment, rather than "confirm" that no introductions occur.

On the decision to postpone consideration of more detailed documentation requirements for shipments of LMO-FFPs, Bolivia requested adding reference to the consideration of the need for a stand-alone document. On submitting further information on experiences gained prior to COP/MOP 7, the EU, with Croatia and Turkey, suggested also submitting information on obstacles encountered in complying with documentation requirements, as well as any specific capacity-building needs.

**COP/MOP Decision:** In the decision (UNEP/CBD/BS/COP-MOP/5/L.7), the COP/MOP, *inter alia*: requests parties and urges other governments to continue taking measures to ensure that information required to identify FFP-LMOs is incorporated into existing documentation accompanying LMOs; requests parties and encourages other governments, relevant organizations and the GEF to cooperate with and support developing



country parties to build capacity to implement identification requirements; and decides to postpone a decision on detailed documentation requirements for HTPI until COP/MOP 8.

**STANDARDS:** WG II considered UNEP/CBD/BS/COP-MOP/5/9 on Tuesday. A draft decision was approved on Wednesday, and the decision was adopted in plenary on Friday.

Discussion focused on the identification of gaps in information and existing standards; the nomination of national and international reference laboratories; funding for development of capacity to developing country parties; and whether to form an AHEG and the scope of its TOR.

The African Group, Iran, New Zealand and Bolivia, opposed by the EU, Paraguay, the Philippines and Argentina, supported establishing an AHEG, with the African Group and Bolivia insisting that it should comprise both parties and relevant organizations. New Zealand added that the AHEG should collect information but not elaborate standards. The African Group, with Bolivia, preferred that the AHEG's ToR include the task of compiling information on standard-setting. Mexico, with Brazil, emphasized that the AHEG would be costly. The EU, with Turkey and Croatia, supported by Paraguay, maintained that an AHEG would not be the most effective tool, proposing that the Executive Secretary instead commission a report on standard-setting.

After informal consultations between the EU, with Turkey and Croatia, the African Group, New Zealand, Mexico, Bolivia and Japan, the EU presented compromise text requesting the Executive Secretary to commission an analysis of existing standards, methods, and guidance relevant to the HTPI of LMOs, while addressing gaps, cooperation with relevant organizations, guidance on international regulations, and possible elaboration of standards.

Iran, the Republic of Korea, and others called for a stand-alone document containing more specific guidelines on HTPI. The African Group called for resources to develop capacity and build LMO detection facilities, while Argentina said capacity building should not be limited to detection only.

**COP/MOP Decision:** In the decision (UNEP/CBD/BS/COP-MOP/5/L.14), the COP/MOP, *inter alia*: requests the Executive Secretary to: continue following developments in standards related to HTPI of LMOs and report any developments to COP/MOP 6; disseminate the results of the Online Forum on Standards for Shipments for LMOs; organize regional workshops; invite standard-setting bodies to form an electronic communications group with the CBD Secretariat for information exchange; and request parties to make available, via the BCH, information on standards relevant to HTPI of LMOs, existing guidance on the use of relevant international standards, and methods for the detection and identification of LMOs.

#### **RIGHTS AND/OR OBLIGATIONS OF PARTIES OF TRANSIT OF LMOs**

On Monday and Wednesday, WG I discussed document UNEP/CBD/BS/COP-MOP/5/10. The African Group highlighted that the lack of submissions by African states is due to the lack of both experience and national biosafety frameworks. Kenya said that national, regional and international requirements regarding transit of LMOs should be enforced. Delegates from New Zealand, Kenya and Japan requested deferring the request

to the Compliance Committee in order to address issues related to LMOs based on information from national reports to COP/MOP 8.

**COP/MOP Decision:** In its decision (UNEP/CBD/BS/COP-MOP/5/L.8), the COP/MOP urges parties to continue addressing issues related to the transit of LMOs through their territories using domestic administrative and legal systems, and to consider this item at COP/MOP 8.

#### **LIABILITY AND REDRESS**

The negotiations on the supplementary protocol on liability and redress were concluded during the fourth meeting of the Group of Friends of the Co-Chairs (CCLR 4), held 6-10 October, directly preceding COP/MOP 5. Originally scheduled for three days, the meeting was extended over the weekend in order to resolve outstanding issues with regard to references to "products" of LMOs in the article on the supplementary protocol's scope. The final draft supplementary protocol text was approved in the early hours on Monday, 11 October. CCLR 4 also negotiated the draft COP/MOP decision for the supplementary protocol's adoption. During COP/MOP 5 a legal drafting group met from Monday to Wednesday to ensure legal clarity and consistency of the text. The Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Biosafety Protocol was adopted in plenary on Friday, October 15.

**CCLR 4:** On Wednesday, 6 October, Co-Chair Jimena Nieto opened the meeting, urging participants to reach consensus on pending issues in order to present a final draft supplementary protocol for adoption at COP/MOP 5. 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 organization of work (UNEP/CBD/BS/GF-L&R/4/1 and 1/Add.1). Delegates discussed outstanding issues on the basis of the revised draft supplementary protocol text contained in Annex I of the report of the third meeting of the CCLR (UNEP/CBD/BS/GF-L&R/4/2). Co-Chair René Lefebvre 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 COP/MOP 5.

**Definition of LMOs and "products thereof" in relation to scope (Article 3.2):** Co-Chair Lefebvre 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. Japan opposed the proposal, noting that the term "products thereof" should only apply to living materials. Co-Chair Lefebvre recalled that there was an understanding that "products thereof" would also refer to dead material.

Bolivia, supported by Ecuador, proposed using the Co-Chairs' proposal as a self-standing definition. Mexico, opposed by Bolivia, suggested 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 suggested qualifying pre-definition to prevent misinterpretation of “replication.” Mexico noted that a definition of “products thereof” was not necessary since the Biosafety Protocol refers only to LMOs.

Delegates then discussed at length the legal implications of using this language to define “products thereof,” which appears in several places in the Biosafety Protocol. The EU raised concerns that using the language from the annex on risk assessment, which is relevant in the context of the 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 proposed 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.” The subsequent discussion focused on these two proposals: the Bolivian proposal as amended by Mexico, and Japan’s 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. Ukraine said the language from the Biosafety Protocol encompasses Japan’s concerns since it also refers to LMOs used in processing industries. South Africa, Malawi, Ecuador and Brazil expressed willingness to support the Bolivian proposal as amended by Mexico, despite having similar reservations with regard to “products thereof.”

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 which substances required regulation. Bolivia suggested LMOs and products derived from LMOs that have the potential to affect biodiversity taking into account human health, consistent with text from the Biosafety Protocol. Cameroon supported introducing relevant language into the supplementary protocol to enable redress where there is damage.

After informal consultations, Malaysia presented a compromise consisting of an amendment to the Bolivian proposal, as amended by Mexico, 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 it would change the scope of the Biosafety Protocol and requesting to postpone the 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 his 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 amendment made by the Philippines. Namibia explained that the amendment would introduce a new distinction between living and non-living modified organisms, deviating from that used in the Biosafety Protocol, which uses the term “replication.” The EU expressed concern about diverging interpretations of the definition. Paraguay noted that he had “received instructions” to accept the compromise proposal as amended by the Philippines.

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. Delegates then discussed several options to do so, but noting that this would lead to different interpretations of the definition, they decided to convene further informal consultations to find language acceptable to all. Informal consultations continued throughout the day on Saturday.

On Saturday afternoon, Malaysia suggested deleting the proposed definition of “products thereof” and to replace the reference to “products thereof” in the article on scope 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.

Further informal consultations were held throughout the day on Sunday. Late Sunday night delegates decided to delete the reference to “products thereof” and to include a statement in the COP/MOP 5 report noting that it emerged during the negotiations that parties hold different understandings of the application of Biosafety Protocol Article 27 (Liability and Redress) to processed materials that are of LMO origin. One such understanding is that parties may apply the supplementary protocol to damage caused by such processed materials, provided that a causal link between the damage and the LMO can be established. The draft supplementary protocol text was then adopted and forwarded to the COP/MOP.

**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 retaining 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. South Africa questioned the need for a provision on financial security. The African Group, except South Africa, opposed deleting the text, noting that an operative provision to financial security could not be inserted once the supplementary protocol is adopted. Supported by Bolivia, Peru, India, Malaysia and Ukraine, he pointed out that the provision would not impose a financial security obligation, but enable countries to address financial security in their national legislation.

On Thursday, after a series of bilateral meetings between parties and the Co-Chairs, Co-Chair Lefeber reported that Brazil, Mexico, Paraguay and South Africa had indicated that they could not accept a reference to financial security in the operative text, but that they would make an alternative proposal. Brazil, supported by Paraguay, restated his proposal to include a preambular reference and to conduct a technical study. Malaysia rejected the proposal, noting that the provision must be included in the operative text.

On Friday afternoon, after informal consultations, Malaysia reported that parties had agreed to compromise language stating that: parties retain the right to provide for financial security in their domestic law; and 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 on developing countries, as well as identify the appropriate entities to provide financial security.

After further discussion, and several editorial changes to the final paragraph, delegates adopted the provision.

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

**COP/MOP Decision on Liability and Redress:** 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 additional and supplementary compensation measures, delegates agreed, after informal consultations, to language stating that in situations where the costs of redressing damage has not been addressed by the supplementary protocol, the costs of redressing damage may be addressed by additional or supplementary compensation measures, which may include other arrangements to be addressed by the COP/MOP. A second paragraph states that these measures may include a supplementary collective compensation arrangement whose TOR will be established by the COP/MOP. The language was agreed to after further discussion and some minor amendments.

On Sunday, after informal consultations, delegates agreed to a reference paragraph noting initiatives by the private sector concerning recourse in the event of damage to biological diversity caused by LMOs.

**COP/MOP 5:** On Monday, delegates heard a report from the CCLR 4 and established a legal drafting group that met from Monday to Wednesday. On Friday, delegates adopted a decision on liability and redress that contains the Supplementary Protocol.

**COP/MOP Decision:** In the decision (UNEP/CBD/BS/COP-MOP/5/L.2), the COP/MOP, *inter alia*: notes initiatives by the private sector concerning resources in the event of damage to biodiversity caused by LMOs.

The operative part of the decision is divided into three parts addressing the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety (the Supplementary Protocol), additional and supplementary compensation measures, and complementary capacity-building measures.

The COP/MOP decides to adopt the Supplementary Protocol, contained in the annex, and calls upon parties to the Biosafety Protocol to sign the Supplementary Protocol on 7 March 2011 or at the earliest opportunity thereafter and to ratify it as soon as possible.

Regarding additional and supplementary compensation measures, the COP/MOP decides: that, where the costs of response measures as provided for in the Supplementary Protocol have not been covered, such a situation may be addressed by additional and supplementary compensation measures; and that such measures may include arrangements to be addressed by the COP/MOP.

Regarding complementary capacity-building measures, the COP/MOP: urges parties, taking into account the Protocol's Capacity-Building Action Plan, to cooperate in the development and/or strengthening of human resources and institutional capacities for implementing the Supplementary Protocol, including through existing institutions and organizations and, as appropriate, through facilitating private sector involvement; and decides to take the present decision into account, as appropriate, in the next review of the Capacity-Building Action Plan.

The annex contains the text of the Supplementary Protocol. The preamble, *inter alia*: recognizes the need to provide for appropriate response measures where there is damage or sufficient likelihood of damage consistent with the Biosafety Protocol; and recalls Biosafety Protocol Article 27 (Liability and Redress).

Article 1 (Objective) states that the Supplementary Protocol's objective is to contribute to the conservation and sustainable use of biodiversity, taking into account risks to human health, by providing international rules and procedures in the field of liability and redress relating to LMOs.

Article 2 (Use of Terms) states that the terms defined in the Convention and the Biosafety Protocol apply to the Supplementary Protocol. In addition, it provides that:

- "damage" means an adverse effect on the conservation and sustainable use of biodiversity, taking into account risks to human health that are measurable or otherwise observable taking into account scientifically-established baselines recognized by a competent authority that takes into account any other human-induced or natural variation, and is significant as set out in Supplementary Protocol;
- "operator" means any person in direct or indirect control of the LMO, which could include, *inter alia*, the permit holder, the person who placed the LMO on the market, developer, producer, notifier, exporter, importer, carrier or supplier;
- "response measures" means reasonable actions to: prevent, minimize, contain, mitigate or otherwise avoid damage, as appropriate; restore biodiversity to the condition that existed



before the damage occurred, or its nearest equivalent, or replace the loss of biodiversity with other components of biodiversity for the same, or for another type of use either at the same, or as appropriate, at another location; and

- “significant” adverse effect is to be determined based on factors, such as: the long-term permanent change that will not be redressed through natural recovery within a reasonable period of time, the extent of the qualitative or quantitative changes that adversely affect the components of biological diversity, the reduction of the ability of components of biodiversity to provide goods and services, and the extent of any adverse effects on human health in the context of the Biosafety Protocol.

Article 3 (Scope) states that the Supplementary Protocol applies to damage resulting from LMOs that find their origin in a transboundary movement. The LMOs referred to are LMO-FFPs, LMOs destined for contained use, and LMOs intended for intentional introduction into the environment. Further paragraphs specify that the Supplementary Protocol applies to: damage resulting from intentional authorized transboundary movements of LMOs referred to in the paragraph above; damage resulting from unintentional transboundary movements and illegal movements as referred to in the Biosafety Protocol; damage resulting from a transboundary movement that started after the Supplementary Protocol’s entry into force for the party into whose jurisdiction the movement was made; and damage that occurred within the limits of the national jurisdiction of parties. The final paragraphs state that parties may use criteria set out in their domestic law to evaluate damage that occurs within the limits of their national jurisdiction; and that domestic law implementing the Supplementary Protocol shall also apply to damage from transboundary movements from non-parties.

Article 4 (Causation) states that a causal link shall be established between the damage and the LMO in question, in accordance with domestic law.

Article 5 (Response Measures) states that parties shall require the appropriate operator or operators, in the event of damage, subject to any requirements of the competent authority to: immediately inform the competent authority; evaluate the damage; and take appropriate response measures. The competent authority shall: identify the operator that has caused the damage; evaluate the damage; and determine which response measures should be taken by the operator. Further paragraphs state that:

- the operator shall be required to take measures to avoid damage from occurring if information posted on the BCH indicates that there is sufficient likelihood of damage;
- the competent authority may implement response measures if the operator fails to do so, in which case the competent authority has the right to recover from the operator any costs and expenses related to the measures and to evaluating the damage;
- decisions of the competent authority in this regard shall be reasoned and the operator informed, and parties shall provide for remedies including administrative or judicial review of such decisions, of which the operator must also be informed;
- parties shall assess whether response measures are already addressed by their domestic law on civil liability; and
- response measures shall be in accordance with domestic law.

Articles 6-8 state that parties may provide in their domestic law for exemptions, time limits and financial limits.

Article 9 (Right of Recourse) states that the Supplementary Protocol shall not limit or restrict any right of recourse or indemnity that an operator may have against any other person.

Article 10 (Financial Security) states that parties retain the right to provide, in their domestic law for financial security and that 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. Furthermore, the first meeting of Supplementary Protocol COP/MOP shall request the Executive Secretary to undertake a comprehensive study addressing, *inter alia*: the modalities of financial security mechanisms; an assessment of the environmental, economic and social impacts of such mechanisms, in particular in developing countries; and an identification of the appropriate entities to provide financial security.

Article 11 (Responsibility of States for Internationally Wrongful Acts) states that the Supplementary Protocol shall not affect the rights and obligations under the rules of general international law with respect to the responsibility of states for internationally wrongful acts.

Article 12 (Implementation and Relation to Civil Liability) contains three provisions. The first states that parties shall provide, in their domestic law, for rules and procedures that address damage. To implement this obligation, parties shall provide for response measures in accordance with this Supplementary Protocol and may, as appropriate: apply their existing domestic law, including, where applicable, general rules and procedures on civil liability; apply or develop civil liability rules and procedures specifically for this purpose; or apply or develop a combination of both.

The second provision states that parties shall, with the aim of providing adequate rules and procedures in their domestic law on civil liability for material or personal damage associated with the damage as defined in Article 2, paragraph 2(c): continue to apply their existing general law on civil liability; develop and apply or continue to apply civil liability law specifically for that purpose; or develop and apply or continue to apply a combination of both.

The third provision states that when developing civil liability law, as referred to in subparagraphs (b) or (c) of paragraphs 1 or 2 above, parties shall, as appropriate, address, *inter alia*, the following elements: damage; standard of liability including strict or fault-based liability; channeling of liability, where appropriate; and the right to bring claims.

Article 13 (Assessment and Review) states that the Supplementary Protocol COP/MOP shall undertake a review of the Supplementary Protocol’s effectiveness five years after its entry into force and every five years thereafter, provided information requiring such a review has been made available by parties. The review shall be undertaken in the context of the assessment and review of the Biosafety Protocol, unless otherwise decided by the parties to the Supplementary Protocol. The first review shall include a review of the effectiveness of Articles 10 (Financial Security) and 12 (Civil Liability).

Articles 14-21 address institutional issues, namely the Supplementary Protocol's COP/MOP; Secretariat; relationship with the Convention and the Biosafety Protocol; signature; reservations; withdrawal; and authentic texts.

Article 18 (Entry into Force) states that the Supplementary Protocol will enter into force 90 days after receipt of the 40th ratification.

#### **RISK ASSESSMENT AND RISK MANAGEMENT**

On Tuesday and Thursday, WG II discussed UNEP/CBD/BS/COP-MOP/5/12 and UNEP/CBD/BS/COP-MOP/5/INF/13 on different issues relating to risk assessment. A draft decision was approved on Thursday.

#### **FURTHER GUIDANCE ON SPECIFIC ASPECTS**

**OF RISK ASSESSMENT:** The African Group called for the extension of the mandate of *Ad hoc* technical expert group (AHTEG) and for the online forum to be more accessible for African countries, with India requesting that the AHTEG's recommendations be more specific with regard to geographical requirements. Ukraine supported the AHTEG's work, particularly on long-term assessments. Paraguay requested that the AHTEG be comprised of risk assessment experts. Norway said that the AHTEG should focus on revising the roadmap on risk assessment of LMOs.

On the guidance materials, many called for their rapid translation into all UN languages. Brazil suggested that the AHTEG's output be referred to as a report and not a guidance document. Malaysia suggested that the guidance document incorporate lessons learned from recent regional training exercises and Iran proposed revising the priorities for future guidance materials and suggested the addition of other topics. The Philippines, the EU and the US prioritized revising and testing current guidance, with the Philippines calling for general guidance rather than sets of specific guidance. Mexico, Niger and New Zealand supported the roadmap but emphasized increased peer review and testing, with Cambodia calling for testing at regional and subregional levels. Mexico said relevant organizations should be associated with LMO evaluation, peer review and risk assessment. PRRI criticized that the experience gained in 25 years of LMO research and use is not adequately reflected in the document.

On the objective of the guidance on risk assessments of LMOs, Paraguay suggested reflecting that it is an evolving document and the Philippines suggested adding that the guide is not restrictive and does not impose any obligations on parties.

**CAPACITY BUILDING:** On Thursday, WG II considered capacity building in risk assessment. The African Group, India and the Philippines stressed the importance of capacity building for risk assessment, calling for South-South collaboration and information exchange. The EU stressed capacity for evaluating risk assessment reports. The Philippines suggested channeling more resources towards developing online materials. The African Group, with Argentina, endorsed continued work of the AHTEG on capacity building for policy and decision-makers. Palau called for training of personnel in Pacific Island nations on risk assessment and management. China stressed the need for continued financial support for training workshops on risk assessment.

**LMOs THAT MAY HAVE/ARE NOT LIKELY TO HAVE ADVERSE IMPACTS:** On differentiating impacts of LMOs, many delegates argued that the likelihood of adverse impacts of LMOs depends on the characteristics of the environment they are grown in and cannot be determined globally. They prioritized additional research and information sharing ahead of further discussion. Norway and others rejected developing lists of LMOs that will be exempt from the AIA Procedure.

On LMOs that may have adverse impacts, many favored a case-by-case approach. While calling for additional information sharing and training, several opposed an AHTEG due to limited funds. PRRI said adverse impacts can never be ruled out, and offered providing evidence of LMOs that are less likely to have impacts than their non-LMO counterparts.

**COP/MOP Decision:** The decision (UNEP/CBD/BS/COP-MOP/5/L.13) contains three sections on further guidance on specific aspects of risk assessment, capacity building and LMOs that may have/are not likely to have adverse impacts on the conservation and sustainable use of biodiversity.

With regard to further guidance, the COP/MOP, *inter alia*: welcomes the "Guidance on Risk Assessment of Living Modified Organisms," whose objective is to provide guidance in implementing the Protocol's provisions on risk assessment, noting that this first version requires scientific reviewing; decides to extend the current open-ended online forum and the AHTEG on Risk Assessment and Risk Management; urges parties to nominate experts to the open-ended online forum; and requests the Executive Secretary to convene, prior to COP/MOP 6, *ad hoc* discussion groups and real-time online conferences under the open-ended online forum and two meetings of the AHTEG; and to compile views and recommendations from participants in the forum.

With regard to capacity building, the COP/MOP requests the Executive Secretariat to, *inter alia*: convene at its earliest convenience, further regional and subregional training courses for hands-on experience in preparation and evaluation of risk assessment reports; improve the training manual in cooperation with UN bodies and other expert reviewers in accordance with recommendations from the training courses; and develop an interactive learning tool based on the training manual to be made available through the BCH in view of developing cost-effective risk assessment training.

With regard to LMOs that may have adverse impacts, the COP/MOP urges parties and other governments to submit to the BCH decisions and risk assessments where potential adverse effects have been identified, and other information that may assist in identification of LMOs that may have effects on conservation and sustainable use of biological diversity, taking into account human health.

With regard to LMOs that are not likely to have adverse impacts, the COP/MOP requests: parties, governments and other organizations to submit to the Executive Secretary information on risk assessments, on a case-by-case basis, regarding the receiving environment of the LMOs that may assist in identifying LMOs unlikely to have adverse effects, and the criteria considered in the identification of such LMOs; and the Executive Secretary to compile information received and prepare a synthesis report for consideration by the parties at COP/MOP 6.

The annexed ToR for the AHTEG on risk management and risk assessment outline the methodology, expected outcomes and reporting of their activities.

#### **PUBLIC AWARENESS, EDUCATION AND PARTICIPATION**

WG II considered UNEP/CBD/BS/COP-MOP/5/13 on Tuesday and Wednesday and approved a draft decision on Thursday.

Discussions focused on whether additional resources would be required for the effective implementation of the programme of work. The EU, with Turkey and Croatia, did not support requesting the GEF to provide additional financial resources. This was opposed by South Africa and others. Delegates eventually accepted the EU proposal that GEF “take into account” the programme of work.

Adding a preambular paragraph that recognizes the central role of the BCH, the Republic of Korea requested encouraging the establishment of an advisory committee or using the informal BCH advisory committee to provide advice and guidance on the implementation of the work programme.

Argentina called for effective monitoring by experts to curb the dissemination of false information on LMOs. Honduras said information on LMO benefits is lacking, with PPRI noting that the information about biosafety in the public domain has a negative bias. ECOROPA emphasized the need to involve “knowledgeable members of the public” in the creation of effective awareness campaigns.

**COP/MOP Decision:** The decision on public awareness, education and participation (UNEP/CBD/BS/COP-MOP/5/L.16) adopts the annexed programme of work and decides to review it at COP/MOP 8. The four programme elements included are: capacity building; public awareness and education; public access to information; and public participation.

The COP/MOP further requests that the programme of work be taken into account by the GEF in its funding activities and urges developed country parties, other governments and organizations to provide additional support. It encourages parties to establish or make use of existing advisory committees on public awareness, education and participation concerning LMOs, and invites the Secretariat to establish an online forum and other appropriate means.

#### **MONITORING AND REPORTING**

Monitoring and reporting (UNEP/CBD/BS/COP-MOP/5/14/Rev.1) was addressed in WG I on Monday and Wednesday, when a draft decision, including a new format for national reporting, was approved. Given the limited rate of submissions for the first national reporting period, New Zealand and other countries lauded the proposed format as being more comprehensive, but cautioned that the increased information requirements could be challenging. Cuba, Liberia and the EU, with Turkey and Croatia, raised concerns about the timeframes to submit the second national report, considering the proposed information requirements, with the African Group suggesting to postpone the deadline for submission from 2011 to 2012. Guatemala, supported by Malaysia and Uganda, emphasized the need for timely access to financial support to prepare national reports. On information to be requested on liability and redress, India said that this should only apply after the Supplementary Protocol enters into force.

The EU, with Croatia and Turkey, suggested an online forum for sharing best practices, advice and expertise on reporting. Argentina said that non-parties should be allowed to present voluntary national reports.

**COP/MOP Decision:** In its decision (UNEP/CBD/BS/COP-MOP/5/L.9), the COP/MOP, *inter alia*: requests the Executive Secretary to make the final reporting format available through the BCH and to organize an online forum or, subject to the availability of funds, regional or subregional workshops on national reporting; requests parties to use the reporting format for the preparation of their second national report or, in the case of parties submitting their national report for the first time, to use it for their first national report. The COP/MOP further requests parties to submit to the Secretariat their second national report; encourages parties to give priority to national reporting when seeking funding from the GEF; and invites non-parties to share their experiences on their biosafety-related regulatory and administrative measures by submitting national reports.

The annex to the decision includes the reporting format for the Second National Reports, which contains 179 questions and guidelines to use the format. The decision states that the questions do not necessarily represent obligations under the Protocol but are considered to be useful to gather information that facilitates the establishment of baselines for subsequent assessment and review processes.

#### **ASSESSMENT AND REVIEW**

WG I considered UNEP/CBD/BS/COP-MOP/5/15 on Monday afternoon and Tuesday morning, and approved a draft decision on Wednesday afternoon. Discussions focused on the indicators to be included in the second review of the Protocol’s effectiveness and on the question whether an AHTEG was required to analyze data on implementation.

The African Group and Cuba supported convening an AHTEG, while the EU, with Turkey and Croatia, proposed that the Secretariat commission the analysis of the Protocol’s effectiveness and that parties conduct the review at the next COP/MOP. Delegates agreed to make the AHTEG explicitly subject to the availability of funds.

Regarding the indicators to be utilized, Brazil proposed to separately measure the implementation of domestic regulatory frameworks and of the AIA procedure. Stressing the efficient use of financial resources, Mexico suggested eliminating indicators on the amount of funding made available or else to include a measure of the “impact resulting from such funding.” Uganda proposed reviewing the number of parties reporting damages from LMOs or illegal introductions of LMOs, as well as those parties with systems for risk management, impact assessment, and legal and administrative procedures for liability and redress.

The African Group requested including the development of indicators for socio-economic impacts of LMOs. The PPRI voiced concerns that such indicators could make the consideration of socio-economic impacts prescriptive. She proposed inquiring why some parties have not established domestic biosafety procedures and measuring changes in the use of pesticides, fertilizers, fossil fuels and soil erosion resulting from the introduction of genetically modified crops.



**COP/MOP Decision:** The decision on assessment and review (UNEP/CBD/BS/COP-MOP/5/L.16) requests the Secretariat to collect and compile information for the second review of the Protocol's effectiveness and to commission the analysis of such information. Subject to the availability of funds, the COP/MOP decides to establish a regionally-balanced AHTEG to review the analysis and make recommendations to COP/MOP 6. The elements and indicators on which the second review shall focus are annexed and include: coverage, reviewing the number of parties to the Protocol and their imports/exports of LMOs; domestic implementation of core procedures, including operation of the AIA procedure and of domestic regulatory frameworks; international level procedures and mechanisms, including an indicator on the amount of funding provided or received for supporting biosafety capacity-building activities and the impacts resulting from such funding; and impacts of transboundary LMO movements on biological diversity, taking into account risks to human health and the indicators of the CBD, without reference to socio-economic impacts or the use of pesticides, fertilizers, fossil fuels and soil erosion.

### **STRATEGIC PLAN AND MYPOW**

Delegates discussed document UNEP/CBD/BS/COP-MOP/5/16 on the Strategic Plan for the Period 2011-2020, including a draft multi-year programme of work (MYPOW) on Tuesday, Wednesday and Thursday. The decision on the Strategic Plan and MYPOW was adopted on Friday.

On the Strategic Plan's objectives and its linkages between them, the African Group proposed streamlining the strategic objectives with those of the Convention and also with discussions in parallel processes, such as on the Supplementary Protocol. The Latin American and Caribbean Group, supported by South Africa, said the linkages with the CBD Strategic Plan should be strengthened. On reviews of the Strategic Plan, Vietnam called for a mid-term review in 2015, while Malaysia supported minor reviews at every COP/MOP meeting.

Considering that many of the issues within the Strategic Plan were being addressed in other parallel discussions, parties agreed that the Strategic Plan, including references to budget and human resources, would be amended and updated with other decisions adopted at COP/MOP 5.

On financial resources, the African Group, with Yemen, noted that many developing parties face difficulties in accessing GEF funds for biosafety matters and proposed including reference to a biosafety fund, which would be a special voluntary fund for parties that want to assist developing countries in implementing the Strategic Plan. Japan, the EU, with Croatia and Turkey, and New Zealand said implementation should be supported by existing GEF funds. Parties agreed to incorporate text "to explore the feasibility of establishing a special biosafety fund." However, in the closing plenary, the Secretariat, reminding delegates that WG I had agreed to update and streamline the Strategic Plan with other decisions taken in parallel discussions at COP/MOP 5, announced that this reference to a special biosafety fund had to be deleted for the sake of consistency.

On socio-economic considerations, the EU, with Croatia and Turkey, supported by Norway, proposed including text to promote cooperation on research and exchange of information on socio-economic impacts of LMOs, which was originally rejected

by the African Group. After informal consultations, compromise text considering the provision on relevant guidance on socio-economic considerations based on research and information exchange was included.

On the Plan's indicators, the EU stressed that these be measurable and relate to practical impact. Vietnam suggested adding quantitative indicators, while the African Group supported strengthening qualitative assessment.

On the draft MYPOW, Burkina Faso requested that capacity building be addressed at subsequent COP/MOP meetings. The EU, with Croatia and Turkey, said that the development of tools and guidance on contained use of LMOs should be addressed earlier than COP/MOP 7, adding that the programme of work for both COP/MOP 7 and COP/MOP 8 would require revision after the completion of the second assessment of the Protocol. She remarked that planning for COP/MOP 9 and COP/MOP 10 was premature.

**COP/MOP Decision:** In its decision (UNEP/CBD/BS/COP-MOP/5/L.11), the COP/MOP adopts the Strategic Plan for the Cartagena Protocol on Biosafety (2011-2020) included in Annex I and the MYPOW of the COP/MOP included in Annex II. It urges parties to review and align their national action plans and programmes with the Strategic Plan, including their National Biodiversity Strategies and Action Plans, and allocate adequate human and financial resources necessary to expedite the implementation of the Strategic Plan. It further decides to conduct a mid-term evaluation of the Strategic Plan at COP/MOP 8, in conjunction with the Protocol's third assessment and review.

Annex I includes the Strategic Plan's text, comprising the following sections: context, interpretation and monitoring and assumptions and human resource needs to support the implementation and elements of the Strategic Plan. The Strategic Plan's elements are presented in a table, including the vision, mission and five prioritized focal areas with respective expected impacts, operational objectives, outcomes and indicators. Annex II contains the Programme of Work of the COP/MOP for 2012-2016, including standing items and other items to be addressed at subsequent meetings.

### **CLOSING PLENARY**

The closing plenary convened at 4:00 pm on Friday. Delegates resolved outstanding issues with regard to the decision on capacity building and adopted 17 decisions, followed by the adoption of the Working Group reports (UNEP/CBD/BS/COP-MOP/5/L.1/Add.1 and Add.2) and the COP/MOP 5 report (UNEP/CBD/BS/COP-MOP/5/L.1).

The adoption of the Supplementary Protocol was followed by long ovations and laudatory statements. On behalf of the Japanese COP/MOP Presidency, Parliamentary Secretary Masayo Tanabu extended her congratulations to delegates for the successful meeting and the adoption of the Supplementary Protocol. She expressed confidence that any kind of challenge can be overcome in the spirit of cooperation. CBD Executive Secretary Ahmed Djoghlaif said the North-South cooperation exemplified in the name of the Supplementary Protocol provided a historic message, but lamented shortage of funding to support the Secretariat's work.

The Comoros was picked in the raffle to decide which delegation will sit at the front-left corner in CBD meetings for the duration of the Japanese Presidency.

Malawi, for the African Group, raised concern that the nominal Secretariat budget growth approximated zero, reminding developed country parties of their historical commitment to financial resources for the implementation of the Rio conventions. Ukraine, for CEE, welcomed the adoption of the Supplementary Protocol. Palau, for the Asia and the Pacific Group, identified as key issues for his region: capacity building, financial resources, and information exchange and technology transfer. India welcomed delegates to COP/MOP 6 in his country in October 2012. The EU, with Croatia and Turkey, said that the MYPOW and the extension of the period for risk assessment and management were essential for the successful implementation of the Biosafety Protocol. Colombia, for the Latin American and Caribbean Group, called the Supplementary Protocol's adoption a major milestone marking the International Year for Biodiversity. COP/MOP 5 President Kano gavelled COP/MOP 5 to a close at 7:31 pm.

### A BRIEF ANALYSIS OF COP/MOP 5

When historians look back at COP/MOP 5 in Nagoya, it is possible that they will agree that this meeting marked a defining moment in the history of the Cartagena Protocol. Some may credit the adoption of the Nagoya-Kuala Lumpur Supplementary Protocol on Liability and Redress for setting the mood for a smooth meeting without any major controversies. However, a deeper analysis reveals a general shift in attitudes, positions and political undercurrents that may have facilitated both the successful conclusion of the negotiations on liability and redress and the swift completion of other agenda items. COP/MOP 5 provided an indication of what could be the beginning of a new phase in international regulation of biotechnology: one that is focused on cooperation in the management of the risks associated with LMOs rather than on the struggle between those who embrace biotechnology as a solution for many of the world's most pressing problems, and those who seek to defend themselves against their utilization because they consider the risks associated with LMOs greater than the benefits. This analysis will first take a deeper look at these emerging trends, followed by an investigation how they affected COP/MOP 5.

#### THE CHANGING FACE OF BIOTECHNOLOGY

The negotiation of the Cartagena Protocol and previous meetings of the COP/MOP negotiations had been shaped by two fault lines in interests. The first was the divide between those who embraced new biotechnologies and those who emphasized precaution. The interest of the former countries, including the United States, Canada and Australia, to name a few, was primarily driven by the desire to establish a favorable environment for the private sector to foster innovation and deployment of new technologies. However developing countries, especially in Africa, had always strongly defended the right to decide if and under which conditions LMOs would be introduced in their countries.

The second split was between food importing and exporting countries, whose positions were determined by both their own attitudes towards LMOs and those of their trading partners.

Many food producing countries rejected LMOs out of the fear of losing access to major export markets such as the EU, if they could not guarantee that their production chains were LMO free.

Many veterans of the Cartagena Protocol were therefore surprised when several countries and regional groups that have long been known for their critical attitude towards biotechnology and the use of LMOs made interventions that were perceived as leaning pro-biotech, such as Kenya's statement that the rich world should not stand in the way of developing countries' ambitions to develop or use biotechnology to tackle problems associated with hunger and development.

For many developing countries both their own attitude and that of their trading partners is shifting. The recent food crisis catalyzed a change in opinions in developing countries as it has significantly impacted traditional patterns of development aid and technology transfer, with many countries and organizations now including LMOs in their agricultural development strategies. The Kenyan statement was indicative of this new popularity of using LMOs as a solution to hunger in developing countries. At the same time, many of the developed country trading partners of food exporting countries have loosened their attitude against LMOs. Looming trade conflicts and shifts in the public attitude have led many of the countries who emphasize precaution to switch towards a more pragmatic approach regarding the approval and import of LMOs.

The shifting positions also had an impact on the liability and redress negotiations where several leaders of developing country groups commented that "their ranks were thinning" as more and more countries dissociated from their common position over the course of the negotiations. Throughout the COP/MOP meeting it was evident that the divides between both developed and developing countries as well as between exporters and importers have become smaller, making new space for agreement

#### SWITCHING INTO COOPERATIVE MODE

Prior to Nagoya, the COP/MOP was characterized by protracted negotiations on issues such as documentation requirements, risk assessments and work on socio-economic impacts of LMOs where one side would accuse the other of seeking to erect barriers to international trade of LMOs. The other side would rejoin with claims of being forced to accept the introduction of LMOs against their will. Every agenda item was subject to tedious negotiations down to the last comma, often lasting late into the night. COP/MOP 5 was different in that the very same issues were addressed in a much more pragmatic way.

Documentation requirements for handling, transport, packaging and identification of LMO-FFPs are a case in point. COP/MOP 5 was mandated to conduct the first review of experiences gained with the requirements adopted at COP/MOP 3 and decide how to elaborate further requirements for newly developed LMOs. At COP/MOP 3 delegates had an interim agreement to use the phrase "may contain" meaning that shipments that could be broadly labeled as possibly including a certain percentage of new LMOs without the obligation to report the specific types or quantities of LMOs. For many countries this was a key concern as the level of detail in documentation requirements determines the level of protection against the risks associated with newly developed LMOs. A part of the compromise was to regularly review the arrangement and

develop more detailed requirements at a later stage. Rather than re-engaging in old battles on documentation requirements, COP/MOP 5 decided, without major resistance, to postpone the decision and focus on facilitating the gathering and sharing of information on lessons learned with the existing arrangement.

Another example is the consideration of socio-economic impacts of LMOs. In the past, there had been repeated quarrels on this issue, which often resembled a black and white debate. Some pushed for the consideration of socio-economic impacts arguing that they are a key determinant of risk associated with LMOs. Others feared that these impacts could be used as inadequate subjective criteria to reject LMO imports. While COP/MOP 5 still experienced substantial disagreement on this issue, which cut across various agenda items and triggered a reopening of an already adopted document in the closing plenary, a general recognition of the importance of the issue could be observed. The debate now focuses on how to approach the issue, with some preferring to establish an AHEG and others seeking to concentrate on information exchange. The resulting decision to organize an online forum, followed by a workshop on methodologies for research and information exchange was welcomed by many as an important enabling step to finally engage in the issue.

Another way COP/MOP 5 was different was that the “wallflowers” of the COP/MOP, such as the activities facilitated through the BCH, were able to attract far more interest than at previous meetings. As more and more countries are approving LMOs for use and import, the interest in exchanging experiences and information about the day-to-day decision-making regarding LMO shipments and associated tasks, i.e., reviewing documentation, analyzing information and interpreting risk assessments, is growing. Not surprisingly, delegates praised the improvements made to the digital and communications structure of the BCH, such as the intuitive user interface, the increased information access through advanced search capabilities and the interoperability with multiple database formats. As one delegate explained, “no matter whether you are rich or poor, an importer or an exporter, we all need to learn how to manage LMOs and the best way is to learn from each others’ experiences.” The growing overlap in interest in this area was also reflected by the repeated calls for capacity building for using the BCH. Now even developed countries are calling for capacity building as they can also benefit from the technological advances, particularly if developing countries are enabled to contribute to exchanging information and experiences through the BCH.

At the same time as the BCH is evolving into a more useful tool for implementation of the Protocol, parties are setting other issues on a more cooperative track by exploring synergies and common interest on previously divergent issues. This cooperative track was seen by many as positive step forward for the Protocol. According to them, this new approach will lead to solutions that are mutually beneficial for parties, while accomplishing the overall objective of the Protocol to protect the environment against the risks associated with LMOs. The remaining challenges are, however, important. Divergent opinions on how to prioritize capacity building for different activities and how to develop solutions that maximize environmental protection while minimizing impacts on trade will require carefully crafted compromises.

## **LIABILITY AND REDRESS—FILLING THE GAP ON IMPLEMENTATION**

The adoption of the Supplementary Protocol on Liability and Redress was another example of the global shift in thinking about biotechnology and was without question the highlight of COP/MOP 5. The Supplementary Protocol had been the last outstanding element in a functional Biosafety Protocol, and is expected to enhance the effectiveness of both environmental protection measures and the Biosafety Protocol itself. As adopted, it should strengthen the Cartagena Protocol’s objective to provide for the safe transfer, handling and use of LMOs that may have adverse effects on biodiversity by compensating for, and preventing, damage to the environment. Its effectiveness is, in theory, uncertain as it relies on the ability of countries to measure this damage under the highly specific guidelines of the administrative approach and relies on the quality and effectiveness of the response measures, which, to some extent, depend on appropriate economic valuation of biodiversity as a resource. It remains to be seen if the Supplementary Protocol will both enhance the benefits of LMOs and/or if it can limit their negative impacts on environmental goods and services. The Supplementary Protocol’s administrative approach also places the burden of proof on the claimant, meaning the more resources and knowledge a country has the more it will be able to protect itself. Thus, developing countries may struggle to realize its full effectiveness.

The final meeting of the Group of Friends of the Co-Chairs, which was held directly prior to the COP/MOP, focused on two outstanding issues: the definition of “products” of LMOs and a provision on financial security. The debate on “products” concerned the types of materials that are considered to be within the definition of LMOs. Some processed materials, such as food products or synthesized biological compounds, may cause damage to the environment or human health even though they are not LMOs themselves. It is ambiguous whether the Biosafety Protocol covers such processed materials, because they are not included in the Protocol’s definition of LMOs, despite being referenced in several articles and annexes. Some feared that adding a definition of “products” could broaden the scope of the liability regime beyond that of the Biosafety Protocol, while others maintained that without the definition, the Supplementary Protocol would not apply to some types of damage covered by the Biosafety Protocol.

After several long days of debate, delegates agreed to remove reference to “products,” and instead noted in the report that parties maintained different understandings on the application of the Biosafety Protocol to processed materials. According to observers, this solution was appreciated but was also dissatisfying because it was “basically an agreement to disagree” that might be a hindrance to implementation in the future. Others were pleased that the operational language at least established a causal link between “LMOs” and “damage caused by the processed materials of LMOs.” This means that if damage is caused by a product of an LMO, such as the flour milled from imported LMO wheat, the importer will be liable if the damage can be linked to the LMO. A number of developing country delegates expressed hope that having legitimized the view that



there can be a causal link between LMOs and damages caused by their “products” would strengthen their case for including LMO products in future work on risk assessment and management.

The provision on financial security also resulted in a diluted, legal middle ground. Originally envisioned as an international legal obligation, this provision now only “allows” parties to require financial security in their domestic law for imports into their jurisdiction. Such a requirement would oblige “operators,” those in control of LMOs such as importers, to provide for insurance or another type of financial safeguard to prove their ability to provide compensation in the case of damage. Proponents viewed the inclusion of such a provision as essential to ensure that compensation will be provided since damage from LMOs could easily exceed the financial capacity of an operator. The opponents of such a requirement, such as Brazil, South Africa, Paraguay, Mexico and others, argued that it would act as a trade barrier, disadvantaging exporting countries because adequate financial instruments to comply with such a requirement currently do not exist. Members of the global biotechnology industry have introduced a supplementary compensation scheme to address this issue, which was developed outside the context of the negotiations, but formally acknowledged within the COP/MOP decision to adopt the Supplementary Protocol.

Although COP/MOP 5 participants were enthusiastic about the adoption of the Supplementary Protocol, they had mixed feelings about the content. On the one hand, the Co-Chairs of the Group of Friends suggested its adoption could be an impetus to “exchange words for deeds,” in other multilateral environmental negotiations. If the Supplementary Protocol comes into force quickly it could provide a model for other areas of environmental damage. Most existing instruments, in particularly those based on a civil liability approach, such as the protocol to the Basel Convention on Transboundary Movements of Hazardous Wastes, have not yet entered into force. However, on the other hand, after six years of negotiation, maintaining high expectations at this stage may be unrealistic. It was obvious to some that the text had lost considerable substance in the efforts to find a compromise, such as on civil liability, and that its effectiveness in preventing and redressing damage to the environment is uncertain. Implementation of the Supplementary Protocol will be challenging for a number of reasons, including the investments required for the administrative approach. But perhaps it is uncertainty in the direction of future technology that will limit the overall effectiveness of the Protocol in the long run. So one has to wonder, with so many diverging views among the delegates, if what was calmly achieved was merely a “diluted compromise” of an already “watered down” agreement, as some perceived, or if it really is a major step forward for multilateral environmental agreements.

### **INTO THE BIOTECHNOLOGY AGE**

Overall, the success of COP/MOP 5 may reflect both the maturity of the biotechnology field and the maturity of the Biosafety Protocol itself. Biotechnology is clearly out of its childhood with a new approach of science-based risk management and informed case-by-case decision making rather than ideological turf wars about LMOs as “benign” or “evil” technology. The Biosafety Protocol is finally “complete” with

the adoption of an international regime on liability and redress. Future COP/MOPs can now focus on developing the Protocol’s role in the biotechnology context.

But challenges still remain. The liability negotiations served as a pertinent example of the challenges existing at the science-policy interface. The “difference in understanding” on “products” highlighted the scientific complexity of and uncertainty in the discussions. It was difficult for many parties to forecast the exact impact of the Supplementary Protocol on conservation and cultural practices, resulting in tiring debates on scientific semantics over, for example “replicating” versus “naturally reproducing” products. In a number of sessions, delegates frequently asked for descriptions of LMO activities at the microbiological level, and, in unreasonably short periods of time, were asked to absorb and dispute the political impacts of very complex scientific information. Genetic modification is an expanding field and remaining abreast of developments is essential to effective negotiating on, and legal interpretation of, biotechnology. Some suggested that organizing targeted and integrated workshops for negotiators, policy makers and scientists could greatly enhance the quality and outcome of future COP/MOP negotiations.

As delegates left the closing plenary on Friday, there was hope that the progress on liability and redress, documentation requirements, socio-economic issues, the BCH and other issues demonstrates that the Protocol has left the quarrels of adolescence behind and will now increasingly focus on its main objective: the cooperative and facilitative management of the risks emerging from modern biotechnology, while preventing damage and ensuring compensation and redress for damage that occurs.

### **UPCOMING MEETINGS**

**CBD COP 10:** The tenth meeting of the Conference of the Parties to the Convention on Biological Diversity is expected to, *inter alia*, adopt a protocol on access and benefit-sharing, assess the achievement of the 2010 target to reduce significantly the rate of biodiversity loss and adopt the Convention’s new strategic plan. **dates:** 18-29 October 2010 **location:** Nagoya, Japan **contact:** CBD Secretariat **phone:** +1-514-288-2220 **fax:** +1-514-288-6588 **email:** [secretariat@cbd.int](mailto:secretariat@cbd.int) **www:** <http://www.cbd.int/cop10/>

**Global Conference on Agriculture, Food Security and Climate Change:** This meeting is organized by the Government of the Netherlands in cooperation with the Governments of Ethiopia, Norway and New Zealand, the World Bank and the UN Food and Agriculture Organization (FAO). The meeting aims to provide concrete actions to link the implementation of agriculture-related investments, policies, and measures with long-term carbon emission reductions and adaptation benefits. **dates:** 31 October – 5 November 2010 **location:** The Hague, the Netherlands **contact:** Ministry of Agriculture, Nature and Food Quality of the Netherlands **email:** [agriculture2010@minlnv.nl](mailto:agriculture2010@minlnv.nl) **www:** <http://www.afcconference.com/>

**11th Asian Maize Conference:** Sponsored by the Government of Guangxi Zhuang Minority Autonomous Region, China, the Chinese Academy of Agricultural Sciences (CAAS), and the International Maize and Wheat Improvement Center (CIMMYT), a member of the Consultative Group on International Agricultural

Research (CGIAR), this meeting will address climate change effects and meeting maize demand for Asia. **dates:** 7-11 November 2010 **location:** Nanning, China **contact:** International Maize and Wheat Improvement Center **phone:** +86-771-428-1798 **fax:** +86-771-428-2154 **email:** cheng-daniel@126.com **www:** <http://www.cimmyt.org/fr/component/content/article/426-conferences/762-the-11th-asian-maize-conference>

**OECD Knowledge-based Bioeconomy Workshop:** Organized by the Organization for Economic Cooperation and Development (OECD) Directorate for Science, Technology and Industry, this workshop will focus on “bioeconomy,” the value that biosciences add to a host of products and services. **dates:** 10-12 November 2010 **location:** Saint Petersburg, Russian Federation **contact:** OECD Directorate for Science, Technology and Industry **phone:** +33-1-4524-8200 **fax:** +33-1-4524-8500 **email:** sti.contact@oecd.org **www:** [www.oecd.org](http://www.oecd.org)

**11th International Symposium on the Biosafety of Genetically Modified Organisms (ISBGMO 11):** The theme of the meeting, which is organized by the International Society for Biosafety Research, will be the role of biosafety research in the decision-making process. **dates:** 15-20 November 2010 **location:** Buenos Aires, Argentina **contact:** International Society for Biosafety Research **email:** office.bs@isbr.info **www:** <http://www.isbgmo.info/>

**Agriculture and Rural Development Day 2010:** The fourth Agriculture and Rural Development Day (ARDD) will convene in conjunction with the Cancun Climate Change Conference, to be held from 29 November – 10 December 2010. The day will be hosted by CGIAR, the Global Donor Platform for Rural Development, the CGIAR Challenge Programme on Climate Change, Agriculture and Food Security, and the Ministry of Agriculture, Livestock, Rural Development, Fisheries and Food of Mexico. **date:** 4 December 2010 **location:** Cancun, Mexico **contact:** ARDD Secretariat **email:** info@agricultureday.org **www:** <http://www.agricultureday.org>

**OECD Global Forum on Biotechnology:** This Forum will review how knowledge in the life sciences is governed, shared, regulated and managed, and explore new linkages between the life sciences and information and communication technologies. **dates:** 6-7 December 2010 **location:** Paris, France **contact:** Directorate for Science, Technology and Industry, OECD **phone:** +33-1-4524-8200 **fax:** +33-1-4524-8500 **email:** stbioregistration@oecd.org **www:** [http://www.oecd.org/document/8/0,3343,en\\_2649\\_34537\\_46142664\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/8/0,3343,en_2649_34537_46142664_1_1_1_1,00.html)

**ITPGR GB 4:** The fourth session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture will address compliance, implementation issues regarding the Treaty’s Multilateral System, and the outstanding financial rules. **dates:** 14-18 March 2011 **location:** Bali, Indonesia **phone:** +39-06-570-53441 **fax:** +39-06-570-56347 **email:** pgrfa-treaty@fao.org **www:** [http://www.planttreaty.org/gbnex\\_en.htm](http://www.planttreaty.org/gbnex_en.htm)

**Codex Committee on Food Labelling (39th Session):** The meeting is organized by the Codex Alimentarius Secretariat. **dates:** 9-13 May 2011 **location:** Quebec City, Canada **contact:** Selma Doyran, Codex Secretariat **phone:** +39-06-57051 **fax:** +39-06-5705-4593 **email:** Selma.Doyran@fao.org **www:** <http://www.codexalimentarius.net/>

**Panel of Eminent Experts on Ethics in Food and Agriculture (5th Session):** This meeting is organized by FAO. **dates:** 1-2 Jun 2011 **location:** Rome, Italy **contact:** Dan Leskien, FAO **phone:** +39-06-5705-4981 **fax:** +39-06-570-53152 **email:** Dan.Leskien@fao.org **www:** <http://www.fao.org/ethics>

**Codex Alimentarius Commission (34th Session):** This meeting is organized by the Codex Alimentarius Secretariat. It will be preceded by the 65th session of the Commission’s Executive Committee, to be held from 28 June – 1 July 2011. **dates:** 4-9 Jul 2011 **location:** Geneva, Switzerland **contact:** Selma Doyran, Codex Secretariat **phone:** +39-06-57051 **fax:** +39-06-5705-4593 **email:** Selma.Doyran@fao.org **www:** <http://www.codexalimentarius.net/>

**CGRFA 13:** The thirteenth session of the Commission on Genetic Resources for Food and Agriculture (CGRFA 13) is organized by FAO. It will be preceded by a special event on climate change. **dates:** 16-22 July 2011 **location:** Rome, Italy **contact:** CGRFA Secretariat **phone:** +39-06-5705-4981 **fax:** +39-06-5705-5246 **email:** cgrfa@fao.org **www:** <http://www.fao.org/nr/cgrfa/cgrfa-home/en/>

**Biosafety Protocol COP/MOP 6:** The sixth meeting of the Conference of the Parties to the CBD serving as Meeting of the Parties to the Cartagena Protocol on Biosafety is tentatively scheduled for October 2012. **dates:** 1-5 October 2012 **location:** New Delhi, India **contact:** CBD Secretariat **phone:** +1-514-288-2220 **fax:** +1-514-288-6588 **email:** secretariat@cbd.int **www:** <http://www.cbd.int/>

**CBD COP 11:** The eleventh meeting of the Conference of the Parties to the Convention on Biological Diversity is tentatively scheduled for October 2012. **dates:** 8-19 October 2012 **location:** New Delhi, India **contact:** CBD Secretariat **phone:** +1-514-288-2220 **fax:** +1-514-288-6588 **email:** secretariat@cbd.int **www:** <http://www.cbd.int/>

## GLOSSARY

AIA	Advance Informed Agreement
AHEG	<i>Ad Hoc</i> Expert Group
AHTEG	<i>Ad Hoc</i> Technical Expert Group
BCH	Biosafety Clearing-House
CBD	Convention on Biological Diversity
CEE	Central and Eastern Europe
CCLR	Group of the Friends of the Co-Chairs on Liability and Redress
COP/MOP	Conference of the Parties serving as the Meeting of the Parties
GEF	Global Environment Facility
HTPI	Handling, transport, packaging and identification
LMO	Living modified organisms
LMO-FFP	Living modified organisms for food, feed and processing
MYPOW	Multi-year programme of work
PRRI	Public Research and Regulation Initiative
ToR	terms of reference
STAR	System for Transparent Allocation of Resources
WG	Working Group



## SIDS Policy & Practice

A Knowledgebase on the Sustainable Development of Small Island Developing States



The International Institute for Sustainable Development is pleased to announce the launch of

# SIDS Policy & Practice: A Knowledgebase on the Sustainable Development of Small Island Developing States

## SIDS-L.iisd.org

SIDS Policy & Practice is a knowledge management project that reports on activities related to the sustainable development of small Island developing States (SIDS). It is managed by the International Institute for Sustainable Development (IISD) Reporting Services.

The project is conducted in close cooperation with the United Nations Department of Economic and Social Affairs (DESA), in conjunction with the revitalization of SIDSNet, in support of the Barbados Programme of Action, which called for support for "the development of a small Islands' sustainable development information network to facilitate the exchange of experience among small Island developing States." The launch of SIDS Policy & Practice is timed to coincide with the UN General Assembly's High-Level Review Meeting on the Implementation of the Mauritius Strategy for the Further Implementation (MSI) of the Programme of Action for the Sustainable Development of Small Island Developing States, being held in New York at UN Headquarters on 24-25 September 2010.

IISD RS is fully responsible for the content posted on SIDS Policy & Practice. Information on implementation activities is provided in cooperation with SIDSNet.

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For further information on this initiative or to provide us with information about your SIDS-related activity, please contact Faye Leone, Content Editor, at [faye@iisd.org](mailto:faye@iisd.org).

