

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 Ewert (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 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.

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 measureable 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-FPPs, 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 **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 **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

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/documnt/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

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

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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.

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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.

