



Convention on Biological Diversity

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ASIA-PACIFIC REGIONAL WORKSHOP ON THE
NAGOYA – KUALA LUMPUR SUPPLEMENTARY
PROTOCOL ON LIABILITY AND REDRESS TO
THE CARTAGENA PROTOCOL ON BIOSAFETY
New Delhi, 17-18 November 2011

REPORT OF THE WORKSHOP

INTRODUCTION

1. The Asia-Pacific Regional Workshop on the Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety was held at Hotel Samrat in New Delhi, on 17-18 November 2011. The workshop was conducted back-to-back with the workshop on capacity-building for research and information exchange on the socio-economic impacts of living modified organisms under the Cartagena Protocol on Biosafety, held immediately before this workshop at the same venue.
2. The workshop was attended by 19 participants - 18 of them from 12 country Parties to the Cartagena Protocol on Biosafety. The following countries were represented: Bhutan, Cambodia, India, Kiribati, Malaysia, Mongolia, Myanmar, Philippines, Saudi Arabia, Sri Lanka, Syrian Arab Republic and Thailand. A participant from the Third World Network, a civil-society organization also attended. The full list of participants is contained in annex III below.
3. Like the first two similar projects conducted in Central and Eastern Europe and the Africa region, the objective of this Asia-Pacific workshop was to increase awareness and understanding of the Nagoya - Kuala Lumpur Supplementary Protocol and thereby expediting its signature and ratification and its implementation by the Parties to the Cartagena Protocol on Biosafety. Accordingly, presentations on various topics relevant to liability and redress in general, and the Supplementary Protocol in particular, were made. Following each presentation, participants had the opportunity to ask questions and provide comments.
4. The workshop also provided a forum for participants to be introduced to or to follow up on, as appropriate, the implementation of two decisions of the fifth meeting of the Parties to the Protocol on Biosafety, namely the decision on the Strategic Plan for the Cartagena Protocol for the Period 2011-2020,¹ and the decision on monitoring and reporting² where the Parties adopted a format for the

¹ Decision BS-V/16.

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second national report by each Party on the implementation of its obligations under the Cartagena Protocol on Biosafety and requested submission of national reports by the end of September 2011.

ITEM 1. OPENING OF THE WORKSHOP

5. The workshop was opened by Hem Pande, Joint Secretary in the Ministry of Environment and Forests of the Indian Government and the national focal point for the Convention on Biological Diversity and the Cartagena Protocol on Biosafety. Mr. Pande welcomed the participants and thanked them for their presence at the workshop. He recalled the winding and arduous negotiations on liability and redress, which finally led to the adoption of the Nagoya – Kuala Lumpur Supplementary Protocol in Nagoya, Japan in October 2010. He mentioned the complexities involved in regulating activities associated with modern biotechnology and the dilemmas that many countries faced. Mr. Pande noted that India is a mega biodiversity country on the one hand and a growing biotechnology centre on the other that recognizes the importance of conservation and sustainable use of biodiversity by putting in place the necessary legal measures such as liability and redress rules in the context of fulfilling the obligations that the country undertook both under the Convention on Biological Diversity and the Cartagena Protocol on Biosafety. He assured participants that India, as the incoming president of the sixth meeting of the Parties to the Protocol on Biosafety and the eleventh meeting of the Conference of the Parties to the Convention on Biological Diversity, will continue to promote regional cooperation for effective implementation of the Biosafety Protocol. Mr. Pande expressed his gratitude to partner organizations that contributed to the organization of the workshop in cooperation with the Ministry of Environment and Forests of India. He also expressed his appreciation to the Secretariat of the Convention on Biological Diversity for assisting Parties in their efforts to implement their obligations under the Convention on Biological Diversity and the Cartagena Protocol on Biosafety, and for organizing the workshop to raise understanding regarding the new Supplementary Protocol on Liability and Redress.

6. Charles Gbedemah Principal Officer of the Biosafety Division of the Secretariat of the Convention on Biological Diversity made an opening remark on behalf of the Executive Secretary of the Convention. Mr. Gbedemah welcomed the participants to the workshop. He thanked the Government of Japan for its financial support that made it possible for the Secretariat to organize the workshop. He also paid tribute to the Government of India for hosting the workshop and providing excellent facilities.

7. Following the opening remarks, participants introduced themselves and indicated their expectations from the workshop. They also completed a form highlighting their expectations.

8. Participants adopted the workshop programme as attached herewith as annex II.

ITEM 2. THE NAGOYA – KUALA LUMPUR SUPPLEMENTARY PROTOCOL ON LIABILITY AND REDRESS

2.1 Basic concepts and facts relevant to liability and redress

9. Worku Damena Yifru of the Secretariat of the Convention on Biological Diversity made a presentation under this item. Mr. Yifru highlighted some of the basic concepts that are relevant to the subject of liability and redress. He briefly addressed the following: the concept of liability; the concept of damage; types of damage – traditional as well as the emerging types of damage; categories/types of liability; standards of care or liability; issues or elements that are commonly addressed in a liability regime; and general purposes of liability rules. He also highlighted some of the international environmental liability instruments, the different approaches adopted by these instruments in defining damage and providing for liability rules, and their status.

10. Participants raised some questions and discussed some relevant points.

² Decision BS-V/14.

2.2 *The negotiations on liability and redress and overview of the Supplementary Protocol*

11. Mr. Yifru of the Secretariat gave a presentation on the provisions and core requirements of the Supplementary Protocol on Liability and Redress. He summarized the background that led to the Cartagena Protocol on Biosafety and the Nagoya – Kuala Lumpur Supplementary Protocol. He described the objective of the Supplementary Protocol, which was, ultimately, to contribute to the conservation of biological diversity and the sustainable use of its components. He highlighted the main features of the scope of the Supplementary Protocol; the definition of damage; measures in response to damage - what measures needed to be undertaken and by who, according to the Supplementary Protocol; and finally the implementation requirements and the application of civil liability rules in the context of the Supplementary Protocol.

12. At the end of the presentation, participants raised questions and made comments.

2.3 *Stakeholders' perspective on the significance of the Supplementary Protocol*

13. Under this item, Lim Li Ching of Third World Network made a presentation. Ms. Lim recalled how the negotiations on liability and redress were contentious. She described the Supplementary Protocol as a minimum international standard which had gaps but also opportunities to address the gaps and strengthen the implementation of liability and redress laws, particularly at the national level. She stated that the adoption of the Supplementary Protocol signaled acknowledgement by the international community that living modified organisms might cause harm or damage, and thus measures had to be taken to redress damage. Ms. Lim noted that the Supplementary Protocol could fill regulatory gaps in countries where there was no clear liability regime, and as much was left to be addressed by domestic law, Parties should make sure that they developed and put in place national laws that reflected their context, needs and priorities.

14. After the presentations, participants raised questions and made comments.

2.4 *Group exercise on scenarios of damage and cases of liability*

15. Following the presentations and discussions held throughout the day, participants were asked to undertake some exercises in the form of hypothetical cases that depict different scenarios of damage and potential cases of liability. The purpose of the exercise was to enable participants to relate the provisions of the Supplementary Protocol to different specific situations and to measure their understanding of the Supplementary Protocol in the context of its possible application or implementation at the domestic level.

16. Accordingly, participants formed three small groups and each group was assigned with a case. After discussions within the small groups, each group presented, through its rapporteur, its views and suggestions on how the issues highlighted in the cases might be resolved.

2.5 *Experience/approaches within the region in providing rules on liability and redress*

17. Under this item, each participant was asked to make a presentation on national experiences and the status of domestic laws that have relevance to liability and redress in general and liability and redress for damage caused by living modified organisms in particular. Accordingly, participants made presentations on their national biosafety laws or biosafety frameworks, taking note of the compilation prepared by the Secretariat on “Domestic biosafety or environmental laws and regulations which include provisions on liability and redress” (UNEP/CBD/BS/L&R/RW/APAC/1/2). They have also briefed the workshop on the status of national discussions concerning the signature of the Nagoya – Kuala Lumpur Supplementary Protocol. Some participants have acknowledged that the information that was made available through the Biosafety Clearing-House earlier by their respective countries was not up-to-date. They agreed to update or facilitate the updating of such information.

2.6 *Signature and ratification*

18. Mr. Yifru of the Secretariat of the Convention on Biological Diversity made a presentation on the significance/importance of signing and ratifying the Supplementary Protocol. He also outlined the

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procedures of signature, and ratification, approval, acceptance or accession and the legal significance of each of the international agreements. He updated participants with the status of signature of the Supplementary Protocol. He has also outlined some possible advantages and significance that might result from signing and ratifying the Nagoya – Kuala Lumpur Supplementary Protocol.

ITEM 3. IMPLEMENTATION OF OTHER DECISIONS ADOPTED BY THE FIFTH MEETING OF THE CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES TO THE CARTAGENA PROTOCOL ON BIOSAFETY

3.1. Strategic Plan

19. Under this item, Ms. Kathryn Garforth of the Secretariat of the Convention on Biological Diversity made a presentation on the Strategic Plan for the Cartagena Protocol on Biosafety for the Period 2011-2020 and on the multi-year programme of work annexed to the Strategic Plan adopted by the fifth meeting of the Parties to the Protocol.

20. Ms. Garforth drew the attention of participants to decision BS-V/16 of the fifth meeting of the Parties to the Cartagena Protocol. She highlighted the vision, mission and the strategic objectives of the Strategic Plan. She presented the structure, purpose and relationship among the strategic objectives, expected impacts, operational objectives, outcomes and indicators specified in the Strategic Plan. She mentioned the schedule and purpose of the midterm evaluation of the Strategic Plan and emphasized the importance of national reports in providing the information necessary to measure achievements or identify limitations in the implementation of the Strategic Plan.

3.2. Second national report

21. Ms. Garforth also made a presentation on the obligation of Parties to the Protocol on Biosafety to submit their second national report which was due at the end of September 2011 in accordance with Article 33 of the Protocol and decision V/14 of the fifth meeting of the Parties to the Protocol. She recapped the important elements of decisions made by the meeting of the Parties to date with regard to national reporting and the rate of submission by Parties of their first and second national report to date. Ms. Garforth reminded parties of the objective of national reporting in general and the specific purposes of second national reports in particular.

22. Participants raised questions and asked for some clarifications.

ITEM 4. CONCLUSIONS AND EVALUATION OF THE WORKSHOP

23. At the last session of the workshop, participants considered and adopted the following conclusions and recommendations. Accordingly, participants:

(a) Noted that the workshop was useful and timely in enhancing their understanding of the requirements of the Nagoya – Kuala Lumpur Supplementary Protocol and providing them with information that would help expedite efforts being made in a number of countries at national level towards the signature and ratification of the Supplementary Protocol;

(b) Underlined the importance of such regional workshops in providing them with the opportunity to share information on experiences in regulatory approaches and best practices in implementing biosafety related policy, legal and administrative measures;

(c) Agreed to encourage their Governments to sign and ratify the Supplementary Protocol at the earliest opportunity, and to expedite the domestic consultation processes in their respective countries;

(d) Recognized the need to initiate preparations for the implementation of the Supplementary Protocol and to start reviewing their existing domestic laws with a view to determine the adequacy of

such laws to address damage and to provide for response measures in accordance with the Supplementary Protocol;

(e) Encouraged the Parties to the Protocol to consider inviting the Global Environment Facility and other donors to provide financial resources for building capacities and supporting developing countries in their efforts to promote understanding and implement the Nagoya – Kuala Lumpur Supplementary Protocol as envisaged in section C of decision BS-V/11;

(f) Invited the Secretariat to consider arranging for or facilitating the development of an explanatory guide on the provisions of the Supplementary Protocol;

(g) Agreed to make information available or work with their Biosafety Clearing-House national focal points to make information on national biosafety laws and regulations and any other information relevant to the implementation of the Cartagena Protocol on Biosafety, including any updating of such information, available to the Biosafety Clearing-House as required by the Cartagena Protocol on Biosafety;

(h) Agreed to expedite the preparation and timely submission of their second national report on the implementation of the obligations under the Protocol on Biosafety recognizing that information from national reports is fundamental in the implementation of decisions taken by the Conference of the Parties serving as the meeting of the Parties to the Protocol;

(i) Emphasized the importance of the Strategic Plan adopted by the fifth meeting of the Parties to the Protocol in guiding actions by Parties, both at the national and international level, with regard to the implementation of the Cartagena Protocol on Biosafety;

(j) Expressed appreciation and gratitude to the Government of India for hosting the workshop and for the warm hospitality received; the Government of Japan for providing the financial resources that enabled them to participate in the workshop; and the Secretariat for organizing and conducting the workshop.

24. Participants also completed an evaluation of the workshop. The results of the evaluation are summarized in annex I.

ITEM 5. CLOSURE OF THE WORKSHOP

25. Ranjini Warriar, Director of the Conservation and Survey Division of the Ministry of Environment and Forests, India, thanked participants for their active participation. She also thanked the Secretariat for organizing the workshop, for preparing the necessary documents and workshop materials and for the presentations. She expressed her confidence that the workshop met all the objectives and expectations of all participants

26. After an exchange of courtesies, the workshop was closed at 1.30 p.m. on Friday, 18 November 2011.

*Annex I***WORKSHOP EVALUATION**

1. At the end of the workshop, the participants were asked to complete a workshop evaluation form. They were asked to rate, on a scale of 1 to 6, the extent to which the workshop had improved their understanding of: (i) the Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress; and (ii) other decisions from the fifth meeting of the Parties to the Protocol – in particular decisions on the Strategic Plan and second national reports. The participants were also invited to provide an overall assessment of the workshop in terms of how well it was organized and conducted and the extent to which it had met their expectations. The results of the evaluation are summarized in the table below.

Part 1: Nagoya – Kula Lumpur Supplementary Protocol on Liability and Redress	Average rating	Rating	Satisfaction (%)
(i) Improving your understanding of the issues relevant to liability and redress?	5	Very useful	87%
(ii) Improving your understanding of the Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress?	5	Very useful	86%
(iii) Improving your understanding of the context in which the Supplementary Protocol might be applicable?	5	Very useful	83%
(iv) Improving your understanding of the existing approaches and rules adopted by other countries concerning liability and redress?	4	Useful	71%
(v) Improving your understanding of the advantages and significance of the Supplementary Protocol?	5	Very useful	79%
(vi) Improving your understanding of the signature and ratification, approval, acceptance or accession processes/procedures?	5	Very useful	86%
Part 2 Other COP-MOP decisions: Strategic Plan, Second National report			
(i) Improving your understanding of the decisions from the fifth meeting of the Parties to the Biosafety Protocol?	4	Useful	72%
(ii) Improving your understanding of the capacity needs to fulfil the requirements of the decisions?	4	Useful	73%
(iii) Improving your understanding of how to seek financial or technical support from available sources in preparing your country's second national report?	4	Useful	74%
(iv) Improving your understanding of the Cartagena Protocol on Biosafety?	4	Useful	74%
(v) Improving your knowledge of the status of implementation of the decisions by other countries?	5	Very useful	76%

Part 3: Overall workshop assessment	Average rating	Rating	
(i) Has the workshop met your expectations?	5	Fully	85%
(ii) How useful has the workshop been in improving your understanding of how your country could address damage resulting from living modified organisms?	5	Yes	86%
(iii) Has the workshop encouraged you to initiate a process or expedite any existing process towards the signature and ratification of the Supplementary Protocol by your Government?	5	Very useful	81%
(iv) How useful was the workshop for you as an individual?	5	Very useful	87%
(v) How well organised was the workshop?	5	Very well organized	84%
(vi) How did you find the balance between presentations and the discussions?	5	Very well balanced	79%
(vii) Overall, how would you rate the workshop?	5	Excellent	86%

2. In the written comments, most participants considered all parts of the workshop to have been very helpful in allowing a comprehensive understanding of the issues. Many noted that the presentations regarding the Supplementary Protocol and basic concepts of liability and redress were particularly useful. Additionally, a few identified the following, in particular, to have been the most helpful part of the workshop:

- (a) The group exercises on different scenarios;
- (b) Clarification of Article 12 of the Supplementary Protocol;
- (c) Allowing for stakeholders' perspective.

3. Although most participants considered that all aspects of the workshop had been helpful, one participant considered the discussion on second national reports as the least helpful aspect of the workshop.

4. All but one participant responded "yes" to the question of whether they would recommend to their Government to ratify the Supplementary Protocol. Two of these participants indicated that the full implication of the provisions of the Supplementary Protocol both at domestic and global levels would need to be assessed before making any recommendation in favour of ratification.

5. Participants made the following suggestions for improving future workshops:

- (a) Include more hypothetical cases and have the facilitator offer conclusions on each;
- (b) Provide further capacity-building tools for understanding the Supplementary Protocol (i.e., guidelines/training manuals/user guide). Explain the provisions of the Supplementary Protocol one-by-one during the workshop.

(c) Focus particularly on assisting governments to integrate the Supplementary Protocol into national legislation (i.e., examples of possible draft laws, possible issues/problems at the domestic level).

(d) Inform participants in advance about presentations they are expected to make at the workshop (i.e., on liability and redress provisions in national legislation), so as to allow them to better prepare.

Annex II

WORKSHOP PROGRAMME

Date and time	Agenda item	Facilitator/Presenter
Thursday, 17 November 2011		
9.30 a.m. – 9.45 a.m.	1. Opening of the workshop	<i>Facilitator:</i> Charles Gbedemah (SCBD)
9.45 a.m. – 10.15 a.m.	2. The Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress	<i>Facilitator:</i> Ranjini Warriar (India)
10.15 a.m. – 10.30 a.m.	2.1 Basic concepts and facts relevant to liability and redress <i>Discussion</i>	<i>Presenter:</i> Worku Damena Yifru (SCBD)
10.30 a.m.– 11 a.m.	<i>Coffee/Tea Break</i>	
11 a.m. – noon	2.2 Overview of the Supplementary Protocol: Background to the negotiations and core provisions of the Supplementary Protocol	<i>Presenter:</i> Worku Damena Yifru (SCBD)
Noon – 1 p.m.	<i>Discussion</i>	
1 p.m. – 2.30 p.m.	<i>Lunch Break</i>	
2.30 p.m. – 2.40 p.m.	2.3 Stakeholders' perspective on the significance of the Supplementary Protocol	<i>Facilitator:</i> Ranjini Warriar (India)
2.40 p.m. – 3.10 p.m.	2.3.2 Non-governmental organizations	<i>Presenter:</i> Lim Li Ching (Third World Network)
3.10 p.m. – 3.30 p.m.	<i>Discussion</i>	
3.30 p.m. – 3.45 p.m.	2.4 Group exercise on scenarios of damage and cases of liability <i>Discussions in small groups</i>	<i>Facilitator:</i> Worku Damena Yifru (SCBD) <i>Discussions in small groups</i>
3.45 p.m. – 4 p.m.	<i>Coffee/Tea Break</i>	
4 p.m. – 4.30 p.m.	<i>Discussions in small groups(continued)</i>	
4.30 p.m. – 5.30 p.m.	<i>Reports from the small groups and discussion</i>	<i>Workshop participants</i> <i>Group rapporteurs</i>

Date and time	Agenda item	Facilitator/Presenter
Friday, 18 November 2011		
9.30 a.m. – 10.30 a.m.	2.5 Experience/approaches within the region in providing rules on liability and redress	<i>Facilitator:</i> Ranjini Warriar (India) <i>Presenters:</i> Workshop participants
10.30 a.m. – 10.50 a.m.	2.6 Signature and ratification <i>Discussion</i>	<i>Presenter:</i> Worku Damena Yifru (SCBD)
10.50 a.m. – 11 a.m.	<i>Coffee/Tea Break</i>	
11 a.m. – noon	3. Implementation of other decisions adopted by the fifth meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety 3.1 Strategic plan 3.2 Second national report on the implementation of the Cartagena Protocol on Biosafety	<i>Facilitator:</i> Ranjini Warriar (India) <i>Presenter:</i> Kathryn Garforth (SCBD)
Noon – 12.30 p.m.	<i>Discussion</i>	
12.30 p.m. – 1.30 p.m.	4. Conclusions of the workshop and evaluation	<i>Facilitator:</i> Charles Gbedemah (SCBD)
	5. Closure of the workshop	Ranjini Warriar (India)

Annex III

LIST OF PARTICIPANTS

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