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TECHNICAL GROUP OF EXPERTS ON LIABILITY AND REDRESS IN THE CONTEXT OF THE CARTAGENA PROTOCOL ON BIOSAFETY
Montreal, 18-20 October 2004
Item 3 of the provisional agenda*

SYNTHESIS OF VIEWS SUBMITTED IN RESPONSE TO THE QUESTIONNAIRE ON LIABILITY AND REDRESS FOR DAMAGE RESULTING FROM TRANSBOUNDARY MOVEMENTS OF LIVING MODIFIED ORGANISMS (ARTICLE 27 OF THE PROTOCOL)

Note by the Executive Secretary

INTRODUCTION

1. In its decision BS-I/8, the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety (COP/MOP), established an Open-Ended Ad Hoc Working Group of Legal and Technical Experts on Liability and Redress in the context of the Protocol (hereafter referred to as the Open-ended Working Group on Liability and Redress) to carry out the process pursuant to Article 27 of the Protocol. It requested the Executive Secretary, in consultation with the Bureau, to convene a Technical Group of Experts on Liability and Redress (Technical Group of Experts) to undertake preparatory work for the first meeting of the Open-ended Working Group.

2. The Conference of the Parties serving as the meeting of the Parties to the Protocol also invited Parties, Governments, international organizations and relevant stakeholders to submit their views to the Executive Secretary in response to the questionnaire on liability and redress for damage resulting from transboundary movements of living modified organisms contained in the annex to recommendation 3/1 of the Intergovernmental Committee for the Cartagena Protocol (UNEP/CBD/ICCP/3/10 annex) no later than three months prior to the meeting of Technical Group of Experts. It further requested the Executive Secretary to compile the views submitted, including those submitted for the purpose of the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol, and prepare a synthesis report of the submissions for consideration by the Technical Group of Experts.

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* UNEP/CBD/BS/TEG-L&R/1/1.

3. In response to the requests from the Conference of the Parties serving as the meeting of the Parties to the Protocol, the Executive Secretary issued a notification inviting views on the questionnaire on liability and redress. As of 31 July 2004, 26 submissions were received from the following countries: Australia*, Brazil, Bulgaria, Cameroon, Canada, Colombia, Egypt, European Union*, Guinea Bissau, India, Iran (Islamic Republic of), Latvia, Liberia, Mali, Mauritius, Mexico, Norway*, Republic of Palau*, Romania, Saint Lucia, Slovenia, Sri Lanka, Switzerland, Togo, Uganda and United States of America*. Three submissions were received from the following organizations: Global Industry Coalition*, Groupe de recherche et d'échanges technologiques, and International Grain Trade Coalition.*

4. The submissions received were compiled in a document (UNEP/CBD/BS/WS-L&R/INF/1). On the basis of these submissions, this synthesis report has been prepared in order to facilitate the discussions at the meeting of the Technical Group of Experts. Section I contains the synthesis of the views submitted; section II includes a set of recommendations for further action that the Technical Group of Experts may wish to consider. Also, for ease of reference, the questionnaire is reproduced and contained in the annex to this document.

I. SYNTHESIS OF VIEWS

5. The structure and contents of the questionnaire on liability and redress, to a large extent, correspond to the issues identified in the terms of reference for the Open-ended Working Group on Liability and Redress. This section is therefore organized, as much as possible, to reflect the views on the elements under the terms of reference for the Open-ended Working Group on Liability and Redress.

6. Some submissions indicated that before giving any substantive answers for the issues raised in the questions from 4 to 12, further clarifications and more information are needed with respect to some basic issues such as damage scenarios, the types of activities that may cause damage, definition of damage and valuation of damage to biological diversity. According to these submissions, without establishing an understanding on those issues, it would be difficult and premature to discuss other topics identified in the questionnaire. Therefore these submissions have limited their substantive answers primarily to questions 1 to 3.

A. Types of activities and situations

7. The first two questions in the questionnaire mainly concern the perception of damage scenarios that may occur in countries and the type of activities or situations that are perceived as most likely to cause damage to be covered under the international rules and procedures referred to in Article 27 of the Protocol.

8. Some submissions indicated that it is important from the outset to understand the problems that countries are facing in dealing with transboundary movement of living modified organisms (LMOs) before embarking on discussion of specific rules and procedures for liability and redress under Article 27. In this respect, several submissions expressed concern that developing countries, because of a lack of appropriate technology and capacity, are particularly vulnerable to the potential damage to the environment and human health that may be caused by introduction of LMOs into their territories. Therefore these submissions pointed out that, in developing rules and procedures on liability and redress under the Protocol, the situation and national circumstances of developing countries must be fully taken into account. Such concern is shared by some small island developing countries, in particular, in relation

* These countries and organizations made their submissions before the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol.

to dealing with the situation of LMOs in transit. One submission indicated the potential problems associated with food aid and stated that a country receiving food aid must be informed of the type of food it was going to receive, and then decide whether or not to accept it.

9. At the same time, some submissions cautioned that the Protocol does not preclude transboundary movements of LMOs and that liability rules would not be appropriate if they were so stringent that they would ultimately result in a cessation of these movements.

10. With respect to activities and situations to be covered by Article 27 of the Protocol, some submissions asserted that all LMO-related activities that are within the scope of the Protocol, ranging from transboundary movement, handling, use, and transit, should be included. Other submissions, however, emphasized that since Article 27 only refers to damage caused by transboundary movement, the scope of the rules and procedures should be restricted to transboundary movement. It was further noted that activities that are undertaken in accordance with the requirements of the Protocol and approved by the Party of import should not be covered by the liability and redress rules under Article 27 at all.

11. In terms of transboundary movement of LMOs, many submissions indicated the following four types of such movements envisaged in the Protocol:

(a) *Intentional transboundary movement* which covers LMOs for intentional introduction into the environment of the Party of import, LMOs intended for direct use as food or feed, or for processing (LMO-FFPs) and LMOs for contained use;

(b) *Unintentional transboundary movement*, such as accidental releases of LMOs;

(c) *Illegal transboundary movement* carried out in contravention of the Protocol or domestic regulations; and

(d) *LMOs in transit*.

12. One submission further provided a list of activities that are likely to cause damage including unlawful possession and use of LMOs, transportation and handling in a manner that leads to escape, inadequate or inappropriate handling of LMOs due to changed environment circumstances.

13. With respect to damage scenarios, some submissions indicated that damage may be caused by release of LMOs, including damage to non-GMO agricultural products through contamination, damage to the wild relatives of genetically modified crops and contamination of aquatic species. In this context, one submission linked the activities and situations with risk assessment and indicated that the latter would identify activities that would lead to situations such as transfer of genetic material, phenotypic and genotypic instability, and pathogenic, toxic or allergenic potential.

14. In summary, discussions on types of activities essentially concern the scope of the rules and procedures on liability and redress envisaged under Article 27 of the Protocol. The submissions generate some fundamental questions that need to be further discussed in order to establish understanding on the scope of Article 27: (i) whether Article 27 of the Protocol should cover a broad range of activities, from transboundary movement to other activities that may be closely associated with transboundary movement such as handling, use and transit of LMOs?; and (ii) what would be the damage scenarios of concern that could arise from the activities identified ?

B. Damage: definition, valuation and threshold

15. Question 3 addresses a number of issues relating to definition, valuation and threshold of damage under Article 27 of the Protocol as well as its interaction with Article 14, paragraph 2, of the Convention on Biological Diversity (CBD).

16. Some submissions indicated that Article 27 of the Protocol refers to the term “damage” without specifying what constitutes damage. Views differ significantly on the scope of damage.

17. Many submissions proposed a broad definition, which would include the following elements: (i) traditional damage (i.e. loss of life or personal injury, loss of property, including loss of profits or impairment of income); (ii) damage to environment and/or biological diversity (i.e. loss of income directly deriving from an economic interest in any use of environment including biological diversity, and the cost of measures of reinstatement of the environment); and (iii) damage to human health.

18. However, several submissions proposed that the definition be limited to: (i) damage to biological diversity (or damage to the conservation and sustainable use of biological diversity); and (ii) damage to human health – but only to the extent that it arises from adverse effects on biological diversity.

19. In addition, some submissions were of the view that the scope of damage should not only cover all types of damage as identified in paragraph 17 above but also the socio-economic loss caused by LMOs. At the other end of the spectrum, however, was the view that definition of damage is confined by the stated objective of the Protocol and therefore only damage to the conservation and sustainable use of biological diversity should be included.

20. Despite differing views on the scope of damage, one common component mentioned by most submissions is damage to biological diversity or damage to the conservation and sustainable use of biological diversity. Some submissions suggested that the definition of such damage needs to be informed by other articles under the Protocol, namely, Articles 1 (Objective) and 4 (Scope), both of which embody the concept of "conservation and sustainable use of biological diversity".

21. If this concept were used for the purpose of definition of damage in a liability regime, one submission suggested that Article 2 of the Convention on Biological Diversity in which "biological diversity" is defined, be used as a starting point. Accordingly, damage to the conservation and sustainable use of biological diversity would cover damage to the conservation and sustainable use of the variability among living organisms from all sources, including diversity within species, between species, and of ecosystems.

22. This raises the issue of the valuation of damage to biological diversity. In order to assess whether the damage to biological diversity occurs, many submissions mentioned that baseline data on the state of biological diversity and natural variation that it exhibits over time are essential. On this respect, one submission gives an example of its legislation on LMOs, which requires that any impact assessment must contain a description of the state of the environment before the deliberate release or discharge of LMOs. The purpose is to enable authority to evaluate the measures for restoration should damage caused by LMOs occur.

23. Regarding the approach for evaluating damage, some submissions recommended a case-by-case assessment. For the situation where it is possible to restore the loss of the conservation and sustainable use of biological diversity to the status that existed before the damage occurred, the possible approach employed could include restoration by replacing the same components at the same place, or in a condition which leads to a status that is deemed to be equivalent or superior to the baseline condition. Measures could be taken such as replanting of cultivated or wild plants, by release of fish or by building up a stock of wild animals. For the situation that is not possible for restoration, reinstatement by equivalent, or complementary remediation could be used to restore a loss to the conservation and sustainable use of biological diversity. It was also noted that the valuation of damage to the conservation and sustainable use of biological diversity in monetary terms only becomes an issue if there is no requirement to repair damage by means of measures of reinstatement.

24. Some submissions have suggested that, in order for liability to arise, a threshold needs to be established. Some of them favoured using qualitative adjective such as "significant damage", "substantive damage" or "measurable damage", leaving the application in practice to be determined.

25. With respect to the relationship of the definition and scope of the damage under the Protocol and those under the Convention on Biological Diversity, most submissions supported synergy and

cross-fertilization between the two processes, whereas some others indicated that the concept of damage under the Protocol must not be treated the same as that under the Convention on Biological Diversity.

26. In summary, the definition of damage is viewed as a critical element in the development of any liability regime. The submissions included a wide range of views, among which the key question is whether coverage of damage under Article 27 should include traditional damage, in addition to the component of biological diversity or conservation and sustainable use of biological diversity. A number of other questions may need to be further examined: for instance, what constitutes damage to biological diversity? How would one adversely affect the variability among living organisms? Is damage to biological diversity the same as damage to the conservation and sustainable use of biological diversity? How should damage to human health be defined in the context of the Protocol?

27. Given the complexity of the issue, some submissions called for technical information in this area in order to have a fruitful discussion and better understanding in defining "damage" as referred to in Article 27 of the Protocol.

C. Channelling liability and State responsibility/liability

Channelling liability

28. Question 4 raises the issue of which actor should be held liable for damage resulting from the transboundary movement of LMOs.

29. Many submissions referred to the polluter-pays principle on the basis of which primary liability for damage should be channelled to the person(s) responsible for an action related to the transboundary movement of LMOs that may be directly or indirectly at the origin of damage. One submission quoted its legislation in which the term "the person responsible" is defined as a physical or legal person who operates the activity from which the LMOs are discharged, including the person with the duty to provide information or to obtain approval under the legislation.

30. Some submissions indicated that, depending on the objective and function of a liability regime, other principles may also guide channelling of liability. According to one submission, if the function of a liability regime is prevention of damage, liability should be channelled to the person who was in the best position to prevent damage; if the function is reparation of damage, the person who is easily identifiable, financially capable of covering the damage or judicially accessible, should be held liable.

31. A number of submissions suggested that assigning liability to appropriate persons may also need to take into account the principle of fairness to reflect equitable balance between interests of victims, environment and stakeholders such as industry. In this regard, these submissions noted that there is a careful balance struck in the Protocol between the respective responsibilities of the exporter and the importer throughout the process of transboundary movement of LMOs and that any rules of channelling must not distort such a balance.

32. In light of those principles, some submissions provided a list of persons that could be held liable, including:

(a) The producer/developer/patent holder;

(b) The notifier;

(c) The exporter;

(d) The importer, and

(e) The carrier.

33. Some submissions pointed out that, however, identifying who is liable among the persons listed above needs to be further examined in the context and in association with type of activities and specific circumstances. For example, some suggested that for the contained use and field trial of LMOs, the

liability should be channelled to the operator; whereas for the use of marketed LMOs, the liability should rest with the producer/exporter of the original LMOs (e.g. the seed producer) with a right of recourse against the negligent or careless user.

34. Some submissions also raised the question of who would be liable in a situation where an intentional transboundary movement of LMOs is in full compliance with the requirements of the Protocol, such as the advance informed agreement (AIA) procedure, yet damage nevertheless occurs. One submission argued that even though a Party may have authorized the import of the LMOs, such approval could be based on the information provided by the developer who presumably was licensed to develop and place on the market and allow export of the LMOs, by a Party or non-Party. On this basis, this submission concluded that the country from which movement originated should be held liable.

35. Another submission noted that exporters and transporters who do not develop the technology, produce the products, or decide how the products are used when they reach the importing country, should not bear any liability under the Protocol if they have complied with domestic regulation and other obligations.

36. Many submissions referred to the possibility of channelling liability to a chain of actors or multiple persons, but indicated that further discussion is needed regarding the basis on which one or several from amongst them is held liable. In this respect, some of them suggested that the concept of joint and several liability be taken into account.

37. Some submissions also suggested that further consideration be given to the introduction of additional tiers of liability, if the damage is not or only partly redressed by the person to whom primary liability has been channelled, specifically in situations where: (i) the primary liable person cannot be identified; (ii) the primary liable person escapes liability on the basis of a defence; (iii) a time limit has expired; (iv) a financial limit has been reached; (v) financial securities of the primary liable person are not sufficient to cover liabilities; and (vi) the provision of interim relief is desired.

38. In summary, channelling liability is viewed as one of the most critical but complex and contentious elements in elaborating rules and procedures on liability and redress. Submissions demonstrated that attention might be given to the following questions in order to determine liable persons: what would be the basis to determine person(s) liable? How would types of activities be linked to channelling liability?

State responsibility and State liability

39. Question 11 discusses the relevance of State responsibility and State liability to the rules and procedures on liability and redress under the Protocol.

40. Submissions indicated that the general principle under international law governing transboundary environmental damage is that States have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction. It was pointed out that, in the context of the Protocol, Parties to the Protocol undertake general responsibility to ensure safety of LMOs in their territories. According to one submission, State responsibility in relation to the transboundary movement of living modified organisms may arise if Parties fail to comply with the provisions of the Protocol, or with the provisions of other treaties or rules of customary international law relevant for the transboundary movement of living modified organisms.

41. In terms of State liability, one submission stated that there is only one international instrument that establishes State liability – 1972 Convention on International Liability for Damage Caused by Space Objects. It further pointed out that the reason for setting out State liability under this Convention is primarily because all the space-related activities were conducted by States when the Convention was adopted. However, the submission further indicated that the system has come under pressure with the advent of commercial activities in outer space.

42. In this respect, some submissions suggested that States should not be held liable for the damage resulting from transboundary movement of LMOs caused by individuals within its jurisdiction unless the State itself is an operator. It was further pointed out that since State responsibility and liability already exist in customary international law and other applicable general international rules, there is no need to develop special rules on this subject matter for damage resulting from transboundary movement of LMOs.

43. On the other hand, one submission noted that the State is primarily liable in cases of transboundary damage matters since the State has willingly permitted the LMOs to be used in its country. It further recommended that a global biosafety fund be established for the purpose of helping victims, with contributions from States Parties and biotechnology industry.

44. Other submissions have also expressed their support for the consideration of the notions of joint liability, partial liability and secondary or residual liability of the State along with the operator(s) of the activities involving the LMOs in question. Generally, while some submissions favour the exclusion of State responsibility and State liability from the rules and procedures of liability and redress that may be developed in the context of Article 27 of the Protocol, others suggested that the issues are relevant and important and have to be examined further.

D. Standard of liability and exemptions

45. Question 5 refers to three standards of liability.

46. One submission explains these three standards as follows:

(a) *Fault-based liability* where proof of the fault of the actor is required. This standard of liability presupposes intent or negligence on the part of the actor for an event that causes damage;

(b) *Strict liability*, where there is no need to establish the fault of the actor, only the fact that act has caused the damage. In general, this standard of liability allows for limited defences and is ordinarily reserved for hazardous activities;

(c) *Absolute liability*, where there is a need only to establish a causal link between an act (or omission) and the damage. This standard of liability allows almost no defences and is used in very rare circumstances.

47. While few submissions supported the application of absolute liability to LMO-related activities, views appear polarized between the fault-based and strict liability, depending on the perception of the level of potential risks of LMOs and nature of the transboundary movement of LMOs. Some submissions supported strict liability on the basis that LMO-related activities are highly risky and could cause irreversible damage to environment and human health, while others preferred a fault-based standard based on the perception that LMO activities are not inherently hazardous.

48. The option of a combination of these two standards of liability is also explored by some submissions. For example, it was suggested that the starting point would be strict liability but complemented with a fault-based scheme in cases of damage caused by negligent or reckless action.

49. Question 6 refers to exemptions to liability. Many submissions listed commonly accepted defences, including:

(a) Act of God (force majeure);

(b) Act of war or civil unrest;

(c) Intervention by a third party.

50. According to some submissions, there are other defences that need to be examined as well, which include:

(a) Compliance with compulsory measures imposed by a public authority;

(b) Permission of an activity by means of a generally applicable law or in a specific authorization issued to the operator; and

(c) The "state-of-the-art" defence for activities that were not considered harmful according to the state of scientific and technical knowledge at the time they were carried out.

51. In summary, submissions presented different views on the application of strict and/or fault-based liability, which in turn raises a fundamental issue as to whether LMO-related activities should be classified as "dangerous activities". With respect to exemptions from liability, while most submissions agree with the commonly used defences, a question remains as to whether and to what extent the activities that have caused damage but have complied with the Protocol would be exonerated from liability.

E. Limitation of liability in time and in amount

52. Question 7 raises the issue of limitation of liability in time, which refers to the time allowed for a claim to be brought including relative and absolute time limits.

53. Most submissions agreed that in considering the time limit for liability, there is a need to take into account the nature of damage caused by LMOs, in particular the fact that the occurrence and/or magnitude of damage to species, habitats and ecosystems may take a long time to manifest. In terms of specific time limits, the submissions presented different time schemes for claiming damage in the context of the Protocol: the relative time limit of three or five years from the date the claimant knew of the damage; and the absolute time limit of 10, 15, 30 years, or no time limit at all.

54. Question 8 is related to limitation of liability in amount, which is in general used in strict liability regimes, either in the form of floor - providing minimum compensation, or ceiling - providing maximum financial limits. Given the potential scale of damage that may be caused by LMOs, some submissions supported the idea that compensation should not have any limit. Yet one submission suggested that, in order to develop a realistic instrument, the amount for compensation should be negotiated together with representatives of the insurance sector.

F. Jurisdiction, mutual recognition and enforcement of judgments

55. Question 9 raises the issue of jurisdiction, mutual recognition and enforcement of judgements, all of which are relevant to civil liability and redress regime.

56. Some submissions pointed out that private international law should apply to the issues listed in this question and that a number of international instruments have developed applicable rules.

57. On the other hand, many submissions stated that it would be premature to answer this question at this stage since it is yet to be decided whether or not the rules and procedures under Article 27 of the Protocol would be developed toward a civil liability regime. Recognizing the importance of those issues, one submission sought information on the work under the Hague Conference on Private International Law with respect to enforcement of judgement.

G. Arbitration

58. Question 10 addresses the issue of the relevance of arbitration in settling disputes arising with respect to damage in the field of liability and redress.

59. In general, most submissions supported the use of arbitration as a potentially efficient mechanism to resolve interstate disputes. Specifically, some submissions suggested that, depending on the issue in dispute, the dispute-settlement mechanism set out in Article 27 and annex II of the Convention on

Biological Diversity be used for resolving disputes with respect to interpretation and application of rules and procedures on liability and redress that may be developed under Article 27 of the Protocol. These submissions state that, for disputes on compensation and payment of damage caused by transboundary movement of LMOs, the arbitration provided by international institutions such as the Permanent Court of Arbitration may serve as an appropriate forum.

H. The right to bring claims

60. Question 12 raises the issue about who should have the right to make claims for damage resulting from transboundary movement of LMOs.

61. Many submissions agreed that in principle, the person affected by damage caused by transboundary movement of LMOs has the right to bring a civil action for compensation. However, as indicated by some submissions, there is a growing trend at the domestic level to relax the requirement on granting legal standing to make claims, especially in the field of damage to environment and biological diversity. It was therefore pointed out that the provision on the right to bring claims in the context of Article 27 of the Protocol needs to be elaborated in consideration of the type of damage and the objective of the rules and procedures on liability and redress.

I. Other issues

62. The questionnaire gives an opportunity to raise any other issues that are not covered. The following other issues were raised.

1. Causation

63. Several submissions highlighted the issue of causation and the importance of establishing causal link between damage and the transboundary movement of particular LMOs in elaboration of rules and procedures on liability and redress. They also pointed out the potential difficulty in proving causation as a result of the complexities of the interaction of LMOs with the receiving environment and the possible timescales involved. Particularly, in discussing damage to biological diversity, one submission raised the question as to how causation will be determined for impacts on biological diversity that are cumulative in nature.

2. Financial security

64. Some submissions highlighted the importance of establishing financial security to guarantee adequate compensation for victims. Maintenance of insurance by operator was identified as one of the mechanisms, as well as other types of financial guarantee such as creation of a fund, to provide compensation for victims or remedy the damage which might not otherwise be covered by a liability system.

3. Instrument choice

65. One submission indicated that since the choice of instrument - binding or non-binding - for the rules and procedures on liability and redress under Article 27 of the Protocol has yet to be decided, there is a need to discuss the nature of those rules and procedures. It was asserted that consideration should be given to all options: from no new rules at all, to rules and procedures ranging from the non-binding to the binding, from the national to the international.

II. RECOMMENDATIONS

66. According to decision BS-I/8, the purpose of the meeting of the Technical Group of Experts is to undertake preparatory work for the first meeting of the Open-ended Working Group on Liability and Redress. In so doing, the experts at the meeting may wish to take the following action:

(a) Consider the issues raised in this document with a view to identifying options for elements of rules and procedures referred to in Article 27 of the Protocol and making recommendations to the first meeting of the Open-ended Working Group on Liability and Redress;

(b) Request the Executive Secretary to invite Parties to the Protocol, other States, relevant international organizations and other stakeholders to submit further views on the issues that may be identified by the meeting of the Technical Group of Experts, no later than six months before the first meeting of the Open-ended Working Group on Liability and Redress;

(c) Examine the information provided through the ICCP process and the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety, identify information gaps, and request the Executive Secretary to make the relevant information available at the first meeting of Open-ended Working Group on Liability and Redress.

Annex

QUESTIONNAIRE ON LIABILITY AND REDRESS FOR DAMAGE RESULTING FROM TRANSBOUNDARY MOVEMENTS OF LIVING MODIFIED ORGANISMS

Notes

Nothing in this questionnaire is intended to prejudge the decision of the Conference of the Parties serving as the meeting of the Parties with respect to the process to be adopted pursuant to Article 27 of the Protocol.

The list in this questionnaire is not exhaustive. Parties, Governments and relevant international organizations are invited to raise or answer any other questions or issues that are deemed appropriate.

Questionnaire

1. What types of activities or situations covered under the Protocol are perceived as most likely to cause damage in your country and what kind of criteria are helpful in assessing damage to biological diversity resulting from transboundary movements of LMOs?

2. What types of activities or situations should be covered under the international rules and procedures referred to in Article 27 of the Protocol?

3. How should the concept of "damage resulting from transboundary movements of LMOs" be defined, valued and classified, and should this be different from the definition, valuation and classification of damage within the framework of Article 14 paragraph 2, of the Convention on Biological Diversity?

4. To whom should liability for damage resulting from transboundary movements of LMOs be channelled?

5. What should be the standard of liability for damage resulting from transboundary movements of LMOs, that is, should it be fault-based, strict or absolute?

6. Should there be any exemptions from liability? If so, under what circumstances?

7. Should the liability be limited in time and, if so, to what period?

8. Should the liability be limited in amount and, if so, to what amount?

9. How would judgments given pertaining to liability and redress be recognized or enforced in another country/jurisdiction?

10. What would be the relevance of arbitration in settling disputes arising with respect to damage in the field of liability and redress?

11. What purpose would the notion of State liability and State responsibility serve in a liability and redress regime within the framework of the Cartagena Protocol?

12. Who should have the right to make claims for damage resulting from transboundary movements of LMOs?
