

**CONVENTION ON
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**OPEN-ENDED AD HOC WORKING GROUP OF
LEGAL AND TECHNICAL EXPERTS ON
LIABILITY AND REDRESS IN THE CONTEXT OF
THE CARTAGENA PROTOCOL ON BIOSAFETY**

Fourth meeting
Montreal, 22-26 October 2007

ANNOTATIONS TO THE PROVISIONAL AGENDA

INTRODUCTION

1. The Open-ended Ad Hoc Working Group of Legal and Technical Experts on Liability and Redress in the Context of the Cartagena Protocol (hereinafter referred to as the “Working Group”) was established by decision I/8 of the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Biosafety Protocol (COP-MOP). It was, essentially, entrusted with the task of elaborating options for elements of rules and procedures referred to in Article 27 of the Protocol.

2. The Working Group has to date held three meetings. Its last and third meeting was held in Montreal from 19 to 23 February 2007. The meeting continued with its analytical work to better understand the approaches, options and issues that were thought to be relevant in elaborating international rules and procedures in the field of liability and redress for damage resulting from transboundary movements of living modified organisms (LMOs). In that context, the meeting started by expert presentations organized by the Secretariat on the basis of the prior request from the Working Group. The presentations were focused on: (i) the availability of financial security to cover damage that may arise from the transboundary movement of LMOs; (ii) the relevant elements of private international law for transboundary environmental damage; and (iii) valuation tools and methods for valuation of biodiversity and biodiversity resources and functions.

3. At its third meeting, 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. The blueprint contains a matrix of elements that is intended to provide a better structure to guide future deliberations of the Working Group and to be taken into account in developing one or more annexes to a possible COP-MOP decision. The Working Group approved the blueprint as annex I of the final report of the meeting. The Working Group also considered further submissions of proposals of operational text on approaches and options identified pertaining to liability and redress in the context of Article 27 of the Protocol. The proposals of operational text were compiled and contained in the report of the third meeting as annex II.

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The Working Group has, once again, invited Parties, other Governments, relevant international organizations and stakeholders to submit further views in the form of proposals for operational text, which should be synthesized by the Co-Chairs, with the assistance of the Secretariat, and be submitted, to the fourth meeting of the Working Group for its consideration.

4. Furthermore, the Co-Chairs invited experts present at the meeting to reflect, during the inter-sessional period, on:

(a) The emerging consensus within the Working Group that primary liability for damage resulting from transboundary movements of living modified organisms should rest with the operator; and

(b) The utility of an administrative approach in cases of environmental damage and damage to biodiversity and to consider setting aside civil liability for cases of traditional damage if it were decided to cover such damage in the rules and procedures referred to under Article 27 of the Cartagena Protocol.

5. The Working Group also requested the Secretariat to gather and make available, at its fourth meeting, information on supplementary collective compensation arrangements in international environment-related liability instruments. It also requested the Secretariat to prepare and make available, as was done on previous occasions, an update on recent developments in international law relating to liability and redress, including the status of international environment-related liability instruments.

6. The Working Group requested further the Secretariat to make available through the Biosafety Clearing House (BCH) any information submitted to it, on existing national rules and procedures in the field of liability and redress for damage resulting from the transboundary movement of living modified organisms, including reports of judgments addressing that damage, and relevant international rules and procedures. In accordance with this request, the Secretariat has included a search option named "Rules and procedures on liability and redress" in the "search area" of the existing BCH database on "Laws, Regulations and Guidelines". The Secretariat has received no submission of such information to date.

7. The fourth meeting of the Working Group is scheduled to take place from 22 to 26 October 2007 at the premises of the International Civil Aviation Organization in Montreal.

8. At this meeting, the Working Group is expected to review operational texts submitted on the basis of elements identified by the Working Group with a view to proceed with the elaboration of rules and procedures referred to in Article 27 of the Protocol.

ITEM 1. OPENING OF THE MEETING

9. The meeting will be opened by one of the Co-Chairs of the Working Group on 22 October 2007 at 10 a.m. This will be followed by welcoming remarks from Mr. Ahmed Djoghlaif, the Executive Secretary of the Convention.

ITEM 2. ORGANIZATIONAL MATTERS

2.1. Adoption of the agenda

10. The Working Group may wish to adopt its agenda on the basis of the provisional agenda (UNEP/CBD/BS/WG-L&R/4/1), prepared by the Executive Secretary in consultation with the Co-Chairs of the Working Group.

2.2. Organization of work

11. The Working Group may wish to consider the proposed organization and programme of its work as contained in annex I below. The proposed programme of work may be adjusted to accommodate any need for regional consultation meetings during the first day of the meeting as promised by the Co-Chairs and referred to under paragraphs 94 and 95 of the report of the third meeting of the Working Group.

12. The proposed organization of work provides for the meeting to be conducted entirely in plenary session. However, the Working Group may wish to consider setting up contact groups, as it deems appropriate to further or facilitate its work.

13. The meeting will operate on the basis of two sessions every day from 10 a.m. to 1 p.m. and from 3 p.m. to 6 p.m., with simultaneous interpretation into the six United Nations working languages. Should the Working Group wish to establish contact groups, they will conduct their work without interpretation.

14. The documentation that will be made available for the meeting is listed in annex II below.

ITEM 3. REVIEW OF INFORMATION RELATING TO LIABILITY AND REDRESS FOR DAMAGE RESULTING FROM TRANSBOUNDARY MOVEMENTS OF LIVING MODIFIED ORGANISMS

15. The Working Group had requested the Secretariat, at its third meeting, to make available information specified under paragraph 92(a) of the report of the meeting. Accordingly, the Working Group has before it the following information documents:

(a) *Recent developments in international law relating to liability and redress, including the status of international environment-related third party liability instruments (UNEP/CBD/BS/WG L&R/4/INF/2)*: This document updates the information contained in document (UNEP/CBD/BS/WG-L&R/3/INF/2). The latter is an information document that was prepared by the Secretariat and submitted to the Working Group at its third meeting; and

(b) *Supplementary collective compensation arrangements in international environment-related liability instruments ((UNEP/CBD/BS/WG-L&R/4/INF/3)*. This document presents information on how other environment-related liability instruments provide for supplementary collective compensation arrangements and on experiences, if any, on how such arrangements are being implemented.

ITEM 4. ELABORATION OF OPTIONS FOR ELEMENTS OF RULES AND PROCEDURES REFERRED TO IN ARTICLE 27 OF THE BIOSAFETY PROTOCOL

16. At its third meeting, the Working Group considered a working draft prepared by the Co-Chairs with the assistance of the Secretariat. The working draft was a synthesis of submissions made by Parties, other Governments, relevant international organizations and stakeholders. The Working Group invited the submission of further views, in the form of proposals for operational text, on the matter covered by Article 27 of the Protocol, in particular with respect to approaches and options identified in sections I to VIII of the working draft, contained in annex II of the report of its meeting. It also requested the Co-Chairs to synthesize the submissions and to produce, with the assistance of the Secretariat, a working draft for consideration by the Working Group at its fourth meeting.

17. Accordingly, under this agenda item, the meeting is invited to consider the working draft before it (UNEP/CBD/BS/WG-L&R/4/2), prepared by the Co-Chairs, on the basis of the synthesis of operational texts proposed by Parties, other Governments, relevant international organizations and stakeholders in their submissions. The complete texts of the submissions are compiled in an information document (UNEP/CBD/BS/WG-L&R/4/INF/1) and are made available to the present meeting in accordance with the request of the Working Group.

ITEM 5. OTHER MATTERS

18. Under this item, the Working Group may wish to consider any other matters of relevance raised by participants of the meeting.

ITEM 6. ADOPTION OF THE REPORT

19. The Working Group will be invited to consider and adopt its report on the basis of a draft report to be prepared and presented to it by the Rapporteur.

ITEM 7. CLOSURE OF THE MEETING

20. The fourth meeting of the Open-ended Ad Hoc Working Group of Legal and Technical Experts on Liability and Redress in the Context of the Cartagena Protocol on Biosafety is expected to be closed by 6 p.m. on Friday, 26 October 2007.

Annex I

**PROPOSED ORGANIZATION OF WORK FOR THE FOURTH MEETING OF THE
OPEN-ENDED AD HOC WORKING GROUP ON LIABILITY AND REDRESS IN THE
CONTEXT OF THE CARTAGENA PROTOCOL ON BIOSAFETY**

<i>Date and time</i>	<i>Agenda item</i>
<i>22 October 2007</i>	
10 a.m. to 10:20 a.m.	1. Opening of the meeting
10:20 a.m. to 10:30 a.m.	2. Organizational matters: 2.1. Adoption of the agenda; 2.2. Organization of work.
10:30 a.m. to 11 a.m.	3. Review of information relating to liability and redress for damage resulting from transboundary movements of living modified organisms
11 a.m. to 1 p.m.	4. Elaboration of options for elements of rules and procedures referred to in Article 27 of the Biosafety Protocol
1 p.m. to 3 p.m.	Lunch break
3 p.m. to 6 p.m.	Continuation of agenda item 4
<i>23 October 2007</i>	
10 a.m. to 1 p.m.	Continuation of agenda item 4
1 p.m. to 3 p.m.	Lunch break
3 p.m. to 6 p.m.	Continuation of agenda item 4
<i>24 October 2007</i>	
10 a.m. to 1 p.m.	Continuation of agenda item 4
1 p.m. to 3 p.m.	Lunch break
3 p.m. to 6 p.m.	Continuation of agenda item 4
<i>25 October 2007</i>	
10 a.m. to 1 p.m.	Continuation of agenda item 4
1 p.m. to 3 p.m.	Lunch break
3 p.m. to 6 p.m.	Continuation of agenda item 4
<i>26 October 2007</i>	
10 a.m. to 12 noon	Continuation of agenda item 4
12 noon to 1 p.m.	5. Other matters
1 p.m. to 3 p.m.	Lunch break
3 p.m. to 6 p.m.	6. Adoption of the report. 7. Closure of the meeting

Annex II

**LIST OF DOCUMENTS FOR THE FOURTH MEETING OF THE OPEN-ENDED AD HOC
WORKING GROUP ON LIABILITY AND REDRESS IN THE CONTEXT OF THE
CARTAGENA PROTOCOL ON BIOSAFETY**

<i>Symbol</i>	<i>Title</i>
UNEP/CBD/BS/WG-L&R/4/1	Provisional agenda
UNEP/CBD/BS/WG-L&R/4/1/Add.1	Annotations to the provisional agenda
UNEP/CBD/BS/WG-L&R/4/2	Synthesis of proposed operational texts on approaches and options identified pertaining to liability and redress in the context of Article 27 of the Biosafety Protocol
UNEP/CBD/BS/WG-L&R/4/INF/1	Compilation of submissions of further views and proposed operational texts with respect to approaches and options identified pertaining to liability and redress in the context of Article 27 of the Biosafety Protocol
UNEP/CBD/BS/WG-L&R/4/INF/2	Recent developments in international law relating to liability and redress, including the status of international environment-related liability instruments
UNEP/CBD/BS/WG-L&R/4/INF/3	Supplementary collective compensation arrangements in international environment-related liability instruments
