



**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

Fifth meeting

Cartagena, Colombia, 12-19 March 2008

Item 2 of the provisional agenda\*

**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 BS-I/8 of the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Biosafety Protocol. It was established to undertake the process of elaborating international rules and procedures in the field of liability and redress as referred to in Article 27 of the Protocol.

2. To date, the Working Group has held four meetings. Its fourth meeting was held in Montreal from 22 to 26 October 2007. At that meeting, the Working Group streamlined and/or consolidated proposed operational texts contained in the working document before it (“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/4/2)). The streamlining of proposed operational texts was mainly focused on the sections of the working document dealing with possible approaches to liability and redress (section I), damage (section III), and primary compensation schemes (section IV). At the end of the meeting, the Working Group requested the Co-Chairs to streamline the proposed operational texts in sections IV.4 (a), VI and VII during the inter-sessional period by grouping and editing them without altering the substance, and to produce a revised working draft for its consideration at its fifth meeting (UNEP/CBD/BS/WG-L&R/4/3, para. 88, subpara. 4).

3. The Working Group also revised, in accordance with the changes made on the synthesis document, the blueprint which was made available at its prior meeting with the aim of providing a better structure for future negotiations and possible decision(s) by the Conference of the Parties serving as the meeting of the Parties to the Protocol. The results of the revision are contained in annex I to the report of the meeting (UNEP/CBD/BS/WG-L&R/4/3).

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4. Furthermore, the Co-Chairs invited experts to reflect, during the inter-sessional period, on the feasibility and desirability of:

(a) The adoption of a legally binding instrument on private international law in combination with a non-legally binding instrument on substantive rules and procedures relating to civil liability;

(b) The adoption of a legally binding instrument on the administrative approach in combination with a non-legally binding instrument on civil liability;

(c) The introduction in domestic law of a requirement making it incumbent on the importer to establish, at the time of import of a living modified organism, and to maintain thereafter financial security to cover any damage to the conservation and sustainable use of biological diversity that such living modified organism may cause; and

(d) The adoption of a non-legally binding instrument on the administrative approach and/or civil liability in combination with a supplementary collective compensation arrangement which is open to states that have implemented the non-legally binding instrument.

5. The Working Group also requested the Secretariat to gather and make available, at its fifth meeting: (i) information on recent developments in international law relating to liability and redress, including the status of international environment-related liability instruments; and (ii) a list of the documents that are available in the Biosafety Information Resource Centre of the Biosafety Clearing-House that address liability and redress for damage resulting from living modified organisms, as well as a list of national laws and regulations containing rules and procedures on damage resulting from living modified organisms (UNEP/CBD/BS/WG-L&R/4/3, para. 88, subparas. 1 and 3).

6. The Secretariat was also requested to arrange for expert presentations, at the fifth meeting of the Working Group, on:

(a) Settlement of claims by a representative of the Permanent Court of Arbitration; and

(b) Supplementary collective compensation arrangements by a representative of the International Oil Pollution compensation Fund (UNEP/CBD/BS/WG-L&R/4/3, para. 88, subpara. 2).

7. Following the generous offer made by the Government of Colombia to host it, the fifth meeting of the Working Group is scheduled to take place in Cartagena from 12 to 19 March 2008.

8. At this meeting, the Working Group is expected to work on the working document of proposed operational texts as revised by the Co-Chairs (UNEP/CBD/BS/WG-L&R/5/2).

## **ITEM 1. OPENING OF THE MEETING**

9. The meeting will be opened by one of the Co-Chairs of the Working Group at 10 a.m. on 12 March 2008. The opening of the meeting will be followed by welcoming remarks from a high-level official of the Government of Colombia and an opening statement 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/5/1), 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 organization of work provides for the meeting to be conducted in plenary session. However, the Working Group may wish to consider setting up sub-working groups and/or contact groups, as it deems appropriate to further or facilitate its work.
12. The meeting will operate on the basis of two plenary sessions every day, except for Sunday, 16 March, 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 languages. If sub-working groups are established, interpretation services can be provided to only one of them at any given time. Should the Working Group wish to establish contact groups, they will conduct their work without interpretation.
13. Provision has been made for the holding of regional consultations on Sunday, 19 March.
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. Under this item, the Working Group will have before it the information requested of the Secretariat at its fourth meeting on 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/5/INF/1). The document updates the information contained in the note by the Executive Secretary on the same subject that was submitted to the Working Group at its fourth meeting (UNEP/CBD/BS/WG-L&R/4/INF/2). The Working Group will also have before it an information document (UNEP/CBD/BS/WG-L&R/5/INF/2) containing a list of documents that are available in the Biosafety Information Resource Centre of the Biosafety Clearing-House that address liability and redress for damage resulting from living modified organisms, as well as a list of national laws and regulations containing rules and procedures on damage resulting from living modified organisms, if available in the Biosafety Clearing-House.
16. Further to the request of the Working Group referred to in paragraph 6 above, the Secretariat is making efforts to obtain the cooperation of the Permanent Court of Arbitration and the International Maritime Organization in arranging for the expert presentations.

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

17. Under this agenda item, the Working Group is invited to consider the working document of proposed operational texts (UNEP/CBD/BS/WG-L&R/5/2), revised by the Co-Chairs, in accordance with the request of the Working Group at its last meeting (see para. 2 above).
18. In line with its terms of reference provided by the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol (decision BS-I/8, annex), the Working Group is expected to complete its work at the present meeting and “present its final report, together with the proposed international rules and procedures in the field of liability and redress pursuant to Article 27 of the Protocol” (decision BS-I/8, annex, para. 5), to the Parties at their fourth meeting, which will be held in Bonn from 12 to 16 May 2008.

**ITEM 5. OTHER MATTERS**

19. 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**

20. 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**

21. The fifth 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 Wednesday, 19 March 2008.

*Annex I*

**PROPOSED ORGANIZATION OF WORK FOR THE FIFTH 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>12 March 2008 (Wednesday)</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 12 (noon)	3. Review of information relating to liability and redress for damage resulting from transboundary movements of living modified organisms
12 (noon) 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.	Agenda item 4 ( <i>continued</i> )
<i>13 March 2008 (Thursday)</i>	
10 a.m. to 1 p.m.	Agenda item 4 ( <i>continued</i> )
1 p.m. to 3 p.m.	Lunch break
3 p.m. to 6 p.m.	Agenda item 4 ( <i>continued</i> )
<i>14 March 2008 (Friday)</i>	
10 a.m. to 1 p.m.	Agenda item 4 ( <i>continued</i> )
1 p.m. to 3 p.m.	Lunch break
3 p.m. to 6 p.m.	Agenda item 4 ( <i>continued</i> )
<i>15 March 2008 (Saturday)</i>	
10 a.m. to 1 p.m.	Agenda item 4 ( <i>continued</i> )
1 p.m. to 3 p.m.	Lunch break
3 p.m. to 6 p.m.	Agenda item 4 ( <i>continued</i> )
<i>16 March 2008 (Sunday)</i>	Regional consultations
17 March 2008 (Monday)	Agenda item 4 ( <i>continued</i> )
10 a.m. to 1 p.m.	
1 a.m to 3 p.m.	Lunch break
3 p.m. to 6 p.m.	Agenda item 4 ( <i>continued</i> )

<i>Date and time</i>	<i>Agenda item</i>
<i>18 March 2008 (Tuesday)</i> 10 a.m. to 1 p.m.	Agenda item 4 ( <i>continued</i> )
1 p.m. to 3 p.m.	Lunch break
3 p.m. to 6 p.m.	Agenda item 4 ( <i>continued</i> ) 5. Other matters
<i>19 March 2008 (Wednesday)</i> 10 a.m. to 1 p.m.	6. Adoption of the report
1 p.m. to 3 p.m.	Lunch break
3 p.m. to 6 p.m.	Continuation of agenda item 6 7. Closure of the meeting

*Annex II***LIST OF DOCUMENTS FOR THE FIFTH 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/5/1	Provisional agenda
UNEP/CBD/BS/WG-L&R/5/1/Add.1	Annotations to the provisional agenda
UNEP/CBD/BS/WG-L&R/5/2	Revised working draft 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/5/INF/1	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/5/INF/2	List of documents, national laws and regulations on liability and redress for damage resulting from living modified organisms available in the Biosafety Clearing-House

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