



The Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety



**Convention on
Biological Diversity**

**INTERNATIONAL YEAR
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Cartagena Protocol on Biosafety



- 1995: Decision to develop a Protocol focusing on transboundary movement of living modified organisms
- 1996-2000: Negotiations
- 29 January 2000: Adoption of the Cartagena Protocol on Biosafety
- 11 September 2003: Protocol enters into force following 50th ratification
- Number of Parties to date: 160
- 5 meetings of the Conference of the Parties serving as the meeting of the Parties to the Protocol (COP-MOP, the governing body of the Protocol)
 - 82 decisions to give guidance to implementation



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Cartagena Protocol on Biosafety (cont'd)



Article 27: Liability and Redress

“The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, adopt **a process with respect to the appropriate elaboration of international rules and procedures in the field of liability and redress for damage resulting from transboundary movements of living modified organisms**, analysing and taking due account of the ongoing processes in international law on these matters, and shall endeavour to complete this process within four years.”

- *Compromise between those who wanted to include detailed rules on liability and redress in the Biosafety Protocol and those who wanted no rules or felt there was insufficient time to develop them.*



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Negotiations on Liability and Redress

- 15 October 2010: COP-MOP 5 adopts the **Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress** through decision BS-V/11.

Objective of the Supplementary Protocol is:

“to contribute to the conservation and sustainable use of biological diversity, taking also into account risks to human health, by providing international rules and procedures in the field of liability and redress relating to living modified organisms.”



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NAGOYA – KUALA LUMPUR SUPPLEMENTARY PROTOCOL ON LIABILITY AND REDRESS TO THE CARTAGENA PROTOCOL ON BIOSAFETY



Article 1	Objective
Article 2	Use of Terms
Article 3	Scope
Article 4	Causation
Article 5	Response Measures
Article 6	Exemptions
Article 7	Time Limits
Article 8	Financial Limits
Article 9	Right of Resources
Article 10	Financial Security
Article 11	Responsibility of States for Internationally Wrongful Acts
Article 12	Implementation and Relation to Civil Liability

Article 13	Assessment and Review
Article 14	Conference of the Parties serving as the Meeting of the Parties to the Protocol
Article 15	Secretariat
Article 16	Relationship with the Convention and the Protocol
Article 17	Signature
Article 18	Entry into Force
Article 19	Reservations
Article 20	Withdrawal
Article 21	Authentic Texts



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Article 5



Response measures

Parties to the Supplementary Protocol provide response measures in the event of “**damage to biodiversity and associated material and personal damage**” resulting from living modified organisms.

The Supplementary Protocol assigns responsibilities to both the “*operator*” and the *competent authority* to take appropriate response measures.



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Article 5 (cont'd)



Response measures:

Parties to the Supplementary Protocol must require the appropriate **operator**, in the event of damage, to:

- immediately inform the competent authority;
- evaluate the damage; and
- take appropriate response measures.

The **competent authority** may also take response measures, particularly when the operator has failed to do so. The competent authority then has a right of recourse to recover from the operator the costs and expenses incurred in relation to the implementation of the response measures.



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Article 12



Many international treaties on liability and redress focus on civil liability rules for damage and have struggled to enter into force (e.g. Basel Convention L&R Protocol).

Supplementary Protocol follows an administrative approach for addressing damage from living modified organisms.

- i.e. *competent authorities are to require operators to take response measures in the event of damage*



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Article 12



Implementation and Relation to Civil Liability

- Supplementary Protocol does include one article on civil liability.
- It allows Parties to develop, in their domestic law, **civil liability** rules and procedures for damage to biodiversity and associated material and personal damage.



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Article 18: Signature, ratification & entry into force



- The Supplementary Protocol, in accordance with its Article 17, is open for signature at the United Nations Headquarters, New York from 7 March 2011 to 6 March 2012.
- Consistent with Article 41 of the Convention on Biological Diversity, the COP-MOP requested the Secretary General of the United Nations to be the Depository.
- The Supplementary Protocol will enter into force 90 days after deposit of the **40th** instrument of ratification, acceptance, approval or accession.
- Only Parties to the Biosafety Protocol may become Parties to the Supplementary Protocol.



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The Supplementary Protocol is open for signature by Parties to the Cartagena Protocol on Biosafety

Dates: 7 March 2011 – 6 March 2012

Venue: UN Headquarters, New York

Certified true copies:

http://treaties.un.org/pages/DB.aspx?path=DB/Opening%20for%20Signature/page1_en.xml&menu=MTDSG

More information: http://bch.cbd.int/protocol/NKL_Protocol.shtml



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