



Convention on Biological Diversity

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GROUP OF FRIENDS OF THE CO-CHAIRS ON LIABILITY AND REDRESS IN THE CONTEXT OF THE CARTAGENA PROTOCOL ON BIOSAFETY

First meeting

Mexico City, 23-27 February 2009

Item 3 of the provisional agenda*

DECISION BS-IV/12: LIABILITY AND REDRESS UNDER THE CARTAGENA PROTOCOL ON BIOSAFETY

Note by the Executive Secretary

1. The fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol established, under its decision BS-IV/12, a Group of the Friends of the Co-Chairs, Ms Jimena Nieto (Colombia) and Mr. Rene Lefeber (Netherlands), Concerning Liability and Redress in the Context of the Cartagena Protocol on Biosafety.. The Group is entrusted with the task of further negotiating international rules and procedures in the field of liability and redress for damage resulting from transboundary movements of living modified organisms on the basis of a text annexed to the decision.

2 The Secretariat is, therefore, circulating the text of decision BS-IV/12 and its annex for use by the Group of the Friends as a basis for its work at its first meeting. The text of the decision in the other United Nations languages is also available on the Secretariat's web site as part of the report of the fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol (UNEP/CBD/BS/COP-MOP/4/18, annex).

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

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BS-IV/12. Liability and redress under the Cartagena Protocol on Biosafety

The Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety,

Recalling Article 27 of the Cartagena Protocol on Biosafety, which requires the Conference of the Parties serving as the meeting of Parties to adopt, at its first meeting, 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 on-going processes in international law on these matters, and to endeavour to complete this process within four years,

Recalling its decision BS-I/8, in which it decided to establish an Open-ended Ad Hoc Working Group of Legal and Technical Experts on Liability and Redress in the Context of the Cartagena Protocol on Biosafety, with the terms of reference set out in the annex to that decision, to carry out the process pursuant to Article 27 of the Cartagena Protocol on Biosafety,

Noting with appreciation the work undertaken by 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,

Expressing its appreciation to the Government of Colombia for hosting in Cartagena from 12-19 March 2008 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,

Taking note of the final report 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 (UNEP/CBD/BS/COP-MOP/4/11 and Add.1),

Also taking note of the work undertaken by the Contact Group on Liability and Redress at the fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety,

1. *Decides* to establish a Group of the Friends of the Co-Chairs, Ms. Jimena Nieto (Colombia) and Mr. René Lefeber (the Netherlands), Concerning Liability and Redress in the Context of the Cartagena Protocol on Biosafety, with the following terms of reference:

(a) The Group shall hold one meeting and, if deemed necessary by the Co-Chairs, another meeting prior to the fifth meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety;

(b) The Group will further negotiate international rules and procedures in the field of liability and redress for damage resulting from transboundary movements of living modified organisms in the context of the Cartagena Protocol on Biosafety on the basis of the annex to this decision;

(c) The first meeting will be held in early 2009, for a period of five days, and the second meeting, if deemed necessary by the Co-Chairs, in early 2010, also for a period of five days, subject to the availability of funds;

(d) The meetings will be held in Montreal, unless an offer is made to host a meeting;

(e) The composition of the Group will be as follows: six representatives of the Asia-Pacific region, namely Bangladesh, China, India, Malaysia, Palau, and the Philippines; two representatives of the European Union; two representatives of Central and Eastern Europe; six representatives of the African Group; six representatives of the Latin American and Caribbean Group; and New Zealand, Norway, Switzerland and Japan;

(f) The Friends of the Co-Chairs may be accompanied by advisors from Parties as selected by the Friends. The participation of such advisors from eligible Parties to the Cartagena Protocol on Biosafety may be facilitated subject to the availability of funds;

(g) Observers may be invited to participate in the meetings or parts thereof at the discretion of the Co-Chairs;

(h) The outcome will be presented by the Co-Chairs to the fifth meeting of the Conference of the Parties serving as the meeting of the Parties to the Cartagena Protocol on Biosafety for its consideration; and

2. *Calls upon* Parties to the Cartagena Protocol on Biosafety and other Governments to consider providing voluntary contributions to organize these meetings and to facilitate participation by representatives (Friends and advisors) of eligible Parties to the Cartagena Protocol on Biosafety.

Annex

**PROPOSED OPERATIONAL TEXTS ON ~~APPROACHES AND OPTIONS IDENTIFIED~~
PERTAINING TO LIABILITY AND REDRESS IN THE CONTEXT OF ARTICLE 27 OF THE
BIOSAFETY PROTOCOL**

1. Working Towards Legally Binding Provisions

1.A. ADMINISTRATIVE APPROACH

**I. STATE RESPONSIBILITY (FOR INTERNATIONALLY WRONGFUL ACTS,
INCLUDING BREACH OF OBLIGATIONS OF THE PROTOCOL)**

Operational text

These rules and procedures shall not affect the rights and obligations of States under the rules of general international law with respect to the responsibility of States for internationally wrongful acts.

Preambular text

Recognizing that these rules and procedures would not affect the rights and obligations of States under the rules of general international law with respect to the responsibility of States for internationally wrongful acts.

II. SCOPE

A. Functional scope

Operational text 1

1. These rules and procedures apply to transport, transit, handling and use of living modified organisms [and products thereof], provided that these activities find their origin in a transboundary movement. The living modified organisms referred to are those:

- (a) Intended for direct use as food or feed, or for processing;
- (b) Destined for contained use;
- (c) Intended for intentional introduction into the environment.

2. With respect to intentional transboundary movements, these rules and procedures apply to damage resulting from any authorized use of the living modified organisms [and products thereof] referred to in paragraph 1.

3. These rules and procedures also apply to unintentional transboundary movements as referred to in Article 17 of the Protocol as well as illegal transboundary movements as referred to in Article 25 of the Protocol.

B. Geographical scope

Operational text 2

These rules and procedures apply to areas within the limits of its national jurisdiction[, including the exclusive economic zone,] [or control] of the Parties to the Protocol.

C. Limitation in time

Operational text 3

These rules and procedures apply to damage resulting from a transboundary movement of living modified organisms when that transboundary movement was commenced after their implementation by Parties into domestic law.

Operational text 3 alt

These rules and procedures apply to damage resulting from a transboundary movement of living modified organisms that started after the entry into force of these rules and procedures.

D. Limitation to the authorization at the time of the import of the living modified organisms

Operational text 4

[These rules and procedures apply to intentional transboundary movement in relation to the use for which living modified organisms are destined and for which authorization has been granted prior to the transboundary movement. If, after the living modified organisms are already in the country of import, a new authorization is given for a different use of the same living modified organisms, such use will not be covered by these rules and procedures.]

E. Non-Parties

Operational text 5

1. National rules on liability and redress implementing these rules and procedures should also cover damage resulting from the transboundary movements of living modified organisms from non-Parties, in accordance with Article 24 of the Protocol.

2. These rules and procedures apply to “transboundary movements” of living modified organisms, as defined in Article 3(k) of the Protocol.

III. DAMAGE
A. <i>Definition of damage</i>

Operational text 6

1. These rules and procedures apply to damage to the conservation and sustainable use of biological diversity, taking also into account [damage] [risks] to human health[, resulting from transboundary movement of living modified organisms].

2. For the purpose of these rules and procedures, damage to the conservation [and sustainable use] of biological diversity as defined in Article 2 of the Convention on Biological Diversity, means an adverse or negative effect on biological diversity that:

(a) Is measurable or otherwise observable taking into account, wherever available, scientifically-established baselines recognized by a competent national authority that takes into account any other human induced variation and natural variation; and

(b) Is significant as set out in paragraph 4 below.

3. [For the purposes of these rules and procedures, damage to the sustainable use, as defined in Article 2 of the Convention on Biological Diversity of biological diversity, means an adverse or negative effect on biological diversity that is significant as set out in paragraph 4 below and [may have resulted in loss of income] [has resulted in consequential loss to a state, including loss of income].]

4. A “significant” adverse or negative effect on the conservation and sustainable use of biological diversity as defined in Article 2 of the Convention on Biological Diversity is to be determined on the basis of factors, such as:

(a) The long term or permanent change, to be understood as change that will not be redressed through natural recovery within a reasonable period of time;

[(b) The extent of the qualitative or quantitative changes that adversely or negatively affect the components of biological diversity;

(c) The reduction of the ability of components of biological diversity to provide goods and services;]

[(b and c alt) A qualitative or quantitative reduction of components of biodiversity and their potential to provide goods and services;]

[(d) The extent of any adverse or negative effects on human health;]

[(d alt) The extent of any adverse or negative effects of the conservation and sustainable use of biological diversity on human health;]

[5. Parties may take into account local and regional conditions in order to ensure the workability of domestic liability rules and procedures, provided that this is consistent with the objective and provisions of the Protocol.]

<i>B. Valuation of damage</i>

Operational text 7

[1. Damage to conservation and sustainable use of biological diversity shall be valued on the basis of the costs of response measures [in accordance with domestic laws and provisions].

2. For the purposes of these rules and procedures, response measures are reasonable actions to:

(i) [prevent,] minimize or contain damage, as appropriate;

[(ii) restore to the condition that existed before the damage or the nearest equivalent, by the replacement of the loss by other components of the biological diversity at the same location or for the same use or at another location or for another type of use.]]

<i>C. Causation</i>

Operational text 8

A causal link needs to be established between the damage and the activity in question in accordance with domestic law.

IV. PRIMARY COMPENSATION SCHEME
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A. Elements of administrative approach based on allocation of costs of response measures and restoration measures
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Operational text 9

Parties [may][shall][, as appropriate,] [, consistent with international [law] obligations,] provide for or take response measures in accordance with domestic law or[, in the absence thereof,] the procedures specified below, [provided that the domestic law is consistent with the objective of these rules and procedures].

Operational text 10

In the event of damage or imminent threat of damage, an operator [shall][should] immediately inform the competent authority of the damage or imminent threat of damage.

Operational text 10 alt

The Parties should endeavor to require the operator to inform the competent authority of an accident which causes or threatens to cause significant adverse damage to the conservation and sustainable use of biological diversity.

Operational text 11

In the event of damage [or imminent threat of damage], an operator shall, subject to the requirements of the competent authority, investigate, assess and evaluate the damage [or imminent threat of damage] and take appropriate response measures.

[In cases where no response measures can be implemented, the operator shall provide monetary compensation for the damage caused [where applicable under the domestic law].]

Operational text 11 alt

The Parties should endeavor to require any legal or natural person who caused significant damage by that person's intentional or negligent act or omission regarding the transboundary movement to undertake reasonable response measures to avoid, minimize or contain the impact of the damage.

Operational text 12

[1. The competent authority:

a) [should][shall] identify, in accordance with domestic law, the operator which has caused the damage [or the imminent threat of damage];

b) [should][shall] assess the significance of the damage and determine which response measures should be taken by the operator.]

2. The competent authority has the discretion to implement appropriate measures[, in accordance with domestic law, if any, including in particular] where the operator has failed to do so.

3. The competent authority has the right to recover the costs and expenses of, and incidental to, the implementation of any such appropriate measures, from the operator.

Operational text 13

“Operator” means any person in [operational control][[direct or indirect] command or control]:

(a) of the activity at the time of the incident [causing damage resulting from the transboundary movement of living modified organisms];

[(b) of the living modified organism [at the time that the condition that gave rise to the damage] [or imminent threat of damage] arose [including, where appropriate, the permit holder or the person who placed the living modified organism on the market];] [and/]or

(c) as provided by domestic law.

Operational text 13 alt

“Operator” means the developer, producer, notifier, exporter, importer, carrier, or supplier.

Operational text 13 alt bis

“Operator” means any person in operational control of the activity at the time of the incident and causing damage resulting from the transboundary movement of living modified organisms.

Operational text 14

Decisions of the competent authority imposing or intending to impose response measures should be reasoned and notified to the operator who should be informed of the procedures and legal remedies available to him, including the opportunity for the review of such decisions, *inter alia*, through access to an independent body, such as courts.

<i>A bis. Additional elements of an administrative approach</i>
1. Exemptions or mitigation

Operational text 15

[Domestic law may provide for] exemptions or mitigations [that] may be invoked by the operator [in the case of recovery of the costs and expenses]. Exemptions or mitigations [may be][are] based on [any one or more elements of] the following [exhaustive] list:

(a) Act of God or *force majeure*;

(b) Act of war or civil unrest;

[(c) Intervention by a third party [that caused damage despite the fact that appropriate safety measures were in place];]

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

[(d alt) A specific order imposed by a public authority on the operator and the implementation of such order caused the damage;]

[(e) An activity expressly authorized by and fully in conformity with an authorization given under domestic law;]

[(f) An activity not considered likely to cause environmental damage according to the state of scientific and technical knowledge at the time when the activity was carried out;]

[(g) National security exceptions [or international security]].

2. Recourse against third party by the person who is liable on the basis of strict liability

Operational text 16

These rules and procedures do not limit or restrict any right of recourse or indemnity that an operator may have against any other person.

3. Limitation of liability

a. Limitation in time (relative time-limit and absolute time-limit)

Operational text 17

Domestic law may provide for relative and/or absolute time limits for the recovery of costs and expenses[, provided that such limits shall not be less than [three] years for relative time limit and [twenty] years for absolute time limit].

b. Limitation in amount

Operational text 18

Domestic law may provide for financial limits for the recovery of costs and expenses[, provided that such limits shall not be less than [z] special drawing rights].

4. Coverage

Operational text 19

1. [Parties may[, consistent with international [law][obligations],] require the operator to establish and maintain, during the period of the time limit of liability, financial security, including through self-insurance.]

2. [Parties are urged to take measures to encourage the development of financial security instruments and markets by the appropriate economic and financial operators, including financial mechanisms in case of insolvency, with the aim of enabling operators to use financial guarantees to cover their responsibilities under domestic measures implementing these rules and procedures.]

1.B. CIVIL LIABILITY

Operational text 1

[Parties may or may not develop a civil liability system or may apply their existing one in accordance with their needs to deal with living modified organisms.]

Operational text 2

(a) [Subject to subsections (b), (c) and (d) below, nothing in these rules and procedures shall prejudice the right of Parties to have in place or to develop their domestic law or policy in the field of

civil liability and redress resulting from the transboundary movement of LMOs consistent with the objective of the Cartagena Protocol on Biosafety and these rules and procedures/this instrument/this supplementary Protocol.] [Parties may or may not develop a civil liability system or may apply their existing one in accordance with their needs to deal with living modified organisms.] [Parties should ensure that their national civil liability rules and procedures provide for redress to damage resulting from the transboundary movement of living modified organisms. In creating their national rules and procedures on civil liability, Parties may give special consideration to sub-sections (b), (c) and (d).]

(b) Any such law or policy, [shall] [include][address], *inter alia*, the following elements, taking into account[, as appropriate,] the Guidelines in Annex [x] [to this supplementary Protocol][decision BS-V/x]:

- a. Damage;
- b. Standard of liability: that may include strict, fault or mitigated liability;
- c. Channelling of [strict] liability;
- d. [Financial security, where feasible][compensation schemes];
- e. [Access to justice][Right to bring claims];
- f. [[Procedural rules that provide for] due process.]

[(c) Parties shall recognize and enforce foreign judgments in accordance with [the applicable rules of procedures of the domestic courts] [domestic law] [governing the enforcement of foreign judgments] in respect of matters within the scope of these rules and procedures/this instrument/ the Guidelines in Annex [x] to this [supplementary Protocol].[Parties who do not have legislation concerning recognition of foreign judgments should endeavour to enact such laws.]]

[(d) While this provision does not require any change in domestic law, and does not in itself constitute a treaty on reciprocal enforcement of foreign judgments, Parties[, whose domestic law requires bilateral reciprocity agreements for recognition of foreign judgments] [shall endeavor to extend their domestic law governing the reciprocal enforcement of foreign judgments to other Parties not presently covered by their domestic law].]

(c) & (d) alt

[Parties may, in accordance with domestic law, recognise and enforce foreign judgments arising from the implementation of the above guidelines.]

(e) The Guidelines shall be reviewed no later than [3] years after the entry into force of this instrument with a view to consider [elaborating a more comprehensive binding regime on civil liability] [making them binding], in the light of experience gained.

2. Working Towards Non-Legally Binding Provisions on Civil Liability

I. STATE RESPONSIBILITY (FOR INTERNATIONALLY WRONGFUL ACTS, INCLUDING BREACH OF OBLIGATIONS OF THE PROTOCOL)

{For operational and preambular texts, see sub-section I of section 1.A, above}

II. SCOPE

{For operational texts, see sub-section II of section 1.A, above}

III. DAMAGE

A. Definition of damage

Operational text 1

[1. These rules and procedures apply to damage [resulting from the transboundary movement of living modified organisms] as provided for by domestic law.]

[2. For the purposes of these rules and procedures, damage [resulting from the transboundary movement of living modified organisms] as provided for by domestic law may, *inter alia*, include:

(a) Damage to the conservation and sustainable use of biological diversity not redressed through the administrative approach *{For operational texts, see sub-section III.A of section 1.A, above}*;

(b) Damage to human health, including loss of life and personal injury;

(c) Damage to or impaired use of or loss of property;

(d) Loss of income and other economic loss [resulting from damage to the conservation or sustainable use of biological diversity];

[(e) Loss of or damage to cultural, social and spiritual values, or other loss or damage to indigenous or local communities, or loss of or reduction of food security.]]

B. Valuation of damage

Operational text 2

[1. Damage [resulting from the transboundary movement of living modified organisms] [shall][should] be valued in accordance with domestic laws and procedures, including factors such as:]

(a) The costs of response measures [in accordance with domestic law and [procedures] [regulations]];

[(b) The costs of loss of income related to the damage during the restoration period or until the compensation is provided;]

[(c) The costs and expenses arising from damage to human health including appropriate medical treatment and compensation for impairment, disability and loss of life;]

[(d) The costs and expenses arising from damage to cultural, social and spiritual values, including compensation for damage to the lifestyles of indigenous and/or local communities.]

/...

2. In the case of centres of origin and/or genetic diversity, their unique value should be considered in the valuation of damage, including incurred costs of investment.
3. For the purposes of these rules and procedures, response measures are reasonable actions to:
 - (i) [Prevent,] minimize or contain damage, as appropriate;
 - [(ii) Restore to the condition that existed before the damage or the nearest equivalent, by the replacement of the loss by other components of the biological diversity at the same location or for the same use or at another location or for another type of use.]]

C. Causation

Operational text 3

A causal link between the damage and the activity in question as well as the related allocation of the burden of proof to either the claimant or the respondent needs to be established in accordance with domestic law.

IV. PRIMARY COMPENSATION SCHEME

A. Civil liability (harmonization of rules and procedures)

Operational text 4

Parties [may][shall][should] have civil liability rules and procedures for damage [resulting from the transboundary movement of living modified organisms] in accordance with domestic law. Parties [should consider the inclusion of][shall include][may include] the following [minimum] elements and procedures.

1. Standard of liability and channelling of liability

Operational text 5

[The standard of liability, whether fault-based liability, strict liability or mitigated strict liability, needs to be established in accordance with domestic law.]

Option 1: Strict liability

Operational text 6

[The operator [shall][should] be liable for damage [under these rules and procedures][resulting from transport, transit, handling and/or use of living modified organisms that finds its origin in such movements], regardless of any fault on his part.]

{For operational texts on “operator”, see sub-section IV.A of section 1.A, above}

Option 2: Mitigated strict liability

Operational text 7

[1. A fault-based standard of liability [shall][should][may] be used except a strict liability standard [should][shall] be used in cases [such as] where[:]

- [(a) a risk-assessment has identified a living modified organism as ultra-hazardous; and/or]
- [(b) acts or omissions in violation of national law have occurred; and/or]
- [(c) violation of the written conditions of any approval has occurred.]

2. In cases where a fault-based standard of liability is applied, liability [shall][should] be channeled to the [entity having operational control][operator] of the activity that is proven to have caused the damage, and to whom intentional, reckless, or negligent acts or omissions can be attributed.

3. In cases where a strict liability standard has been determined to be applicable, pursuant to *paragraph 1 above*, liability shall be channeled to the [entity that has operational control][operator] over the activity that is proven to have caused the damage.]

Option 3: Fault-based liability

Operational text 8

[In a civil liability system, liability is established where a person:

- (a) Has operational control of the relevant activity;
- (b) Has breached a legal duty of care through intentional, reckless or negligent conduct, including acts or omissions;
- [(c) Such breach has resulted in actual damage to biological diversity; and]
- (d) Causation is established in accordance with section [] of these rules.]

2. The provision of interim relief

Operational text 9

Any competent court or tribunal may issue an injunction or declaration or take such other appropriate interim or other measure as may be necessary or desirable with respect to any damage or imminent threat of damage.

<i>A bis. Additional elements of civil liability</i>
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1. Exemptions or mitigation

Operational text 10

[Domestic law may provide for] exemptions or mitigations [that] may be invoked by the operator in the case of strict liability. Exemptions or mitigations [may be][are] based on [any one or more elements of] the following [exhaustive] list:

- (a) Act of God or *force majeure*;
- (b) Act of war or civil unrest;
- [(c) Intervention by a third party [that caused damage despite the fact that appropriate safety measures were in place];]
- [(d) Compliance with compulsory measures imposed by a public authority;]
- [(d alt) A specific order imposed by a public authority on the operator and the implementation of such order caused the damage;]
- [(e) An activity expressly authorized by and fully in conformity with an authorization given under domestic law;]
- [(f) An activity not considered likely to cause environmental damage according to the state of scientific and technical knowledge at the time when the activity was carried out;]
- [(g) National security exceptions [or international security];]
- [(h) Where the operator could not have reasonably foreseen the damage.]

2. Recourse against third party by the person who is liable on the basis of strict liability

Operational text 11

These rules and procedures do not limit or restrict any right of recourse or indemnity that an operator may have against any other person.

3. Joint and several liability or apportionment of liability

Operational text 12

In case two or more operators have caused the damage, joint and several liability or apportionment of liability may, as appropriate, apply in accordance with domestic law.

Operational text 12 alt

1. If two or more operators [are][may be] liable according to these rules and procedures, the claimant [should][shall] have the right to seek full compensation for the damage from any or all such operators, i.e., may be liable jointly and severally [without prejudice] [in addition][subject] to domestic laws providing for the rights of contribution or recourse.

2. If damage results from an incident that consists of a continuous occurrence, all operators involved successively in exercising the control of the activity during that occurrence shall be jointly and severally liable. However, the operator who proves that the occurrence during the period when he was exercising the control of the activity caused only a part of the damage shall be liable for that part of the damage only.

[3. If damage results from an incident that consists of a series of occurrences having the same origin, the operators at the time of any such occurrence shall be jointly and severally liable. However, any operator who proves that the occurrence at the time when he was exercising the control of the activity caused only a part of the damage shall be liable for that part of the damage only.]

4. Where the claim for damage has not been satisfied, the unsatisfied portion shall be fulfilled by any other person[, identified by the operator,] whose activity has contributed to the occurrence of the damage resulting from the transboundary movement.

4. Limitation of liability

a. Limitation in time (relative time-limit and absolute time-limit)

Operational text 13

Domestic law may provide for relative and/or absolute time limits for the submission of claims in the case of civil liability[, provided that such limits shall not be less than:

- (a) [three] years from the date the claimant knew or reasonably could have known of the damage and its origin; and/or
- (b) [fifteen] years from the date of the occurrence of the damage].

b. Limitation in amount

Operational text 14

[Domestic law may provide for financial limits for strict liability[, provided that such limits shall not be less than [z] special drawing rights].]

5. Coverage

Operational text 15

1. [Parties may[, consistent with international [law][obligations],] require the operator to establish and maintain, during the period of the time limit of liability, financial security, including through self-insurance.]
2. [Parties are urged to take measures to encourage the development of financial security instruments and markets by the appropriate economic and financial operators, including financial mechanisms in case of insolvency, with the aim of enabling operators to use financial guarantees to cover their responsibilities under domestic measures implementing these rules and procedures.]

3. Other Provisions

I. SUPPLEMENTARY COMPENSATION SCHEME

A. Residual State liability

Operational text 1

[Where a claim for damages has not been satisfied by an operator, the unsatisfied portion of that claim shall be fulfilled by the State where the operator is domiciled or resident.]

Operational text 1 alt

[For damage resulting from transboundary movement of living modified organisms, primary liability shall be that of the operator with residual state liability [to the state of the operator]].

B. Supplementary collective compensation arrangements

Operational text 1

1. Where the costs of response measures to redress damage to the conservation and sustainable use of biological diversity have not been redressed by the primary compensation scheme (*administrative approach*) or by any other applicable supplementary compensation scheme, additional and supplementary compensation measures aimed at ensuring adequate and prompt compensation may be taken.

2. These measures may include a supplementary collective compensation arrangement whose terms of reference will be decided upon by the Conference of the Parties serving as the meeting of the Parties.

3. Parties, other Governments as well as governmental, intergovernmental and non-governmental organizations, the private sector and other sources will be invited to contribute to such supplementary collective compensation arrangement in accordance with their national capacity to contribute.

Operational text 1 alt

No provision

OR

The Parties may consider the necessity of any solidarity arrangement for cases of damage which are not redressed through the primary compensation scheme in light of the experience gained through the implementation of the rules set out in this document.

II. SETTLEMENT OF CLAIMS

A. *Civil procedures*

Operational text 1

Civil law procedures should be available at the domestic level to settle claims for damage between claimants and defendants. In cases of transboundary disputes, the general rules of private international law will apply as appropriate. The competent jurisdiction is generally identified on the basis of the [defendants' domicile] [place where the damage occurred]. Alternative grounds of jurisdiction may be provided for well-defined cases according to national legislation, e.g. in relation to the place where a harmful event occurred. Special rules for jurisdiction may also be laid down for specific matters, e.g. relating to insurance contracts.

Operational text 1 alt

All matters of substance or procedure regarding claims before the competent court which are not specifically regulated in these rules and procedures shall be governed by the law of that court, including any rules of such law relating to conflict of laws, in accordance with generally accepted principles of law.

Operational text 1 second alt

No provision

B. *Special tribunal (e.g. Permanent Court of Arbitration Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment)*

Operational text 2

Resorting to special tribunals, such as the Permanent Court of Arbitration and its Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment, may be considered in specific cases such as when a large number of victims are affected.

Operational text 2 alt

Parties may also avail dispute settlement through civil/administrative procedures and special tribunals such as the Permanent Court of Arbitration's Optional Rules for the Arbitration of Disputes relating to Natural Resources and/or the Environment.

Operational text 2 second alt

In the event of a dispute between persons claiming for damage pursuant to these rules and procedures and persons liable under these rules and procedures, and where agreed by both or all parties, the dispute may be submitted to [final and binding] arbitration [in accordance with] [including through] the Permanent Court of Arbitration Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment including in specific cases such as when a large number of victims are affected.

Operational text 2 third alt

No provision.

C. Standing/Right to bring claims

Operational text 3 (civil liability)

1. Subject to domestic law, Parties should provide for a right to bring claims by [affected] natural and legal persons [with a legal interest in the matter] [, including those with an interest in [the conservation and sustainable use of biological diversity] [environmental [and socio-economic] matters and meeting relevant requirements under domestic law]]. Those persons should have access to remedies in the State of export that are no less prompt, adequate and effective than those available to victims that suffer damage from the same incident within the territory of that State.
2. States should guarantee appropriate access to information relevant for the pursuance of remedies, including claims for compensation.

Operational text 3 alt (civil liability)

All matters of substance or procedure regarding claims before the competent court which are not specifically regulated in these rules and procedures [shall][should] be governed by the law of that court, including any rules of such law relating to conflict of laws, in accordance with generally accepted principles of law.

Operational text 4 (administrative approach)

[Natural and legal persons[, including [those] non-governmental organizations promoting environmental protection and meeting relevant requirements under domestic law,] should have a right to [require][request] the competent authority to act according to [domestic law, or in the absence thereof,] these rules and procedures [and to challenge], through a review procedure, the competent authority's decisions, acts or omissions as appropriate under domestic law.]

III. COMPLEMENTARY CAPACITY-BUILDING MEASURES

Operational text 1 (to decision)

Invites Parties to take into account, as appropriate, in the next review of the Updated Action Plan for Building Capacities for the Effective Implementation of the Cartagena Protocol on Biosafety, as contained in the annex to decision BS-III/3, these rules and procedures by (a) considering notions, such as “contributions in kind”, “model legislation”, or “packages of capacity building measures”, and (b) including capacity building measures, such as the provision of assistance in the implementation and application of these rules and procedures, including assistance to (i) develop national liability rules and procedures, (ii) foster inter-sectoral coordination and partnership among regulatory organs at the national level, (iii) ensure [appropriate][effective] public participation, and (iv) enhance the skills of the judiciary in handling issues pertaining to liability and redress.

Operational text 2

1. Recognizing the crucial importance of building capacities in biosafety, the Parties are encouraged to strengthen their efforts in implementing relevant COP-MOP decisions on capacity building under Article 22 of the Biosafety Protocol.
2. Parties are invited to take into account the present rules and procedures in formulating bilateral, regional and multilateral assistance to developing country Parties that are in the process of developing their domestic legislation relating to rules and procedures in the field of liability and redress for damage resulting from transboundary movements of living modified organisms.

Operational text 3 (to decision)

The COP-MOP decides that, under the COP-MOP's overall guidance, [the Parties shall cooperate in the development and/or strengthening of human resources and institutional capacities related to liability and redress on the Cartagena Protocol on Biosafety, including through existing global, regional, subregional

and national institutions and organizations and, as appropriate, through facilitating private sector involvement.][activities performed by experts selected from the roster of experts may include, upon request of the interested Party, the provision of advice:] [the Committee has the following functions:]

- (a) Parties on their domestic legislation in draft or existing form;
- (b) Capacity building workshops on legal issues relating to liability and redress;
- (c) [Identification of best practices related to national legislation on liability and redress;]
- (d) [Support to national capacity's self-assessment activities;]
- (e) [Advice on providers of adequate technology and procedures to access it].
