



**Convention on
Biological Diversity**

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**GROUP OF THE 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*

**DRAFT DECISION ON LIABILITY AND REDRESS UNDER THE CARTAGENA PROTOCOL
ON BIOSAFETY PROPOSED FOR CONSIDERATION BY THE FIFTH MEETING OF THE
CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES TO THE
PROTOCOL**

Note by the Co-Chairs

1. According to its terms of reference provided in decision BS-IV/12, the Group of the Friends of the Co-Chairs has to present, through the Co-Chairs, the outcome of its work to the fifth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol. The outcome of the Group's work is expected to be presented in the form of a draft decision with annexes. The present document presents the possible content and structure of the draft decision for consideration and further development by the Group. It is a revised version of the draft that had been circulated and was the subject of a preliminary discussion in Bonn during the fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol.
2. The Co-Chairs are circulating the present draft as one of the working documents of the Group at its first meeting. They invite members of the Group to further consider this draft as the work of the Group progresses.

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

Draft decision BS-V/--

International rules and procedures in the field of liability and redress for damage resulting from transboundary movements of living modified organisms

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

Recalling Article 27 of the Cartagena Protocol on Biosafety, which required 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 by which it established 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 the decision, to carry out the process pursuant to Article 27 of the Cartagena Protocol on Biosafety,

Noting with appreciation the work 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, as contained in the reports of its five meetings,

Noting the valuable work carried out by the two Co-Chairs of the Working Group, Ms. Jimena Nieto (Colombia) and Mr. René Lefeber (Netherlands), over the past four years in steering the process adopted in the context of Article 27 of the Cartagena Protocol on Biosafety, through both formal and informal ways,

Recalling Article 22 of the Cartagena Protocol on Biosafety, which calls upon Parties to cooperate in the development and/or strengthening of human resources and institutional capacities in biosafety,

Recognizing the need to facilitate the implementation of this decision through complementary capacity building measures,

[*Welcoming* the private-sector initiative to provide for a contractual compensation mechanism concerning recourse in the event of damage to biological diversity caused by living modified organisms,]

A. SUPPLEMENTARY PROTOCOL TO THE CARTAGENA PROTOCOL ON BIOSAFETY ON DAMAGE TO THE CONSERVATION AND SUSTAINABLE USE OF BIOLOGICAL DIVERSITY RESULTING FROM TRANSBOUNDARY MOVEMENTS OF LIVING MODIFIED ORGANISMS

1. *Decides* to adopt the Supplementary Protocol to the Cartagena Protocol on Biosafety on Damage to the Conservation and Sustainable Use of Biological Diversity Resulting from Transboundary Movements of Living Modified Organisms, as contained in annex I to the present decision (hereinafter referred to as “the Supplementary Protocol”);

2. *Requests* the Secretary-General of the United Nations to be the Depository of the Supplementary Protocol and to open it for signature at ... by Parties to the Cartagena Protocol on Biosafety from ... to ..., and at the United Nations Headquarters in New York from ... to

/...

3. *Encourages* Parties to the Cartagena Protocol on Biosafety to implement the Supplementary Protocol pending its entry into force;

4. *Calls upon* the Parties to the Cartagena Protocol on Biosafety to sign the Supplementary Protocol from ----- or at the earliest opportunity thereafter and to deposit instruments of ratification, acceptance or approval or instruments of accession, as appropriate, as soon as possible;

B. GUIDELINES ON CIVIL LIABILITY AND REDRESS IN THE FIELD OF DAMAGE RESULTING FROM TRANSBOUNDARY MOVEMENTS OF LIVING MODIFIED ORGANISMS

5. *Decides* to adopt the Guidelines on Civil Liability and Redress in the Field of Damage Resulting from Transboundary Movements of Living Modified Organisms, as contained in annex II to the present decision;

C. ADDITIONAL AND SUPPLEMENTARY COMPENSATION MEASURES

6. (...)

D. COMPLEMENTARY CAPACITY-BUILDING MEASURES

7. (...)

Annex I

SUPPLEMENTARY PROTOCOL TO THE CARTAGENA PROTOCOL ON BIOSAFETY ON DAMAGE TO THE CONSERVATION AND SUSTAINABLE USE OF BIOLOGICAL DIVERSITY RESULTING FROM TRANSBOUNDARY MOVEMENTS OF LIVING MODIFIED ORGANISMS

The Parties to the present Supplementary Protocol,

Being Parties to the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, hereinafter referred to as “the Protocol”,

Recalling Article 27 of the Protocol,

Recalling also ...

Have agreed as follows:

Article A. OBJECTIVE

The objective of this Supplementary Protocol is to contribute to ensuring that prompt, adequate and effective response measures are taken in the event of damage or imminent threat of damage to the conservation and sustainable use of biological diversity resulting from living modified organisms that find their origin in transboundary movements.

Article B.. USE OF TERMS

1. The terms used in Article 2 of the Convention and Article 3 of the Protocol shall apply to this Supplementary Protocol [except as otherwise defined in paragraph 2 below].

/...

2. In addition, for the purposes of this Supplementary Protocol:

(a) “Conference of the Parties serving as the meeting of the Parties to the Protocol” means the Conference of the Parties to the Convention on Biological Diversity serving as the meeting of the Parties to the Cartagena Protocol on Biosafety;

(b) “Convention” means the Convention on Biological Diversity;

(c) “Protocol” means the Cartagena Protocol on Biosafety to the Convention on Biological Diversity;

(d) ...

[Article R. CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES TO THE PROTOCOL]

[Article S. SECRETARIAT]

[Article T. RELATIONSHIP WITH THE PROTOCOL AND THE CONVENTION]

[Article U. AMENDMENT TO THE SUPPLEMENTARY PROTOCOL]

[Article V. SIGNATURE]

[Article W. ENTRY INTO FORCE]

[Article X. RESERVATIONS]

[Article Y. WITHDRAWAL]

[Article Z. AUTHENTIC TEXTS]

IN WITNESS WHEREOF the undersigned, being duly authorized to that effect, have signed this Supplementary Protocol.

DONE aton thisday of, two thousand and.....

Annex II

**GUIDELINES ON CIVIL LIABILITY IN THE FIELD OF CIVIL LIABILITY AND REDRESS
FOR DAMAGE RESULTING FROM TRANSBOUNDARY MOVEMENTS OF LIVING
MODIFIED ORGANISMS**
