



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

Third meeting

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Item 3 of the provisional agenda*

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

Proposal by the Co-Chairs¹

Guideline 1

OBJECTIVE

The objective of these Guidelines is to provide guidance to Parties regarding domestic rules and procedures on civil liability for damage resulting from transboundary movements of living modified organisms, taking also into account risks to human health.

Guideline 2

USE OF TERMS

1. The terms used in Article 2 of the Convention, Article 3 of the Protocol and Article 2 of the Supplementary Protocol apply to these Guidelines except as otherwise defined in paragraph 2 below.
2. In addition, for the purposes of these Guidelines:
 - (a) “Damage” means;
 - (i) Loss of life or personal injury [incidental to damage to the conservation and sustainable use of biological diversity];

* UNEP/CBD/BS/GF-L&R/3/1.

¹ The use of brackets appearing in the proposed text of the Guidelines is related to outstanding issues in the draft text of the Supplementary Protocol.

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- (ii) Loss of or damage to property [incidental to damage to the conservation and sustainable use of biological diversity];
- (iii) Pure economic loss;
- (iv) Costs of response measures;
- (v) Damage to the conservation and sustainable use of biological diversity not redressed under the Supplementary Protocol.

(b) “Damage to the conservation and sustainable use of biological diversity” means damage as defined in Article 2, paragraph 2 (c), of the Supplementary Protocol;

(c) “Pure economic loss” means loss of income, unaccompanied by personal injury or damage to property, directly deriving from an economic interest in any use of components of biological diversity and incurred as a result of damage to the conservation and sustainable use of biological diversity;

(d) “Supplementary Protocol” means [Supplementary Protocol on [Liability and Redress for] Damage Resulting from Transboundary Movements of Living Modified Organisms to the Cartagena Protocol on Biosafety].

Guideline 3

SCOPE

1. These Guidelines apply to damage resulting from transport, transit, handling and use of living modified organisms [and products thereof] provided that these [living modified organisms][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 Guidelines apply to damage resulting from any authorized use of the living modified organisms [and products thereof] referred to in paragraph 1 above.

3. These Guidelines also apply to damage resulting from unintentional transboundary movements as referred to in Article 17 of the Protocol as well as damage resulting from illegal transboundary movements as referred to in Article 25 of the Protocol.

Guideline 4

LIABILITY

1. The standard of liability should be strict where the damage has been caused by a living modified organism that a risk assessment has identified as hazardous.

2. In cases where the standard of liability is strict, liability should be channelled to the operator.

3. In cases where the standard of liability is strict and two or more operators have caused the damage, their liability should be joint and several.

4. In cases where the standard of liability is strict, the right of recourse or indemnity that an operator may have against another person should not be limited or restricted.

Guideline 5

EXEMPTIONS

Parties should consider the application of exemptions from liability, in particular:

- (a) Act of God or *force majeure*;
- (b) Act of war or civil unrest.

Guideline 6

TIME LIMITS

Parties should consider the application of relative and/or absolute time limits, including the commencement of the period to which a time limit applies.

Guideline 7

FINANCIAL LIMITS

Parties should consider the application of financial limits in cases where the standard of liability is strict.

Guideline 8

FINANCIAL SECURITY

1. [Parties may[, consistent with international [law][obligations],] require the operator to establish and maintain, during the period of any applicable time limit, 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.]

Guideline 9

CLAIMS FOR COMPENSATION

1. Any person or group of persons, including public authorities, should be entitled to claim compensation for loss of life or personal injury, loss of or damage to property and pure economic loss in consequence of the occurrence of damage resulting from the transboundary movement of living modified organisms in addition to, where appropriate, the reimbursement of the costs of response measures.
2. Parties may allow claims for compensation of damage to the conservation and sustainable use of biological diversity.

Guideline 10

SETTLEMENT OF CLAIMS

1. Parties should provide for civil law procedures to settle claims for compensation of damage.
2. Where agreed by both or all parties, claims for compensation of damage may be submitted to arbitration in accordance with the Permanent Court of Arbitration Optional Rules for Arbitration of Disputes Relating to Natural Resources and/or the Environment.

Guideline 11

ACCESS TO INFORMATION

Any person or group of persons sustaining damage should be entitled to any information directly relevant to the presentation of a claim for compensation of damage from the operator or the competent authority in possession of such information, unless such disclosure is not permitted under Article 21 of the Protocol, is specifically prohibited by law or violates the legally protected interests of third parties.
