



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

Fourth meeting
Nagoya, Japan, 6-11 October 2010

REPORT OF THE GROUP OF THE FRIENDS OF THE CO-CHAIRS ON LIABILITY AND REDRESS IN THE CONTEXT OF THE CARTAGENA PROTOCOL ON BIOSAFETY ON THE WORK OF ITS FOURTH MEETING

INTRODUCTION

1. The Group of the Friends of the Co-Chairs on Liability and Redress in the Context of the Cartagena Protocol on Biosafety (hereinafter “Group of the Friends of the Co-Chairs”, or “the Group”) was established by decision BS-IV/12 of the fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol. At its third meeting, the Group agreed to have another meeting prior to the fifth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol (COP-MOP). Accordingly, the fourth meeting of the Group was held in Nagoya, Japan from 6 to 11 October 2010.

2. The meeting was attended by representatives from the following Parties to the Protocol and other Governments: Austria, Belgium, Bolivia, Brazil, Cameroon, China, Colombia, Costa Rica, Cuba, Denmark, Ecuador, European Union, Finland, France, Germany, Guatemala, India, Japan, Liberia, Malawi, Malaysia, Mexico, Namibia, Netherlands, New Zealand, Norway, Panama, Paraguay, Peru, Philippines, Portugal, Republic of Korea, Senegal, South Africa, Spain, Sudan, Switzerland, Thailand, Ukraine, the United Kingdom, United Republic of Tanzania, and the United States of America.

3. The Group of the Friends of the Co-Chairs consisted of six representatives of the Asia-Pacific region of which five, namely China, India, Malaysia, Philippines and Republic of Korea, were represented at the current meeting of the Group; two representatives of the European Union; one representative of Central and Eastern Europe; six representatives of the African Group; six representatives of the Latin America and Caribbean Group; and New Zealand, Norway, Switzerland and Japan.

4. Observers from the following intergovernmental and non-governmental organizations and other stakeholders also participated in the meeting: African Union, Biotechnology Coalition of the Philippines, College of the Atlantic, Consumers Union of Japan, CropLife International, CropLife International

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Compact Executive Committee, Desarrollo Medio Ambiental Sustentable, ECOROPA, GenØk – Centre for Biosafety, Global Industry Coalition, Greenpeace International, International Grain Trade Coalition, International Service for the Acquisition of Agri-biotech Applications Afri Centre, Inter-American Institute for Cooperation on Agriculture, International Centre for Genetic Engineering and Biotechnology, Kobe University, Third World Network, Universidad Nacional Agraria La Molina, University of Canterbury, and University of Washington.

ITEM 1. OPENING OF THE MEETING

5. The meeting was opened at 10 a.m. on Wednesday, 6 October 2010, by Ms. Jimena Nieto, Co-Chair of the Group. She welcomed the participants and expressed her and her Co-Chair's satisfaction to see so many of the Friends around the table thereby showing their ongoing commitment to the process. She reminded them that intensive negotiations would be necessary in order for the Friends to complete their work.

6. Mr. Charles Gbedemah, Senior Environmental Affairs Officer at the Secretariat of the Convention on Biological Diversity, made an opening statement on behalf of the Executive Secretary of the Convention. He urged the Group to make the most of the time available over its three-day meeting because COP-MOP 5 has numerous items on its agenda, making further negotiations on liability and redress during the fifth meeting of the Parties very difficult. He thanked the Government of Japan for hosting the meeting and the Governments of Spain and Norway for their financial contributions towards its organization.

ITEM 2. ORGANIZATIONAL MATTERS

2.1. Adoption of the agenda

7. The Group adopted the following agenda on the basis of the provisional agenda (UNEP/CBD/BS/GF-L&R/4/1) prepared by the Executive Secretary in consultation with the Co-Chairs:

1. Opening of the meeting.
2. Organizational matters:
 - 2.1. Adoption of the agenda;
 - 2.2. Organization of work.
3. Further negotiations on 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.
4. Other matters.
5. Adoption of the report.
6. Closure of the meeting.

2.2. Organization of work

8. The Group adopted its programme of work as proposed in annex I of the annotated agenda (UNEP/CBD/BS/GF-L&R/4/1/Add.1). The organization of work included two sessions a day.

ITEM 3. FURTHER NEGOTIATIONS ON 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

9. The Group of the Friends of the Co-Chairs began consideration of agenda item 3 at the first session of its meeting on Wednesday, 6 October 2010. Mr. René Lefeber, Co-Chair of the Group, reminded the Friends that the work on the remaining outstanding issues needs to be finalised this week to allow COP-MOP to establish a legal drafting group that would finalise the legal editing of the text. He also reminded the Friends of the rules of engagement and outlined the following outstanding items for consideration by the Group:

- (a) Text of the Supplementary Protocol:
 - (i) 'Products thereof' in Article 3;
 - (ii) Financial security under the current Article 10;
 - (iii) Drafting issues;
 - (iv) Headings of the articles;
 - (v) Preamble;
- (b) The draft decision;
- (c) Consolidated draft guidelines on civil liability and redress, contained in Annex II, Appendix I to document UNEP/CBD/BS/GF-L&R/4/2;
- (d) Other provisions, contained in Appendix II to document UNEP/CBD/BS/GF-L&R/4/2.

10. The Co-Chair invited the Friends to turn to the working document and begin their work. Accordingly the Group conducted extensive negotiations with respect to the outstanding issues as outlined by the Co-Chairs.

11. The Group considered the consolidated text of draft guidelines on civil liability and redress contained in annex II, appendix I of document UNEP/CBD/BS/GF-L&R/4/2. It was recalled that the draft guidelines were developed by the Co-Chairs, following the request of the Group at its second meeting. Friends and observers provided comments on the draft guidelines which were then consolidated and made available as an annex to the report of the third meeting. The Group therefore noted the extensive work that had gone into the development of the draft guidelines. However, taking into account the Group's agreement at its first meeting to develop a legally binding supplementary protocol based on an administrative approach including a provision on civil liability which is now contained in Article 12 of the Supplementary Protocol, the Group agreed that it was not necessary to consider or elaborate the guidelines further. It was noted that this agreement does not affect any steps that may be taken in the future as regards the development of binding rules on civil liability for damage resulting from living modified organisms.

12. It emerged during the negotiations of the Supplementary Protocol that Parties to the Protocol hold different understandings of the application of Article 27 of the Protocol to processed materials that are of living modified organism-origin. One such understanding is that Parties may apply the Supplementary Protocol to damage caused by such processed materials, provided that a causal link is established between the damage and the living modified organism in question.

13. Paraguay expressed concern regarding the reference to the last preambular paragraph of the Cartagena Protocol on Biosafety in paragraph 2 of Article 10 of the Supplementary Protocol.

14. The Group noted the critical negotiations that had taken place during its meeting in Nagoya as well as the common practice of naming treaties after their place of adoption. The Group also recalled that the Government of Malaysia had hosted its two previous meetings and that the mandate for the negotiations on liability and redress under Article 27 of the Protocol had been adopted in Kuala Lumpur, Malaysia on 27 February 2004 by the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol. Accordingly, the Group agreed to name the supplementary protocol after the two cities, namely the “Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety”.

Conclusions

15. The Group of the Friends of the Co-Chairs:

(a) *Agreed* to submit, in accordance with paragraph 1(h) of decision BS-IV/12, to the fifth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol the annex to this report which is a draft decision with an annex containing the draft Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety;

(b) *Recommended* that the fifth meeting of the Conference of the Parties serving as the meeting the Parties to the Protocol:

(i) adopt the draft Supplementary Protocol;

(ii) establish, at the earliest possibility, a legal drafting group to look into the legal consistency and accuracy of the text of the proposed supplementary protocol in all the six official languages of the United Nations during the fifth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol;

(iii) include the text in paragraph 12 above in the final report of its fifth meeting;

(c) *Requested* the Co-Chairs to transmit to the fifth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol the report of the Group on the work of its four meetings held following its establishment and its mandate specified in decision BS-IV/12.

ITEM 4. OTHER MATTERS

16. Agenda item 4 was taken up at the last session of the meeting, on Monday, 11 October 2010. No other matters were raised.

ITEM 5. ADOPTION OF THE REPORT

17. The Group adopted the present report as orally amended at the last session of the meeting held on 11 October 2010.

ITEM 6. CLOSURE OF THE MEETING

18. The Co-Chairs expressed their gratitude to the Government of Japan for the excellent facilities provided for the fourth meeting of the Group.

19. The Co-Chairs expressed their heartfelt appreciation to the Friends for their cooperative and truly friendly spirit and for their hard work over the last two years. They also thanked those observers who

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have shown a strong interest and support for the negotiations of the Group. They expressed their gratitude for the staff of the Earth Negotiations Bulletin who provided reporting services throughout the work of the Group.

20. After the usual exchange of courtesies, Co-Chair Nieto declared the fourth meeting of the Group of the Friends of the Co-Chairs closed at 2:00 a.m. on Monday, 11 October 2010.

*Annex****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,

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,

Recalling also its decision BS-IV/12 by which it established a Group of the Friends of the Co-Chairs to 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 the decision,

Noting with appreciation the work of the Group of the Friends of the Co-Chairs, as contained in the reports of its 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 six years in steering the process 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,

Noting initiatives by the private sector concerning recourse in the event of damage to biological diversity caused by living modified organisms,

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

1. *Decides* to adopt the Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety, 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 the United Nations Headquarters in New York from 7 March 2011 to 6 March 2012;

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 on 7 March 2011 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. ADDITIONAL AND SUPPLEMENTARY COMPENSATION MEASURES

5. *Decides* that, where the costs of response measures as provided for in the Supplementary Protocol have not been covered, such a situation may be addressed by additional and supplementary compensation measures;

6. *Decides* that the measures referred to in paragraph 5 above may include arrangements to be addressed by the Conference of the Parties serving as the meeting of the Parties.

C. COMPLEMENTARY CAPACITY-BUILDING MEASURES

7. *Urges* the Parties to cooperate, taking into account the 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, in the development and/or strengthening of human resources and institutional capacities relating to the implementation of the Supplementary Protocol, including through existing global, regional, subregional and domestic institutions and organizations and, as appropriate, through facilitating private sector involvement;

8. *Invites* Parties to take this decision into account in formulating bilateral, regional and multilateral assistance to developing country Parties that are in the process of developing their domestic law relating to the implementation of the Supplementary Protocol;

9. *Decides* to take this decision into account, as appropriate, in the next review of the Action Plan referred to in paragraph 1.

Annex

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

The Parties to this Supplementary Protocol,

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

Taking into account Principle 13 of the Rio Declaration on Environment and Development,

Reaffirming the precautionary approach contained in Principle 15 of the Rio Declaration on Environment and Development,

Recognizing the need to provide for appropriate response measures where there is damage or sufficient likelihood of damage, consistent with the Protocol,

Recalling Article 27 of the Protocol,

Have agreed as follows:

Article 1

Objective

The objective of this 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 related to living modified organisms.

Article 2

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.

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) “Damage” means an adverse effect on the conservation and sustainable use of biological diversity, taking also into account risks to human health, that:

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

(ii) Is significant as set out in paragraph 3 below;

(d) “Operator” means any person in direct or indirect control of the living modified organism which could, as appropriate and as determined by domestic law, include, *inter alia*, the permit holder, person who placed the living modified organism on the market, developer, producer, notifier, exporter, importer, carrier or supplier;

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

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- (f) “Response measures” means reasonable actions to:
- (i) Prevent, minimize, contain, mitigate, or otherwise avoid damage, as appropriate;
 - (ii) Restore biological diversity through actions to be undertaken in the following order of preference:
 - a. Restoration of biological diversity to the condition that existed before the damage occurred, or its nearest equivalent; and where the competent authority determines this is not possible,
 - b. Restoration by, *inter alia*, replacing the loss of biological diversity with other components of biological diversity for the same, or for another type of use either at the same or, as appropriate, at an alternative location.
3. A “significant” adverse effect 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 affect the components of biological diversity;
 - (c) The reduction of the ability of components of biological diversity to provide goods and services;
 - (d) The extent of any adverse effects on human health in the context of the Protocol.

Article 3

Scope

1. This Supplementary Protocol applies to damage resulting from living modified organisms which 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, this Supplementary Protocol applies to damage resulting from any authorized use of the living modified organisms referred to in paragraph 1 above.
3. This Supplementary Protocol also applies 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.
4. This Supplementary Protocol applies to damage that occurred in areas within the limits of the national jurisdiction of Parties.
5. Parties may use criteria set out in their domestic law to address damage that occurs within the limits of their national jurisdiction.
6. Domestic law implementing this Supplementary Protocol shall also apply to damage resulting from the transboundary movements of living modified organisms from non-Parties.

7. This Supplementary Protocol applies to damage resulting from a transboundary movement of living modified organisms that started after the entry into force of this Supplementary Protocol for the Party into whose jurisdiction the transboundary movement was made.

Article 4 **Causation**

A causal link shall be established between the damage and the living modified organism in question in accordance with domestic law.

Article 5 **Response measures**

1. Parties shall require the appropriate operator or operators, in the event of damage, subject to any requirements of the competent authority, to:

- (a) Immediately inform the competent authority;
- (b) Evaluate the damage; and
- (c) Take appropriate response measures.

2. The competent authority shall:

- (a) Identify the operator which has caused the damage;
- (b) Evaluate the damage and determine which response measures should be taken by the operator.

3. Where relevant information, including available scientific information or information available in the Biosafety Clearing-House, indicates that there is a sufficient likelihood that damage will result if timely response measures are not taken, the operator shall be required to take appropriate response measures so as to avoid such damage.

4. The competent authority may implement appropriate response measures including in particular when the operator has failed to do so.

5. The competent authority has the right to recover from the operator the costs and expenses of, and incidental to, the evaluation of the damage and the implementation of any such appropriate response measures. Parties may provide, in their domestic law, for other situations in which the operator may not be required to bear the costs and expenses.

6. Decisions of the competent authority requiring the operator to take response measures should be reasoned. Such decisions should be notified to the operator. Domestic law shall provide for remedies, including the opportunity for an administrative or judicial review of such decisions. The competent authority shall, in accordance with domestic law, also inform the operator of the available remedies. Recourse to such remedies shall not impede the competent authority from taking response measures in appropriate circumstances, unless otherwise provided by domestic law.

7. In implementing this Article and with a view to defining the specific response measures to be required or taken by the competent authority, Parties may, as appropriate, assess whether response measures are already addressed by their domestic law on civil liability.

8. Response measures shall be implemented in accordance with domestic law.

Article 6

Exemptions

1. Parties may provide, in their domestic law, for the following exemptions:
 - (a) Act of God or *force majeure*;
 - (b) Act of war or civil unrest.
2. Parties may provide, in their domestic law, for any other exemptions or mitigations as they may deem fit.

Article 7

Time limits

Parties may provide, in their domestic law, for:

- (a) Relative and/or absolute time limits including for actions related to response measures; and
- (b) The commencement of the period to which a time limit applies.

Article 8

Financial limits

Parties may provide, in their domestic law, for financial limits for the recovery of costs and expenses related to response measures.

Article 9

Right of recourse

This Supplementary Protocol shall not limit or restrict any right of recourse or indemnity that an operator may have against any other person.

Article 10

Financial security

1. Parties retain the right to provide, in their domestic law, for financial security.
2. Parties shall exercise the right referred to in paragraph 1 above in a manner consistent with their rights and obligations under international law, taking into account the final three preambular paragraphs of the Protocol.
3. The first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol after the entry into force of the Supplementary Protocol shall request the Secretariat to undertake a comprehensive study which shall address, *inter alia*:
 - (a) the modalities of financial security mechanisms;
 - (b) an assessment of the environmental, economic and social impacts of such mechanisms, in particular on developing countries; and
 - (c) an identification of the appropriate entities to provide financial security.

Article 11

Responsibility of States for internationally wrongful acts

This Supplementary Protocol 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.

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Article 12

Implementation and relation to civil liability

1. Parties shall provide, in their domestic law, for rules and procedures that address damage. To implement this obligation, Parties shall provide for response measures in accordance with this Supplementary Protocol and may, as appropriate:

- (a) Apply their existing domestic law, including where applicable general rules and procedures on civil liability;
- (b) Apply or develop civil liability rules and procedures specifically for this purpose; or
- (c) Apply or develop a combination of both.

2. Parties shall, with the aim of providing adequate rules and procedures in their domestic law on civil liability for material or personal damage associated with the damage as defined in Article 2, paragraph 2 (c):

- (a) Continue to apply their existing general law on civil liability;
- (b) Develop and apply or continue to apply civil liability law specifically for that purpose; or
- (c) Develop and apply or continue to apply a combination of both.

3. When developing civil liability law as referred to in subparagraphs (b) or (c) of paragraphs 1 or 2 above, Parties shall, as appropriate, address, *inter alia*, the following elements:

- (a) Damage;
- (b) Standard of liability including strict or fault-based liability;
- (c) Channelling of liability, where appropriate;
- (d) Right to bring claims.

Article 13

Assessment and review

The Conference of the Parties serving as the meeting of the Parties to the Protocol shall undertake a review of the effectiveness of this Supplementary Protocol five years after its entry into force and every five years thereafter, provided information requiring such a review has been made available by Parties. The review shall be undertaken in the context of the assessment and review of the Protocol as specified in Article 35 of the Protocol, unless otherwise decided by the Parties to this Supplementary Protocol. The first review shall include a review of the effectiveness of Articles 10 and 12.

Article 14

Conference of the Parties serving as the meeting of the Parties to the Protocol

1. Subject to paragraph 2 of Article 32 of the Convention, the Conference of the Parties serving as the meeting of the Parties to the Protocol shall serve as the meeting of the Parties to this Supplementary Protocol.

2. The Conference of the Parties serving as the meeting of the Parties to the Protocol shall keep under regular review the implementation of this Supplementary Protocol and shall make, within its mandate, the decisions necessary to promote its effective implementation. It shall perform the functions assigned to it by this Supplementary Protocol and, *mutatis mutandis*, the functions assigned to it by paragraphs 4 (a) and (f) of Article 29 of the Protocol.

Article 15
Secretariat

The Secretariat established by Article 24 of the Convention shall serve as the secretariat to this Supplementary Protocol.

Article 16
Relationship with the Convention and the Protocol

1. This Supplementary Protocol shall supplement the Protocol and shall neither modify nor amend the Protocol.
2. This Supplementary Protocol shall not affect the rights and obligations of the Parties to this Supplementary Protocol under the Convention and the Protocol.
3. Except as otherwise provided in this Supplementary Protocol, the provisions of the Convention and the Protocol shall apply, *mutatis mutandis*, to this Supplementary Protocol.
4. Without prejudice to paragraph 3 above, this Supplementary Protocol shall not affect the rights and obligations of a Party under international law.

Article 17
Signature

This Supplementary Protocol shall be open for signature by Parties to the Protocol at the United Nations Headquarters in New York from 7 March 2011 to 6 March 2012.

Article 18
Entry into force

1. This Supplementary Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession by States or regional economic integration organizations that are Parties to the Protocol.
2. This Supplementary Protocol shall enter into force for a State or regional economic integration organization that ratifies, accepts or approves it or accedes thereto after the conditions set out in paragraph 1 above for its entry into force have been fulfilled, on the ninetieth day after the date on which that State or regional economic integration organization deposits its instrument of ratification, acceptance, approval, or accession, or the date on which the Protocol enters into force for that State or regional economic integration organization, whichever shall be the later.
3. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

Article 19
Reservations

No reservations may be made to this Supplementary Protocol.

Article 20
Withdrawal

1. At any time after two years from the date on which this Supplementary Protocol has entered into force for a Party, that Party may withdraw from this Supplementary Protocol by giving written notification to the Depository.
2. Any such withdrawal shall take place upon expiry of one year after the date of its receipt by the Depository, or on such later date as may be specified in the notification of the withdrawal.
3. Any Party which withdraws from the Protocol in accordance with Article 39 of the Protocol shall be considered as also having withdrawn from this Supplementary Protocol.

Article 21
Authentic texts

The original of this Supplementary Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

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

DONE at Nagoya on this fifteenth day of October two thousand and ten.
