



CONVENTION ON BIOLOGICAL DIVERSITY

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OPEN-ENDED AD HOC WORKING GROUP OF LEGAL AND TECHNICAL EXPERTS ON LIABILITY AND REDRESS IN THE CONTEXT OF THE CARTAGENA PROTOCOL ON BIOSAFETY

First Meeting

Montreal, 25-27 May 2005

Item 2 of the provisional agenda*

ANNOTATIONS TO THE PROVISIONAL AGENDA

Note by the Executive Secretary

INTRODUCTION

1. Article 27 of the Cartagena Protocol on Biosafety required the Conference of the Parties serving as the meeting of the Parties to the Protocol (COP/MOP) 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 (LMOs). Accordingly, at its first meeting, the Conference of the Parties serving as the meeting of the Parties to the Protocol established an Open-ended Ad Hoc Working Group of Legal and Technical Experts on Liability and Redress (hereafter referred to as “the Ad Hoc Group on Liability and Redress”) to carry out the process pursuant to Article 27 of the Protocol (decision BS-I/8).
2. According to its terms of reference, the Ad Hoc Group on Liability and Redress shall complete its work in 2007, and to this end, a number of meetings were suggested and included in its indicative work plan.
3. The first meeting of the Ad Hoc Group on Liability and Redress will take place in Montreal at the premises of the International Civil Aviation Organization (ICAO) from 25 to 27 May 2005, immediately prior to the second meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol, which will be held at the same venue.
4. In order to undertake preparatory work for the first meeting of the Ad Hoc Group on Liability and Redress, the Conference of the Parties serving as the meeting of the Parties to the Protocol, in its decision BS-I/8 requested the Executive Secretary to convene a Technical Group of Experts on Liability and Redress, nominated by Parties to the Protocol and based on a fair and equitable geographical representation. Following the financial contributions from the Government of United Kingdom and the European Community, the Technical Group of Experts met in Montreal from 18 to 20 October 2004, and

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

made a number of recommendations for consideration at the first meeting of the Ad Hoc Group on Liability and Redress. The report of this meeting is contained in document UNEP/CBD/BS/WG-L&R/1/2.

ITEM 1. OPENING OF THE MEETING

5. The first meeting of the Ad Hoc Group on Liability and Redress will be opened by the President of the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol or his representative on 25 May 2005, at 10 a.m. The Executive Secretary of the Convention on Biological Diversity may also make some opening remarks for the meeting.

ITEM 2. ORGANIZATIONAL MATTERS

2.1. Election of officers

6. In accordance with paragraph 2 of its terms of reference, the Ad Hoc Group on Liability and Redress shall elect its chairperson and other officers. Accordingly, it is proposed that the meeting consider electing a Chairperson and other officers.

2.2. Adoption of the agenda

7. The Ad Hoc Group on Liability and Redress may wish to adopt its agenda on the basis of the provisional agenda proposed by the Executive Secretary (UNEP/CBD/BS/WG-L&G/1/1).

2.3. Organization of work

8. Interpretation will be provided in the six official languages of the United Nations. The proposed organization of work for the meeting is contained in annex I below.

9. A list of documents for the meeting is contained in annex II below. In addition to normal distribution, the documents will also be available on the Secretariat's website at <http://www.biodiv.org>.

10. The Secretariat is also distributing an information note for participants containing details of registration and logistical arrangements for the meeting, including information on travel, visa requirements, accommodation and other matters.

ITEM 3. REVIEW OF INFORMATION RELATING TO LIABILITY AND REDRESS FOR DAMAGE RESULTING FROM TRANSBOUNDARY MOVEMENTS OF LIVING MODIFIED ORGANISMS

11. In its recommendation to the Ad Hoc Group on Liability and Redress, the Technical Group of Experts identified several areas where additional information would benefit the work on liability and redress, and requested the Executive Secretary to arrange for the provision of information, where possible, in the form of presentation of document UNEP/CBD/BS/WG-L&R/1/3, paras. 117 (b) and (c)).

12. Accordingly, the following information or presentations will be provided to the meeting:

(a) *The scientific analysis and assessment of risks involved in the transboundary movements of living modified organisms in respect of which reference was made to the ongoing work under the Biosafety Protocol.* The issues on risk assessment and risk management will be considered at the second meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol, and for this purpose, the Executive Secretary has prepared a note (UNEP/CBD/BS/COP-MOP/2/9), which contains information that may be relevant to the work of the Ad Hoc Group on Liability and Redress, and will therefore also be made available to this meeting as well. In addition, a presentation by an expert in this field may be arranged for the meeting with a view to providing scientific information on types of risks that may be caused by living modified organisms;

(b) *The determination of damage to the conservation and sustainable use of biodiversity in respect of which reference was made to the definition of biodiversity loss in paragraph 2 of decision VII/30 of the Conference of Parties to the Convention on Biological Diversity as well as the ongoing work on the framework of indicators under the Convention.* An information document, summarizing the relevant work that has been carried out under the Convention, was prepared for this meeting (UNEP/CBD/BS/WG-L&R/1/INF/2);

(c) *The determination of socio-economic damage in respect of which reference was made to the ongoing work under Article 26 of the Biosafety Protocol.* The Conference of the Parties serving as the meeting of the Parties to the Protocol at its second meeting will consider issues relating to cooperation on research and information exchange on any socio-economic impacts of living modified organisms, especially on indigenous and local communities. To facilitate the discussion at the meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol, the Executive Secretary has prepared a note on the subject, which contains information that may benefit the work of the Ad Hoc Group on Liability and Redress and will be made available for this meeting as well (UNEP/CBD/BS/COP-MOP/2/12);

(d) *The availability of financial security to cover liability resulting from the transboundary movement of LMOs and the prices at which such financial security is available.* A presentation by an expert in this area will be arranged for the meeting;

(e) *The status of treaties that provides for third-party liability, and an analysis of reasons why several of those treaties have not entered into force.* Specifically, the Executive Secretary was requested to obtain the information from the relevant bodies with respect to the Basel Protocol on Liability and Compensation for Damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal, the Lugano Convention on Civil Liability for Damage Resulting from Activities Dangerous for the Environment and the Convention on Civil Liability for Damage Caused during Carriage of Dangerous Goods by Road, Rail and Inland Navigation Vessels. The information obtained by the Executive Secretary is contained in an information document (UNEP/CBD/BS/WG-L&R/1/INF/3);

(f) *Recent developments in international law relating to liability and redress, including "soft law" and the work of the International Law Commission with respect to the responsibility of States for internationally wrongful acts and international liability for the injurious consequences of acts not prohibited by international law.* The relevant information is gathered by the Executive Secretary and contained in an information document (UNEP/CBD/BS/WG-L&R/1/INF/4). A presentation by an expert in the field of State responsibility and international liability may be arranged to brief the meeting regarding ongoing work under the International Law Commission.

13. The Technical Group of Experts also requested the Executive Secretary to invite Parties to the Protocol, other Governments, relevant international organizations and other stakeholders to submit their views on the matter covered by Article 27 of the Protocol in particular with respect to scenarios, approaches, options and issues identified in the annex to its report no later than three months before the first meeting of the Ad Hoc Group on Liability and Redress. The submissions received by the Secretariat as of 25 February 2005 are contained in an information document (UNEP/CBD/BS/WG-L&R/1/INF/1).

14. The Ad Hoc Group on Liability and Redress is invited to review the information provided for this meeting with a view to building understandings on the issues relating to liability and redress for damage resulting from transboundary movements of LMOs. It may wish to consider whether further information is needed to facilitate its work.

**ITEM 4. CONSIDERATION OF ISSUES ON LIABILITY AND REDRESS
PURSUANT TO ARTICLE 27 OF THE PROTOCOL**

15. In its recommendation to the first meeting of the Ad Hoc Group on Liability and Redress, the Technical Group of Experts agreed to forward its report and the annex to this meeting for consideration. The Working Group may therefore wish to use the report and the annex as a basis to discuss issues under item 4 of the provisional agenda, taking into account views submitted by Parties and other stakeholders (UNEP/CBD/BS/WG-L&R/1/INF/1).

ITEM 5. OTHER MATTERS

16. Under this item, the Ad Hoc Group on Liability and Redress may wish to raise and discuss other matters related to the subject matter of the meeting.

ITEM 6. ADOPTION OF THE REPORT

17. The Ad Hoc Group on Liability and Redress will consider and adopt its report, on the basis of a draft report to be prepared and presented by the Rapporteur. The Ad Hoc Group on Liability and Redress shall report on its activities and progress to each subsequent meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol. The report of the first meeting of the Group will be presented by the Chair for consideration at the second meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol.

ITEM 7. CLOSURE OF THE MEETING

18. It is expected that the meeting will be closed at 6 p.m. on Friday, 27 May 2005.

Annex I

**PROPOSED ORGANIZATION OF WORK FOR THE FIRST MEETING OF THE
AD HOC GROUP ON LIABILITY AND REDRESS IN THE CONTEXT OF THE
CARTAGENA PROTOCOL ON BIOSAFETY**

<i>Date and time</i>	<i>Agenda item</i>
25 May 2005 10 a.m. to 10.30 a.m.	1. Opening of the meeting.
10.30 a.m. to 11 a.m.	2. Organizational matters: 2.1. Election of officers; 2.2. Adoption of the agenda; 2.3. Organization of work.
11.30 a.m. to 1 p.m.	3. Review of information relating to liability and redress for damage resulting from transboundary movements of living modified organisms
3 p.m. to 6 p.m.	3. Review of information relating to liability and redress for damage resulting from transboundary movements of living modified organisms (<i>continued</i>)
26 May 2004 10 a.m. to 12 noon	4. Consideration of issues relating to Article 27 of the Protocol: 4.1. Analysis of general issues relating to: (a) The potential and/or actual damage scenarios of concern that may be covered under the Protocol; (b) The application of international rules and procedures on liability and redress to damage scenarios of concern that may be covered under Article 27 of the Protocol;
12 noon to 1p.m.	4.2. Elaboration of options of elements of rules and procedures referred to in Article 27 of the Protocol.
3 p.m. to 6 p.m.	4.2. Elaboration of options of elements of rules and procedures referred to in Article 27 of the Protocol (<i>continued</i>)
27 May 2005 10 a.m. to 1 p.m.	4.2. Elaboration of options of elements of rules and procedures referred to in Article 27 of the Protocol (<i>continued</i>)
3 p.m. to 6 p.m.	5. Other matters. 6. Adoption of the report. 7. Closure of the meeting.

Annex II

LIST OF DOCUMENTS FOR THE MEETING OF THE TECHNICAL GROUP OF EXPERTS

<i>Symbol</i>	<i>Title</i>
UNEP/CBD/BS/WG-L&R/1/1	Provisional agenda
UNEP/CBD/BS/WG-L&R/1/1/Add.1	Annotations to the provisional agenda
UNEP/CBD/BS/WG-L&R/1/2	Report of the meeting of the Technical Group of Experts on Liability and Redress
UNEP/CBD/BS/WG-L&R/1/INF/1	Compilation of views submitted on the matter covered by Article 27 of the Protocol
UNEP/CBD/BS/WG-L&R/1/INF/2	Report on the work under the Convention on Biological Diversity regarding definition and indicators for “loss of biodiversity”
UNEP/CBD/BS/WG-L&R/1/INF/3	Status of liability treaties and analysis of reasons why several of those treaties have not entered into force
UNEP/CBD/BS/WG-L&R/1/INF/4	Recent developments in international law relating to liability and redress
UNEP/CBD/BS/COP-MOP/2/9	Risk assessment and risk management (Article 15 and Article 16)
UNEP/CBD/BS/COP-MOP/2/12	Socio-economic considerations (Article 26, paragraph 2)
