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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**

Second meeting

Montreal, 20-24 February 2006

ANNOTATIONS TO THE PROVISIONAL AGENDA*Note by the Executive Secretary***INTRODUCTION**

1. 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 (the "Working Group", hereinafter) held its first meeting in Montreal from 25 to 27 May 2005. The Working Group considered and further developed scenarios of damage resulting from the transboundary movement of living modified organisms (LMOs), options, approaches and issues for further consideration relating to liability and redress, that were initially identified by a technical group of experts that met earlier to undertake preparatory work for the first meeting of the Working Group.
2. The Working Group identified several documents as well as information covering a range of areas that were considered relevant and informative to its future work. It requested the Secretariat to make the documents and the information available for consideration at its second meeting. The Working Group also invited Parties, other Governments, relevant international organizations and stakeholders to submit further views on the matter covered by Article 27 of the Protocol, in particular with respect to approaches, options and issues identified and annexed to its report. It indicated its preference of submissions made in the form of proposals for text, which the Co-Chairs of the Working Group were requested to synthesize and to produce, with the assistance of the Secretariat, a working draft for consideration at its second meeting.
3. The second meeting of the Working Group is scheduled to take place from 20 to 24 February 2006 at the premises of the International Civil Aviation Organization (ICAO) in Montreal.
4. The Working Group is expected, at its second meeting, to review the information made available to it in accordance with its request and, based on this review, to analyse issues and elaborate options for

elements of rules and procedures referred to in Article 27 of the Protocol for damage resulting from the transboundary of movements of living modified organisms.

ITEM 1. OPENING OF THE MEETING

5. The meeting will be opened by one of the Co-Chairs of the Working Group on 20 February 2006, at 10 a.m. This may be followed by welcoming remarks from the Executive Secretary of the Convention.

ITEM 2. ORGANIZATIONAL MATTERS

2.1. Adoption of the agenda

6. The Working Group may wish to adopt its agenda on the basis of the provisional agenda (UNEP/CBD/BS/WG-L&R/2/1), prepared by the Executive Secretary in consultation with the Co-Chairs of the Working Group.

2.2. Organization of work

7. The Working Group may wish to consider the proposed organization and programme of its work as contained in annex I below.

8. The proposed organization of work provides for the meeting to be conducted entirely in plenary session. However, the Working Group may wish to consider setting up contact groups, as it deems appropriate to further or facilitate its work.

9. The meeting will operate on the basis of two sessions every day from 10 a.m. to 1 p.m. and from 3 p.m. to 6 p.m., with simultaneous interpretation into the six United Nations working languages. Should the Working Group wish to establish contact groups, they will conduct their work without interpretation.

10. The documentation prepared for the meeting is listed in annex II below.

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

11. Under this item, the Working Group is expected, in accordance with paragraph 3 (d) and (e) of its terms of reference (decision BS-I), to review information that is made available to it upon its request with a view to expedite its work.

12. In that regard, the Working Group has, before it, the following information documents:

(a) *Determination of damage to the conservation and sustainable use of biological diversity, including case-studies:* It may be recalled that an information document (UNEP/CBD/BS/WG-L&R/1/INF/2) was made available to the first meeting of the Working Group. The document essentially dealt with the same subject of determination of damage to biological diversity, but with a specific focus on the definition of “biodiversity loss” as provided in paragraph 2 of decision VII/30 of the Conference of the Parties to the Convention. The information document prepared for the second meeting of the Working Group, compiles information from various sources (UNEP/CBD/BS/WG-L&R/2/INF/3);

(b) *Transnational procedures including the work of The Hague Conference on Private International Law in this field, including case-studies.* It might be appropriate to recall that limited information regarding the Hague Conference was made available in previous Secretariat pre-session documents such as the update on developments in national, international and regional legal instruments on liability and redress prepared for the first meeting of the Conference of the Parties serving as the meeting of the Parties to the protocol (UNEP/CBD/BS/COP-MOP/1/9/Add.1). The present document (UNEP/CBD/BS/WG-L&R/2/INF/4) provides further information on the state of use and harmonization of transnational procedures, and on the relevant efforts by the Hague Conference on Private International Law as obtained from the secretariat of the Hague Conference itself;

(c) *Recent developments in international law relating to liability and redress, including the status of international environment-related third party liability instruments.* Information on developments in international law in the field of liability and redress was made available to Working Group, at its first meeting (UNEP/CBD/BS/WG-L&R/1/INF/4). Information on the status of treaties that provide for third-party liability was also made available (UNEP/CBD/BS/WG-L&R/1/INF/3). The present document (UNEP/CBD/BS/WG-L&R/2/INF/5) merely updates the information contained in those previous documents;

(d) *Compilation of documents derived from the work of the International Law Commission: (i) United Nations General Assembly resolution on the responsibility of States for internationally wrongful acts; (ii) International Law Commission draft articles on prevention of transboundary harm arising from hazardous activities; and (iii) International Law Commission draft principles on allocation of loss in the case of transboundary harm arising out of hazardous.* These materials have been compiled and will be made available to the Working Group (UNEP/CBD/BS/WG-L&R/2/INF/6);

(e) *Compilation of submissions on experiences and views on criteria for the assessment of the effectiveness of any rules and procedures referred to in Article 27 of the Protocol.* The Working Group invited, at its first meeting, Parties, other Governments and relevant international organizations and stakeholders to share their experiences and submit their views on criteria for the assessment of the effectiveness of any rules and procedures referred to in Article 27 of the Protocol. The submissions are made available to the present meeting (UNEP/CBD/BS/WG-L&R/2/INF/2) in accordance with the request of the first meeting of the Working Group.

13. The Working Group had also requested, at its first meeting, for information on financial security to cover liability resulting from transboundary movements of living modified organisms, including information from Parties and other Governments on national experiences in this respect; and to arrange, if possible, for an expert presentation on this matter. In that regard, an information document will be made available to the Working Group compiling the information on the subject that was obtained from the Swiss Reinsurance Company and made available, electronically, at the first meeting of the Working Group (UNEP/CBD/BS/WG-L&R/2/INF/7). This information document also includes information, if any, that may be available by Parties and other Governments on their national experiences with respect to financial security to cover liability for damage resulting from living modified organisms. The Secretariat is also exploring the possibility of arranging for an expert presentation on the availability of financial security to cover liability for damage resulting from the transboundary movements of living modified organisms.

ITEM 4. ANALYSIS OF ISSUES AND ELABORATION OF OPTIONS FOR ELEMENTS OF RULES AND PROCEDURES REFERRED TO IN ARTICLE 27 OF THE PROTOCOL

14. In accordance with paragraph 4 of its terms of reference, the Working Group is required to analyse, on the basis of its review of information, issues relevant to liability and redress, and to elaborate options for elements of rules and procedures referred to in Article 27 of the Protocol.

15. At its first meeting, the Working Group requested submissions of further views on Article 27 of the Protocol, in particular with respect to approaches, options and issues identified by the Working Group in the context of Article 27, and contained in the annex to the report of the meeting. It expressed its preference for submissions to be made in the form of proposals for text, and requested the Co-Chairs to synthesize the submissions and to produce, with the assistance of the Secretariat, a working draft on the basis of the proposed texts, for consideration by the Working Group at its second meeting.

16. Accordingly, under this agenda item, the meeting is invited to consider the working draft prepared by the Co-Chairs, on the basis of the synthesis of texts proposed by Parties, other Governments, relevant international organizations and stakeholders in their submissions. The Working Group will have, before it a synthesis of proposed texts on approaches, options and issues pertaining to liability and redress in the context of Article 27 of the Protocol. (UNEP/CBD/BS/WG-L&R/2/2). The texts of the submissions are also compiled in an information document (UNEP/CBD/BS/WG-L&R/2/INF/1) and are made available to the present meeting in accordance with the request of the Working Group.

ITEM 5. OTHER MATTERS

17. Under this item, the Working Group may wish to consider any other matters of relevance raised by participants of the meeting.

ITEM 6. ADOPTION OF THE REPORT

18. The Working Group will be invited to consider and adopt its report on the basis of a draft report to be prepared and presented to it by the Rapporteur.

ITEM 7. CLOSURE OF THE MEETING

19. The second 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 is expected to be closed at 6 p.m. on Friday 24 February 2006.

Annex I

**PROPOSED ORGANIZATION OF WORK FOR THE SECOND MEETING OF
THE OPEN-ENDED AD HOC WORKING GROUP ON LIABILITY AND
REDRESS IN THE CONTEXT OF THE CARTAGENA PROTOCOL ON
BIOSAFETY**

| <i>Date and time</i> | <i>Agenda item</i> |
|---|---|
| 20 February 2006 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. Adoption of the agenda; 2.2. 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 4.30 p.m. | Continuation of agenda item 3 |
| 4.30 p.m. to 6 p.m. | 4. Analysis of issues and elaboration of options for elements of rules and procedures referred to in Article 27 of the Protocol |
| 21 February 2006 10 a.m. to 1 a.m. | Continuation of agenda item 4 |
| 3 a.m. to 6 p.m. | Continuation of agenda item 4 |
| 22 February 2006 10 a.m. to 1 p.m. | Continuation of agenda item 4 |
| 3 p.m. to 6 p.m. | Continuation of agenda item 4 |
| 23 February 2006 10 a.m. to 1 p.m. | Continuation of agenda item 4 |
| 3 p.m. to 6 p.m. | Continuation of agenda item 4 |
| 24 February 2006 10 a.m. to 12 noon | Continuation of agenda item 4 |
| 12 noon to 1 p.m. | 5. Other matters |
| 3 p.m. to 6 p.m. | 6. Adoption of the report. 7. Closure of the meeting |

Annex II

LIST OF DOCUMENTS FOR THE SECOND MEETING OF THE OPEN-ENDED AD HOC WORKING GROUP ON LIABILITY AND REDRESS IN THE CONTEXT OF THE CARTAGENA PROTOCOL ON BIOSAFETY

| <i>Symbol</i> | <i>Title</i> |
|--|---|
| <i>Background Documents</i> | |
| UNEP/CBD/BS/WG-L&R/2/1 | Provisional agenda |
| UNEP/CBD/BS/WG-L&R/2/1/Add.1 | Annotations to the provisional agenda |
| UNEP/CBD/BS/WG-L&R/2/2 | Synthesis of proposed texts on approaches, options and issues pertaining to liability and redress in the context of Article 27 of the Protocol: working Draft |
| <i>Information documents</i> | |
| UNEP/CBD/BS/WG-L&R/2/INF/1 | Compilation of further views with respect to approaches, options and issues identified as regards matter covered by Article 27 of the Protocol and proposals for texts |
| UNEP/CBD/BS/WG-L&R/2/INF/2 | Compilation of submissions on experiences and views on criteria for the assessment of the effectiveness of any rules and procedures referred to in Article 27 of the Protocol |
| UNEP/CBD/BS/WG-L&R/2/INF/3 | Determination of damage to the conservation and sustainable use of biological diversity, including case-studies |
| UNEP/CBD/BS/WG-L&R/2/INF/4 | Transnational procedures including the work of the Hague Conference on Private International Law in this field, including case-studies |
| UNEP/CBD/BS/WG-L&R/2/INF/5 | Recent developments in international law relating to liability and redress, including the status of international environment-related third party liability instruments |
| UNEP/CBD/BS/WG-L&R/2/INF/6 | Compilation of relevant documents from the work of the International Law Commission |
| UNEP/CBD/BS/WG-L&R/2/INF/7 | Financial security to cover liability resulting from the transboundary movements of living modified organisms |
| <i>Other background materials</i> | |
| Decision BS-II/9 | Risk assessment and risk management (from document UNEP/CBD/BS/COP-MOP/2/15) |
| Decision BS-II/12 | Socio-economic considerations (from document UNEP/CBD/BS/COP-MOP/2/15) |
| UNEP/CBD/COP/8/27/Add.3 | Report of the Group of Legal and Technical Experts on Liability and Redress in the Context of Article 14 paragraph 2 of the Convention on Biological Diversity |
