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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

Third meeting

Montreal, 19-23 February 2007

**ANNOTATIONS TO THE PROVISIONAL AGENDA**

**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 (hereinafter, the “Working Group”) held its second meeting in Montreal from 20 to 24 February 2006.

2. The Working Group analysed issues and elaborated options for elements of rules and procedures referred to in Article 27 of the Protocol for damage resulting from the transboundary movements of living modified organisms. It considered submissions of proposed texts and views on approaches, options and issues identified pertaining to liability and redress in the context of Article 27 of the Protocol. The proposed texts submitted during the meeting focused on elements covered in sections I to III of the working draft that was before the Working Group. The Working Group also reviewed information relating to liability and redress for damage resulting from transboundary movements of living modified organisms (LMOs). It developed an indicative list of criteria for the assessment of the effectiveness of any rules and procedures referred to in Article 27 of the Cartagena Protocol on Biosafety. The list of criteria was finalized on the basis that it was not negotiated and is non-exhaustive.

3. The Working Group also felt that there was still the need for further information covering a range of areas that were considered relevant and informative to its future work. Accordingly, it identified some documents and sets of information and requested the Secretariat to make them available for consideration at its third 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 in sections IV to XI of the working draft annexed to its report. It indicated its preference for submissions made in the form of proposals for text, which the Co-Chairs of the Working Group were requested to synthesize, with the assistance of the Secretariat, and produce a working draft for consideration at its third meeting.

4. The third meeting of the Working Group is scheduled to take place from 19 to 23 February 2007 at the premises of the International Civil Aviation Organization in Montreal.

5. At this meeting, the Working Group is expected to review the information made available to it in accordance with its request. In Particular, it is expected to examine submissions of texts contained in the working draft before it, with a view to further 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**

6. The meeting will be opened by one of the Co-Chairs of the Working Group on 19 February 2007 at 10 a.m. This will be followed by welcoming remarks from the Executive Secretary of the Convention.

### **ITEM 2. ORGANIZATIONAL MATTERS**

#### ***2.1. Adoption of the agenda***

7. The Working Group may wish to adopt its agenda on the basis of the provisional agenda (UNEP/CBD/BS/WG-L&R/3/1), prepared by the Executive Secretary in consultation with the Co-Chairs of the Working Group.

#### ***2.2. Organization of work***

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

9. 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.

10. 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.

11. The documentation that will be made available 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**

12. Under this item, the Working Group is expected, in accordance with paragraph 3 (d) and (e) of its terms of reference (decision BS-I/8), to review information that is made available to it upon its request with a view to expediting its work.

13. At its second meeting, the Working Group requested the Secretariat to arrange for an expert presentation on transnational procedures. This follows the preparation of an information document on 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/4) for the second meeting of the Working

Group. The Secretariat has arranged for a presentation by Dr. Christophe Bernasconi, First Secretary, Hague Conference on Private International Law.

14. The Working Group also has before it the following information documents:

(a) *Recent developments in international law relating to liability and redress, including the status of international environment-related third party liability instruments.* A similar document was made available at the second meeting of the Working Group (UNEP/CBD/BS/WG-L&R/2/INF/5). The document for the third meeting (UNEP/CBD/BS/WG-L&R/3/INF/2) updates the information contained in the previous document;

(b) *The experience of other international instruments and forums as regards damage suffered in areas beyond the limits of national jurisdiction or control of States.* This document (UNEP/CBD/BS/WG-L&R/3/INF/3) compiles information from various sources on damage suffered in areas beyond the limits of national jurisdiction or the control of States;

(c) *Compilation of documents of the Convention on Biological Diversity relating to the application of tools for valuation of biodiversity and biodiversity resources and functions.* These materials have been compiled and made available to the Working Group (UNEP/CBD/BS/WG-L&R/3/INF/4).

15. The Working Group had also requested, at its second meeting, 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. The Secretariat is doing its best to make the expert presentation possible at the upcoming meeting. The Secretariat is also gathering further information on financial security with a view to compiling an information document (UNEP/CBD/BS/WG-L&R/3/INF/5) for submission to the Working Group as per its request. At the time of finalization of this document, no further information was submitted by Parties or other Governments regarding their relevant experiences. It is recalled that the Secretariat had prepared a document on 'Financial Security to Cover Liability Resulting from Transboundary Movements of Living Modified Organisms' (UNEP/CBD/BS/WG-L&R/2/INF/7) for the second meeting of the Working Group, which included discussion of relevant concepts from the insurance industry, insurance for different heads of losses, and other options; a submission of information and experience from the European Union on financial guarantees and liability for damage resulting from living modified organisms; and a compilation of documents relevant to the issue of financial security obtained from the Swiss Re-insurance Company.

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

16. 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.

17. At its second meeting, the Working Group analysed the working draft of submissions from Parties, other Governments, relevant international organizations and stakeholders that had been prepared by the Co-Chairs with the assistance of the Secretariat. Participants in the Working Group submitted operational text for the first three elements in the working draft, namely scope, damage and causation. The Working Group invited the submission of further views on the matter covered by Article 27 of the Protocol, in particular with respect to approaches, options and issues identified in sections IV to XI of the working draft, contained in annex II of its report of the meeting. The Working Group had indicated its preference

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for submissions 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 for consideration by the present meeting.

18. Accordingly, under this agenda item, the meeting is invited to consider the working draft before it (UNEP/CBD/BS/WG-L&R/3/2), 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 complete texts of the submissions are compiled in an information document (UNEP/CBD/BS/WG-L&R/3/INF/1) and are made available to the present meeting in accordance with the request of the Working Group.

#### **ITEM 5. OTHER MATTERS**

19. 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**

20. 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**

21. The third 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, 23 February 2007.

*Annex I*

**PROPOSED ORGANIZATION OF WORK FOR THE THIRD 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>
<i>19 February 2007</i>	
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 6 p.m.	4. Elaboration of options for elements of rules and procedures referred to in Article 27 of the Protocol
<i>20 February 2007</i>	
10 a.m. to 1 a.m.	Continuation of agenda item 4
3 a.m. to 6 p.m.	Continuation of agenda item 4
<i>21 February 2007</i>	
10 a.m. to 1 p.m.	Continuation of agenda item 4
3 p.m. to 6 p.m.	Continuation of agenda item 4
<i>22 February 2007</i>	
10 a.m. to 1 p.m.	Continuation of agenda item 4
3 p.m. to 6 p.m.	Continuation of agenda item 4
<i>23 February 2007</i>	
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 THIRD 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>
UNEP/CBD/BS/WG-L&R/3/1	Provisional agenda
UNEP/CBD/BS/WG-L&R/3/1/Add.1	Annotations to the provisional agenda
UNEP/CBD/BS/WG-L&R/3/2	Synthesis of proposed operational texts on approaches, options and issues identified pertaining to liability and redress in the context of Article 27 of the Biosafety Protocol (sections IV to XI, annex II, report of the second meeting of the Working Group)
UNEP/CBD/BS/WG-L&R/3/INF/1	Compilation of submissions of further views (proposed texts) with respect to approaches, options and issues identified as regards matter covered by Article 27
UNEP/CBD/BS/WG-L&R/3/INF/2	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/3/INF/3	The experience of other international instruments and forums as regards damage suffered in areas beyond the limits of national jurisdiction or control of States
UNEP/CBD/BS/WG-L&R/3/INF/4	Compilation of documents of the Convention on Biological Diversity relating to the application of tools for valuation of biodiversity and biodiversity resources and functions
UNEP/CBD/BS/WG-L&R/3/INF/5	Compilation of further information on financial security to cover liability resulting from transboundary movements of living modified organisms

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