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**INTERGOVERNMENTAL COMMITTEE FOR THE
CARTAGENA PROTOCOL ON BIOSAFETY**

Third meeting

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Item 4.1.1 of the provisional agenda*

LIABILITY AND REDRESS (ARTICLE 27)

Compilation of views on the terms of reference for the Open-Ended Ad Hoc Group of Legal and Technical Experts under Article 27 of the Protocol

CONTENTS

<i>Submitting country</i>	<i>Page</i>
CANADA	2
REPUBLIC OF KOREA.....	3
SLOVENIA.....	4

* UNEP/CBD/ICCP/3/1.

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CANADA

[14 January 2002]
[SUBMISSION: ENGLISH]

**TERMS OF REFERENCE FOR THE OPEN-ENDED AD HOC GROUP OF LEGAL AND
TECHNICAL EXPERTS**

Canada would propose that the open-ended ad hoc group of legal and technical experts be provided with the mandate to carry out the Article 27 process as per the Annex to Decision 2/1, as follows:

I. Information

The open-ended ad hoc working group shall:

- (a) examine the information provided by Parties, Governments and relevant international organizations pursuant to Decision 2/1, paragraph 2, the synthesis of that information by the Secretariat, as well as information provided to date by the Secretariat in the context of liability discussions under para. 14.2 of the Convention on Biological Diversity;
- (b) take into account the results of any workshops that may be organized by Parties as per Decision 2/1
- (c) request any further information that may be required, such as information on available environmental liability insurance
- (d) monitor ongoing processes in international law on the matters covered by Article 27.

II. Analysis

The open-ended ad hoc working group shall, on the basis of the foregoing information:

- (a) analyze potential and/or actual damage scenarios of concern in order to identify the situations for which rules may be needed
- (b) analyze the issues raised by Article 27, including
 - (i) what damage is covered
 - (ii) level of significance of the damage that should be addressed
 - (iii) which transboundary movements are covered
- (c) analyze the Protocol provisions in the context of liability issues, including:
 - (i) causation
 - (ii) channeling of liability—how and to whom?
 - (iii) role of Party of import
 - (iv) standing/right to bring claims
 - (v) valuation of damage to biodiversity
- (d) based on the foregoing, analyze the types of rules and procedures that are available to address liability and redress issues under Article 27.

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III. Recommendations to the COP/MOP

On the basis of the foregoing review and analysis, the open-ended ad hoc working group shall make recommendations to the COP/MOP on any international rules and procedures that may be appropriate pursuant to Article 27 of the Protocol.

IV. Further Action as Directed by COP/MOP

The open-ended ad hoc working group shall develop rules and procedures for the purposes of Article 27 as directed by the COP/MOP.

REPUBLIC OF KOREA

[17 January 2002]
[SUBMISSION: ENGLISH]

Comments on Terms of Reference of Liability and Redress's Experts Group

I. Reference (UNEP/CBD/ICCP/2/L.6),

6. Recommends that the Terms of Reference for the open-ended ad hoc group of legal and technical experts ;

7. Invites Parties and Governments to submit their views in writing to the Executive Secretary ;

II. Comments of the Republic of Korea

A. Terms of Reference

1. The Open-ended Ad Hoc Group of Legal and Technical Experts shall,

- (a) review the existing relevant instruments, international rules and procedures, in the field of liability and redress for damage resulting from transboundary movements of living modified organisms;
- (b) identify all related elements of liability and redress issues.

2. The Ad-Hoc Group shall, as a priority, inter alia,:

- (a) elaborate the key concepts and terms that are to be addressed in the process;
- (b) define the "damage" resulting from transboundary movements of living modified organisms ;
- (c) identify the inter-relationship between compliance regime and liability and redress system
- (d) review a necessity to develop a Protocol relating to liability and redress system

3. Other Considerations

- (a) The liability and redress system will not override or duplicate any other international legal instrument.

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- (b) The process will take into full account the gap between existing national and international frameworks.
- (c) The work will be carried out, based on of the best available legal and scientific knowledge and experience.
- (d) The Open-ended Ad Hoc Group of Legal and Technical Experts should endeavour to complete its work no later than the given time in the Protocol.
- (e) The Ad-Hoc Group shall submit its final recommendations to COP/MOP, taking into account the comments made by the of Parties and related organizations.

SLOVENIA

[18 January and 5 February 2002]
[SUBMISSION: ENGLISH]

4.1. LIABILITY AND REDRESS (para 2, recomm.2/1))

The first element of Art.27 of the Protocol impose the obligation on the COP/MOP to adopt the process for the appropriate elaboration of international rules and procedures in the field of liability and redress, and the preparation of this issue is part of mandate of the ICCP.

The second major element of Art.27 requires the future process on liability and redress to analyze and take due account of the ongoing process in international law on these matter.

The final element of Art.27 sets out a time-frame in which the process established shall endeavor to complete its work.

Regarding the ICCP recommendations that the Secretariat continues to gather and disseminate information on national, regional and international measures and agreements in the field of liability and redress, as well, to establish of an open-ended ad hoc group of legal and technical experts to carry out the process under Art.27, indicate some relation to the final form of the product of this entire process. Therewith the nature and final content of any future liability and redress regime shall be matter to be decided and resolved by the COP/MOP.

Views on the elements of the TOR for the open-ended ad hoc group of legal and technical experts on liability and redress

The working open-ended ad hoc group should be established by the COP serving as the meeting of the Parties of the Protocol with the following terms of reference:

1. to oversee and examine of existing relevant instruments in order to develop possible elements of a liability and redress regime under the Protocol;
2. to suggest and recommend options of elaboration process;
3. to develop instruments depend on the scope of the Protocol referred in Art.(4);
4. to develop instruments taking into account Art.(17) of the Protocol, too;
5. to identify synergies and cross-fertilisation to the Convention (Art. 14(2));
6. to recommend the most appropriate way to identify damage to biodiversity triggered by transboundary movements of LMOs regarding to Art.(26) of the Protocol;
7. to recommend the final product of the ope-ended and ad hoc group of this entire process;
8. the group shall elect a chair and vice chair for a period of one year.
