



The Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety



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Outline

- Origins
- Cartagena Protocol on Biosafety
- Negotiations on Liability and Redress
- Liability & Redress Supplementary Protocol: Main Articles
- Signature, Ratification & Entry into Force



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Origins



CBD Article 19(3)

“The Parties shall consider the need for and modalities of a protocol setting out appropriate procedures, including, in particular, advance informed agreement, in the field of the safe transfer, handling and use of any living modified organism resulting from biotechnology that may have adverse effect on the conservation and sustainable use of biological diversity.”



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Cartagena Protocol on Biosafety



- 1995: Decision to develop a Protocol focusing on transboundary movement of living modified organisms
- 1996-2000: Negotiations
- 29 January 2000: Adoption of the Cartagena Protocol on Biosafety
- 11 September 2003: Protocol enters into force following 50th ratification
- Number of Parties to date: 160
- 5 meetings of the Conference of the Parties serving as the meeting of the Parties to the Protocol (COP-MOP, the governing body of the Protocol)
 - 82 decisions to give guidance to implementation



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Cartagena Protocol on Biosafety (cont'd)



Objective of the Protocol:

“to contribute to ensuring an adequate level of protection in the field of the safe transfer, handling and use of living modified organisms resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, and specifically focusing on transboundary movements.” (Art. 1)



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Cartagena Protocol on Biosafety (cont'd)

Article 27: Liability and Redress

“The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, adopt **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**, analysing and taking due account of the ongoing processes in international law on these matters, and shall endeavour to complete this process within four years.”

- *Compromise between those who wanted to include detailed rules on liability and redress in the Biosafety Protocol and those who wanted no rules or felt there was insufficient time to develop them.*



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Negotiations on Liability and Redress

- 2004: COP-MOP 1 establishes an Open-Ended Ad Hoc Working Group of Legal and Technical Experts on Liability and Redress in the context of the Protocol to undertake negotiations mandated by Art. 27.
- 2005-2008: five meetings of the Working Group. Negotiations progress but Group is unable to complete its work.
- 2008: COP-MOP 4 agrees to work towards certain legally binding provisions on liability and redress. Establishes a Group of the Friends of the Co-Chairs Concerning Liability and Redress to continue the negotiations.
- 2009-2010: four meetings of the Group of the Friends of the Co-Chairs. At its first meeting, Group agrees that legally binding provisions should take the form of a supplementary protocol to the Biosafety Protocol.



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Negotiations on Liability and Redress (cont'd)

- 15 October 2010: COP-MOP 5 adopts the **Nagoya – Kuala Lumpur Supplementary Protocol on Liability and Redress** through decision BS-V/11.

Objective of the 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 relating to living modified organisms.”



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**INTERNATIONAL YEAR
OF FORESTS • 2011**



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



- Article 1 Objective**
- Article 2 Use of Terms**
- Article 3 Scope**
- Article 4 Causation**
- Article 5 Response Measures**
- Article 6 Exemptions**
- Article 7 Time Limits**
- Article 8 Financial Limits**
- Article 9 Right of Resources**
- Article 10 Financial Security**
- Article 11 Responsibility of States for Internationally Wrongful Acts**
- Article 12 Implementation and Relation to Civil Liability**

- Article 13 Assessment and Review**
- Article 14 Conference of the Parties serving as the Meeting of the Parties to the Protocol**
- Article 15 Secretariat**
- Article 16 Relationship with the Convention and the Protocol**
- Article 17 Signature**
- Article 18 Entry into Force**
- Article 19 Reservations**
- Article 20 Withdrawal**
- Article 21 Authentic Texts**



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Approach of the Supplementary Protocol



Many international treaties on liability and redress focus on civil liability rules for damage.

Supplementary Protocol follows an administrative approach for addressing damage from living modified organisms.

- i.e. *competent authorities are to require operators to take response measures in the event of damage*



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Main Articles

Article 2

Use of Terms

Supplementary Protocol defines “damage” as an adverse effect on the conservation and sustainable use of biological diversity that is measurable and significant.

- Includes indicative list of factors to use in determining significance of an adverse effect.
- Supplementary Protocol is the first international instrument to define *biodiversity damage*.



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Main Articles (cont'd)



Article 5

Response measures

The major obligation that a Party to the Supplementary Protocol assumes is to provide for response measures in the event of damage resulting from living modified organisms.

The Supplementary Protocol assigns responsibilities to the “*operator*” and the *competent authority* to take appropriate response measures.



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Main Articles (cont'd)



Article 5 (cont'd)

Response measures:

Parties to the Supplementary Protocol must require the appropriate **operator**, in the event of damage, to:

- immediately inform the competent authority;
- evaluate the damage; and
- take appropriate response measures.

The **competent authority** may also take response measures, particularly when the operator has failed to do so. The competent authority then has a right of recourse to recover from the operator the costs and expenses incurred in relation to the implementation of the response measures.



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Main Articles (cont'd)



Article 12

Implementation and Relation to Civil Liability

- Supplementary Protocol does include one article on civil liability.
- It allows Parties to develop, in their domestic law, civil liability rules and procedures for damage to biodiversity and associated material and personal damage.



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Signature, ratification & entry into force



- The Supplementary Protocol, in accordance with its Article 17, is open for signature at the United Nations Headquarters, New York from 7 March 2011 to 6 March 2012.
- Consistent with Article 41 of the Convention on Biological Diversity, the COP-MOP requested the Secretary General of the United Nations to be the Depository.
- The Supplementary Protocol will enter into force 90 days after deposit of the 40th instrument of ratification, acceptance, approval or accession.
- Only Parties to the Biosafety Protocol may become Parties to the Supplementary Protocol.



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The Supplementary Protocol is open for signature by Parties to the Cartagena Protocol on Biosafety

Dates: 7 March 2011 – 6 March 2012

Venue: UN Headquarters, New York

Certified true copies:

http://treaties.un.org/pages/DB.aspx?path=DB/Opening%20for%20Signature/page1_en.xml&menu=MTDSG

More information: http://bch.cbd.int/protocol/NKL_Protocol.shtml



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