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Nagoya Kuala Lumpur Supplementary Protocol on Liability and Redress in the Context of 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
- Why is it important to sign and ratify the Supplementary Protocol?



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.”



Origins – Cartagena Protocol on Biosafety

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.



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 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

- 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.”



Articles

Article 1	Objective	Article 13	Assessment and Review
Article 2	Use of Terms	Article 14	Conference of the Parties serving as the Meeting of the Parties to the Protocol
Article 3	Scope	Article 15	Secretariat
Article 4	Causation	Article 16	Relationship with the Convention and the Protocol
Article 5	Response Measures	Article 17	Signature
Article 6	Exemptions	Article 18	Entry into Force
Article 7	Time Limits	Article 19	Reservations
Article 8	Financial Limits	Article 20	Withdrawal
Article 9	Right of Resources	Article 21	Authentic Texts
Article 10	Financial Security		
Article 11	Responsibility of States for Internationally Wrongful Acts		
Article 12	Implementation and Relation to Civil Liability		



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

• ***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.



Main Articles

Article 5 - Response measures (cont.)

- 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

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.



Why is it important to sign and ratify/accede

- It contributes to the prevention or mitigation of damage to biodiversity and to human health.
- It creates an incentive to operators to do their best to ensure safety in the development and handling of living modified organisms.
- It increases further confidence and an enabling environment for the environmentally sound application of modern biotechnology.
- It demonstrates yet another commitment to the conservation and sustainable use of biological diversity.
- It will present another opportunity for both developed and developing country Parties to the Protocol on Biosafety to forge further cooperation in building capacities in the field of biosafety in general, and liability and redress in particular.



Thank You!



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