

## ENVIRONMENT WATCH – March 2008

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***SUMMARY OF THE FIFTH MEETING OF THE  
OPEN-ENDED AD HOC WORKING GROUP ON  
LIABILITY AND REDRESS IN THE CONTEXT OF  
THE CARTAGENA PROTOCOL ON BIOSAFETY:  
12-19 MARCH 2008***

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The fifth 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 (hereafter, the Working Group) took place from 12-19 March 2008, in Cartagena de Indias, Colombia. Approximately 215 delegates attended the meeting, representing governments, intergovernmental organizations, non-governmental organizations, industry and academia.

**A BRIEF ANALYSIS OF THE MEETING**

With just seven weeks remaining before COP/MOP 4 in Bonn, Cartagena warmly welcomed delegates for the critical last mandated meeting of the Working Group of Legal and Technical Experts on Liability and Redress. The baggage some delegates brought to Cartagena included vivid recollections of the final meeting of the Biosafety Working Group and the first meeting of the Ex-COP in Cartagena nine years earlier when negotiations of the Biosafety Protocol could not be concluded. Despite some uncomfortable memories, most delegates seemed happy to return to sunny Cartagena. After a cold spell of meetings in Montreal with only incremental progress, many felt that a little Caribbean spice and heat might just be what was needed to stimulate the process and begin the long-awaited “negotiating dance.” This analysis examines the negotiating dynamics and the diverse interests at play during this meeting and considers the core elements of the discussion, the outcomes and the way forward in light of the impending deadline to conclude negotiations in May in Bonn.

***THE CARTAGENA METHOD: DANCING TO A DIFFERENT TUNE***



The Cartagena meeting got off to a slow start, continuing to work according to the “Montreal method” of streamlining text in sub-working groups. However, by Saturday, the fourth day of the meeting, delegates achieved a discernable momentum, as they began to negotiate and make necessary trade offs. But then, just as delegates seemed to be learning the steps and making some progress, everything came to an abrupt halt when the Co-Chairs changed the tune and tabled their core elements paper. In the paper, the Co-Chairs set out their proposals for a “package deal” comprising four core pieces of a future liability and redress arrangement: a legally binding administrative approach; guidelines on civil liability; a supplementary compensation scheme; and capacity building.

Many were surprised by some of the proposals of the Co-Chairs, particularly that civil liability would be addressed through non-binding guidelines and the administrative approach could be legally binding if the content justified it. Legally binding provisions on civil liability had always been a sticking point for importing countries, because they felt that this would be the only way to effectively secure redress for individuals affected by LMO contamination. The administrative approach lends itself better to incidents of major damage when governments would be seeking redress, and developing countries have little experience working with this approach.

Another controversial proposal was that fault-based liability would be the default standard unless approval of import had been made subject to strict liability. Again importer countries had been insisting on a strict liability standard, where operators would be held liable, without having to engage in the difficult process of attributing fault or proving intention. As a result, some complained that the paper was slanted towards the interests of exporter countries and alleged that non-exporter developing countries had been shortchanged and asserted that a better outcome could be achieved through political negotiations rather than accepting the “package deal.” Others took the view that the core elements paper struck a realistic compromise.

Over the weekend delegates were left to decide whether to accept the package or take a gamble and fight for something more. On Monday developing countries took the lead in rejecting the “package deal” and delegates agreed to substantively revise the core elements paper in a Friends of the Chair group. Thus, with less than 24 hours remaining, negotiations began in earnest. Behind closed doors the 18 negotiators, representing the parties from the different UN regions, managed to

agree on some, and make tangible progress on the substance of other core elements to form the basis of the future arrangement on liability and redress. The core elements were integrated into the “further revised working draft,” tabled and accepted in closing plenary, with corresponding agreed or alternative operational texts. Delegates welcomed the revisions to the core elements reflected in the further revised working draft, noting that it managed to retain a lot of the substance, made progress in some key areas and still left critical issues open for negotiation.

### ***DANCING WITH THE CORE ELEMENTS***

Negotiators made progress when they managed to agree on some of the core elements in the early morning hours, representing the first negotiated outcomes of this process. One of the breakthroughs was that negotiators agreed on a definition of damage. From the outset of negotiations, the question of whether the definition of damage should cover conservation and sustainable use of biodiversity and take into account human health was one of the major points of contention and many delegates were pleased with the agreement reached that the administrative approach’s definition would include this. Arguably the definition is even broader for the part on civil liability where the definition of damage is taken from the wording of Article 27 of the Biosafety Protocol referring to “damage resulting from the transboundary movement of LMOs” without any limitations. Of course the detailed definitions of damage contained in the operational texts are yet to be negotiated, but the core elements contain the political direction and broad parameters that will guide the elaboration of the operational texts.

The determination of the standard of liability remained heavily disputed. Many governments had previously insisted that any choice had to be consistent with their national legislation, but given the diversity of legal systems, any specific choice would have caused a problem for one country or another. Many delegates were surprised that compromise formulations leaving the choice between fault-based or strict liability standard to domestic discretion were rejected, since they effectively implement the domestic approach that had been demanded by so many countries. The important achievement is that previously entrenched positions, where importer countries insisted on strict liability and exporter and hybrid countries maintained fault-based liability, have broken down. Delegates remained helpful that agreement on a compromise formulation leaving the determination of the standard of liability to

domestic discretion could be reached.

Progress was also made on the supplementary compensation scheme. An announcement from an industry representative that six major agricultural biotechnology companies were prepared to enter into a “compact” to provide compensation in the event of damage was met with excitement from a few participants. Other delegates were cautiously optimistic and wanted to see the details of the compact, arguing that its limitations may be designed to serve the interests of the corporations wanting to promote the broader distribution of LMOs. While the significance of the offer remains to be seen, the Working Group agreed on the need for supplementary compensation, with some developing countries proposing it apply to both the administrative approach and civil liability. Divergent views remain on whether a proposed fund should be binding or voluntary and the details of any supplementary compensation arrangement remain to be negotiated.

#### ***DANCING TO THEIR OWN BEAT***

The diversity of negotiating positions and the dynamics within regional groups added to the complexity of the task in Cartagena. Over the last nine years the number of countries having an interest in the production of LMOs has steadily increased and some developing countries have become exporters of LMOs. Especially “hybrid” countries, who are both exporters and importers of LMOs, find themselves attempting to balance the interests of exporters of LMOs and potential harm to biodiversity and livelihoods of their populations from imports of LMOs. As a result, delegations of countries with a greater stake have grown to include trade, agriculture, environment and foreign affairs ministries.

The negotiating dynamics in Cartagena were also affected by the fact that some regional groups found themselves agreeing on procedural issues, including which document should form the basis of negotiations and the creation of a Friends of the Chair Group, but unable to establish joint positions on many substantive issues. The divergence of opinion in certain regional groups also made it hard for interregional groups, like the Group of 77 and China, to come together and throw their collective bargaining power into the balance. Interregional cooperation, which had proven to be

very efficient in past biosafety negotiations, was effectively blocked in Cartagena. Increased diversity of positions marked the debates in the Friend of the Chair Group and some more cynical delegates suggested the “divide” between usual allies made it much easier for a few seasoned negotiators to “conquer.” Since a few countries have been consistently maintaining a “bottom line,” insisting on lower standards than the majority, developing countries will require a unified front in order to exert leverage and secure higher standards in the substantive negotiations

### ***THE ELEMENT IN THE ROOM***

The one issue hanging over the entire process like a Damocles Sword is the choice of instrument. One delegate commented that the most critical issue usually gets resolved at the last moment, when all options and negotiators have been exhausted. Clearly securing legally binding provisions on civil liability remained a sticking point for the majority of countries, and whether this can be secured will largely depend on the ability of developing country regional groups to come together and hold the line until that very last moment. The proposal on a legally binding administrative approach, which seemed to have gained general acceptance, if adopted, would set an important precedent by making an administrative approach part of an international arrangement on liability and redress.

### ***FROM CARTAGENA TO BONN – THE LAST DANCE***

Before making the critical decision on the choice of instrument, operational texts on core substantive issues will have to be negotiated in detail. Delegates agreed that the further revised document still required a lot of work, much more than realistically could be done during the COP/MOP. Given that the Friends of the Chair group had, by the assessment of many, qualitatively and quantitatively advanced the negotiations, delegates agreed to reconvene the group for three days before the COP/MOP. This decision may well contribute to a working document on the basis of which negotiators can engage in creating their own kind of “package deal.” The progress of the intersessional Friends of the Chair group and the acceptance of the outcome by the remainder of the parties will likely determine whether Bonn will indeed become the venue where rules and procedures on liability and redress will be finally agreed upon.

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## **UPCOMING INTERNATIONAL MEETINGS – BIODIVERSITY**

### **INTERNATIONAL CONFERENCE ON BUSINESS AND BIODIVERSITY**

This conference, organized by the environmental foundation Global Nature Fund (GNF) and GTZ in preparation for CBD COP 9, will take place from the 2-3 April 2008 in Bonn, Germany. It aims to exchange knowledge among national and international business representatives, authority officials and stakeholders. For more information, contact: Stefan Hörmann, Project Manager; tel: +49-228-24290-18; fax: +49-228-24290-55; e-mail: [hoermann@globalnature.org](mailto:hoermann@globalnature.org); internet: <http://www.globalnature.org/>

### **SUSTAINING CULTURAL AND BIOLOGICAL DIVERSITY IN A RAPIDLY CHANGING WORLD: LESSONS FOR GLOBAL POLICY:**

This symposium, organized by the American Museum of Natural History, IUCN and Terralingua, will take place from 2-5 April 2008 in New York City and will explore the linkages and policy implications between biological and cultural diversity. For more information, contact: Fiona Brady, American Museum of Natural History; tel: +1-212-496-3431; fax: +1-212-769-5292; e-mail: [brady@amnh.org](mailto:brady@amnh.org); internet: <http://symposia.cbc.amnh.org/biocultural/>

### **INTERNATIONAL ASSESSMENT OF AGRICULTURAL SCIENCE AND TECHNOLOGY FOR DEVELOPMENT INTERGOVERNMENTAL PLENARY:**

This meeting will take place from 7-12 April 2008, in Johannesburg, South Africa. The International Assessment of Agricultural Science and Technology for Development is an international effort to evaluate the relevance, quality and effectiveness of agricultural knowledge, science, and technology; and effectiveness of public and private sector policies as well as institutional arrangements. For more information, contact: Robert Watson, Director (IAASTD); tel: +1-202-473-6965; fax: +1-202-522-7122; e-mail: [rwatson@worldbank.org](mailto:rwatson@worldbank.org); internet: <http://www.agassessment.org>



## **CITES 17TH MEETING OF THE PLANTS COMMITTEE AND 23RD MEETING OF THE ANIMALS COMMITTEE:**

These meetings of the Convention on International Trade in Endangered Species will convene from 15-19 April 2008 (Plants Committee), and 19-24 April 2008 (Animals Committee) in Geneva, Switzerland. For more information, contact the CITES Secretariat: tel: +41-22-917-8139/40; fax: +41-22-797-3417; e-mail: [info@cites.org](mailto:info@cites.org); internet: <http://www.cites.org/eng/news/calendar.shtml>

## **BIODIVERSITY RESEARCH – SAFEGUARDING THE FUTURE:**

This scientific meeting will convene from 12-16 May 2008 in Bonn, Germany, in parallel to the fourth Meeting of the Parties to the Biosafety Protocol, and aims to channel results and needs regarding biodiversity research into the political discussion at the Conference of the Parties to the Convention on Biological Diversity. It will consist of three symposia on: acceleration of biodiversity assessment and inventorying; functions and uses of biodiversity; and biodiversity change relating to the 2010 target and beyond. For more information, contact: Jobst Pfaender, Zoologisches Forschungsmuseum Alexander Koenig; tel: +49-228-9122-277; fax: +49-228-9122-212; e-mail: [precop9@uni-bonn.de](mailto:precop9@uni-bonn.de); internet:

<http://www.precop9.org>

## **PLANET DIVERSITY: LOCAL, DIVERSE AND GMOFREE – WORLD CONGRESS ON THE FUTURE OF FOOD AND AGRICULTURE:**

This meeting, organized by several NGOs, will be held from 12-16 May 2008, in Bonn, Germany, in parallel to the fourth Meeting of the Parties to the Biosafety Protocol. The meeting will consist of an international conference, as well as celebrations, exhibitions and events. For more information, contact: Planet Diversity Secretariat; tel: +49-30-275-90-309; fax: +49-30-275-90-312; e-mail: [info@planet-diversity.org](mailto:info@planet-diversity.org); internet: <http://www.planet-diversity.org/>

## **CARTAGENA PROTOCOL COP/MOP 4:**



The fourth meeting of the Conference of the Parties serving as the Meeting of the Parties to the Cartagena Protocol on Biosafety (COP/MOP4) will take place from 12-16 May 2008, in Bonn, Germany. This meeting will be preceded by three days of intersessional meetings of the Friends of the Chair of the Working Group of Legal and Technical Experts on Liability and Redress in the Context of the Biosafety Protocol. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: [secretariat@cbd.int](mailto:secretariat@cbd.int) ; internet: <http://www.cbd.int/mop4/>

### **NINTH CONFERENCE OF PARTIES TO THE CONVENTION ON BIOLOGICAL DIVERSITY:**

CBD COP 9 will take place from 19-30 May 2008, in Bonn, Germany, including a high-level segment from 28-30 May. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: [secretariat@cbd.int](mailto:secretariat@cbd.int) ; internet: <http://www.cbd.int/cop9/>

### **INTERNATIONAL DAY FOR BIOLOGICAL DIVERSITY:**

“Biodiversity and Agriculture” is the theme of the International Day for Biological Diversity, to be celebrated on 22 May 2008. For more information, contact: CBD Secretariat; tel: +1-14-288-2220; fax: +1-514-288-6588; email: [secretariat@cbd.int](mailto:secretariat@cbd.int); internet:<http://www.cbd.int/ibd/2008/>



## UPCOMING INTERNATIONAL MEETINGS – CLIMATE CHANGE

**TRAINING COURSE ON DOWNSCALING TECHNIQUES FOR GENERATION OF REGIONAL CLIMATE CHANGE SCENARIOS:** This course will convene from 30 March - 3 April 2008, in Bogotá, Colombia. This course is organized under the Iberoamerican Conference of Directors of National Meteorological and Hydrological Services in collaboration with the Iberoamerican Network of Climate Change Offices. This training course is aimed at training relevant stakeholders within the Iberoamerican region on downscaling techniques for generating regional climate change scenarios. For more information, contact: José Ramón Picatoste Ruggeroni; tel: +34-91-436-1496; fax: +34-91-436-1501.

**FIRST SESSION OF THE *AD HOC* WORKING GROUP ON LONG-TERM COOPERATIVE ACTION UNDER THE UNFCCC AND THE FIFTH SESSION OF THE AWG UNDER THE KYOTO PROTOCOL:** These meetings will convene from 31 March - 4 April 2008, in Bangkok, Thailand. For more information, contact: UNFCCC Secretariat; tel: +49-228-815-1000; fax: +49-228-815-1999; e-mail: secretariat@unfccc.int; internet: [http://unfccc.int/meetings/intersessional/awg-lca\\_1\\_and\\_awg-kp\\_5/items/4288.php](http://unfccc.int/meetings/intersessional/awg-lca_1_and_awg-kp_5/items/4288.php)

**FOOD SECURITY AND ENVIRONMENTAL CHANGE: LINKING SCIENCE, DEVELOPMENT AND POLICY:** This conference will take place from 2-4 April 2008, at the University of Oxford, UK, and is organized by the Global Environmental Change and Food Systems Project. The conference will consider: concepts and methods for research on food systems; vulnerability and adaptation; scenarios; decision support; regional research from the Indo-Gangetic Plain, Southern Africa, the Caribbean and Europe; and links to the development agenda and policy process. For more information, contact: Nina Cosgrove, Food Security Conference Secretariat; tel: +44-1865-843297;

**WORLD HEALTH DAY 2008: PROTECTING HEALTH FROM CLIMATE CHANGE:** World Health Day will be held on 7 April 2008. The aims of World Health Day are to: raise awareness; advocate for partnerships on health and climate change; demonstrate the role of the health community in climate change; and spark commitment and action. For more information, contact: WHO Secretariat; tel: +41-22-791-5526; fax: +41-22-791-4127; e-mail: whd2008@who.int; internet: <http://www.who.int/world-health-day/en>

**UNFCCC INFORMAL MEETING OF REPRESENTATIVES FROM PARTIES ON THE OUTCOMES OF COMPLETED ACTIVITIES UNDER THE NWP:** This meeting will convene from 7-9 April 2008, in Bangkok, Thailand. It will bring together representatives of parties alongside experts and representatives of relevant organizations to consider the outcomes of the activities of the NWP completed prior to the meeting. For more information, contact: UNFCCC Secretariat; tel: +49-228-815-1000; fax: +49-228-815-1999; e-mail: secretariat@unfccc.int; internet: [http://unfccc.int/adaptation/sbsta\\_agenda\\_item\\_adaptation/items/4290.php](http://unfccc.int/adaptation/sbsta_agenda_item_adaptation/items/4290.php)

**SIXTEENTH SESSION OF THE COMMISSION ON SUSTAINABLE DEVELOPMENT:** The sixteenth session of the Commission on Sustainable Development will be held at UN headquarters in New York from 5-16 May 2008. The review session will focus on agriculture, rural development, land, drought, desertification and Africa. For more information, contact: DESA Secretariat; tel: +1-212-963-8102; fax: +1-212-963-4260; e-mail: dsd@un.org; internet: <http://www.un.org/esa/sustdev/csd/review.htm>

**INTERNATIONAL GEF WORKSHOP ON EVALUATING CLIMATE CHANGE AND DEVELOPMENT: RESULTS, METHODS AND CAPACITIES:** This meeting will convene from 10-13 May 2008, in Alexandria, Egypt. The GEF Evaluation Office is

organizing this workshop, which will permit sharing of experiences in evaluating projects and programmes aimed at the nexus between climate change and development. Special attention will be paid to the results reported and whether there is convergence in findings throughout agencies. The workshop aims to realize the potential of evaluations to contribute to climate change mitigation and adaptation. For more information, contact the Secretariat: tel: +1-202-458-8537; fax: +1-202-522-1691; e-mail: IntWorkshop@thegef.org; internet: <http://www.esdevaluation.org>

**28TH SESSIONS OF THE UNFCCC SUBSIDIARY BODIES:** The 28th sessions of the Subsidiary Bodies of the UNFCCC – the SBI and the SBSTA – are scheduled to take place from 2-13 June 2008, in Bonn, Germany. In addition, the second meeting of the *Ad Hoc* Working Group on Long-Term Cooperative Action and the resumed fifth session of the *Ad Hoc* Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol are also scheduled to be held. For more information, contact: UNFCCC Secretariat; tel: +49-228-815-1000; fax: +49-228-815-1999; e-mail: [secretariat@unfccc.int](mailto:secretariat@unfccc.int); internet: <http://unfccc.int>

**THIRD SESSION OF THE *AD HOC* WORKING GROUP ON LONG-TERM COOPERATIVE ACTION UNDER THE UNFCCC AND SIXTH SESSION OF THE AWG UNDER THE KYOTO PROTOCOL:** The third meeting of the *Ad Hoc* Working Group on Long-Term Cooperative Action is expected to take place in August/September 2008, with the location and date to be determined. The sixth session of the AWG on Further Commitments for Annex I Parties under the Protocol will also take place at the same time. For more information, contact: UNFCCC Secretariat; tel: +49-228-815-1000; fax: +49-228-815-1999; e-mail: [secretariat@unfccc.int](mailto:secretariat@unfccc.int); internet: <http://unfccc.int>

**INTERNATIONAL CONFERENCE: ADAPTATION OF FORESTS AND FOREST MANAGEMENT TO CHANGING CLIMATE WITH EMPHASIS ON FOREST HEALTH: A REVIEW OF SCIENCE, POLICIES, AND PRACTICES:** This meeting will convene from 25-28 August 2008, in Umeå, Sweden. The meeting will



be co-hosted by the FAO, the International Union of Forest Research Organizations (IUFRO) and the Swedish University of Agricultural Sciences and will focus on the current state of knowledge of ongoing changes in climatic conditions in different regions of the world, and the implications of these changes for forest health, forest management and conservation. For more information, contact: Alexander Buck, IUFRO; tel: +43-1-877015113; e-mail: buck@iufro.org; internet:

<http://www.forestadaptation2008.net/home/en/>

**FOURTEENTH CONFERENCE OF THE PARTIES TO THE UNFCCC AND  
FOURTH MEETING OF THE PARTIES TO THE KYOTO PROTOCOL:**

UNFCCC COP 14 and Kyoto Protocol COP/MOP 4 are scheduled to take place from 1-12 December 2008 in Poznan, Poland. These meetings will coincide with the 29th meetings of the UNFCCC's subsidiary bodies. For more information, contact: UNFCCC Secretariat; tel: +49-228-815-1000; fax: +49-228-815-1999; e-mail: secretariat@unfccc.int; internet:

<http://unfccc.int/>