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**Assessment of key issues likely to emerge at the
COP-MOP meeting on Biodiversity/Biosafety
to be held in March 2006 in Curitiba/Brazil**

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CONTENTS

1	SUMMARY	1
2	INTRODUCTION	2
2.1	Methodology	2
3	KEY ISSUES AT THE EIGHTH CONFERENCE OF THE PARTIES OF THE CBD.....	3
3.1	Introduction.....	3
3.2	Article 8 (j) traditional knowledge, innovations and practices.....	3
3.3	International Regime on Access and Benefit Sharing (ABS).....	4
3.4	Strategic implementation plan and the 2010 target.....	7
3.5	Taxonomy initiatives.....	8
3.6	Other issues for in-depth consideration.....	8
4	KEY ISSUES AT THE THIRD CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES TO THE CARTAGENA PROTOCOL ON BIOSAFETY (COP/MOP)	9
4.1	Introduction.....	9
4.2	Handling, transport, packaging and identification (Article 18)	9
4.3	Liability and redress (Article 27).....	10
4.4	Risk assessment and risk management (Articles 15 and 16)	11
	ANNEX I: SUMMARY OF THE CONFERENCES OF THE PARTIES (COPS) OF THE CONVENTION ON BIOLOGICAL DIVERSITY (CBD)	12
	ANNEX II: SUMMARY OF THE COPS SERVING AS THE MEETING OF THE PARTIES TO THE CARTAGENA PROTOCOL ON BIOSAFETY (COP/MOP).....	14
	ANNEX III: ELEMENTS PROPOSED FOR THE INTERNATIONAL REGIME ON ABS	15

1 SUMMARY

The aim of this Policy Brief is to give an insight into the key issues likely to emerge at the eight meeting of the Conference of the Parties (COP 8) to the Convention on Biological Diversity (CBD) and the third meeting of the Conference of the Parties serving as Meeting of the Parties to the Cartagena Protocol on Biosafety (COP/MOP 3) to be held in March 2006, in Curitiba, Brazil.

Due to the intensive and hard discussions and negotiations initiated by both developing and developed countries, the issue of the International Regime on Access and Benefit Sharing (ABS) is likely to dominate the COP 8 agenda in Curitiba. The recent meetings of the working Group on ABS showed that the negotiations on ABS regime are characterized by fundamental disagreements between developed and developing countries about nature, scope, elements and objective of the regime. For an international regime on ABS to be adopted, a lot of efforts in negotiations need to be spent. The position of developing countries' is that the international regime should be either fully legally binding or partly binding. However, the European Union (EU) together with other industrialized countries seem unlikely to agree to a binding international regime. In addition to the discussions on the ABS, it is also likely that during the COP 8 the EU will stress the need for in-depth negotiations on the issue of the CBD strategic plan and the 2010 target. Furthermore, the EU will avoid any substantial commitments in financial issues such as the budget of Global Environmental Facility (GEF) and will stress the need for streamlining implementation of different Multilateral Environmental Agreements (MEAs).

Delegates to COP/MOP 3 will have to return to the issues on which consensus was not reached in the main negotiations of the biosafety regime and the former COP/MOPs, namely handling and packaging, risk assessment and management, and liability and redress. Since these issues are the in the very heart of the Biosafety Protocol, any decision to be taken in this regard will have huge impacts on the future of this regime.

The workload and the scope of the CBD grows by each COP. Additionally, the number of working and technical groups providing advice to the CBD processes, including COP, has notably increased. It remains to see how COP 8 and COP/MOP 3 meetings can deal with their full agendas and to what extent the international community participating the meetings will be able to take on board the vast amount of recommendations put forward by the different working- and experts groups.

2 INTRODUCTION

The CBD, negotiated under the auspices of the United Nations Environment Programme (UNEP), was adopted on 22 May 1992, and entered into force on 29 December 1993. The CBD has currently 188 Parties.¹ The CBD aims to promote “the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of benefits arising from the use of genetic resources” (Article 1). The COP is the governing body of the CBD, and advances implementation of the Convention through the decisions it takes at its periodic meetings. Reservations to the CBD or to its Protocols are not possible, however reservations to COP decisions are possible (Article 37). To date the COP has held 7 ordinary meetings, and one extraordinary meeting (the latter, to adopt the biosafety protocol, was held in two parts). Key COP Decisions and Key COP/MOP Decisions are summarised in Annex I and II.

COP 8 to the CBD will be held in Curitiba, Brazil (20-31 March 2006). COP/MOP 3 will be held in Curitiba, Brazil (13-17 March 2006). Key issues likely to emerge at COP 8 are: Article 8(j) on traditional knowledge, innovations and practices; an international regime on access and benefit sharing, strategic implementation plan including the 2010 target and taxonomy initiatives. Additionally, the COP 8 Agenda includes a number of other issues for in-depth consideration, including islands biodiversity and biodiversity of dry and sub-humid lands. Key issues expected to be raised at COP/MOP 3 will be the issue of handling, transport, packaging and identification (Article 18), risk assessment and risk management (Articles 15 and 16) and liability and redress (Article 27)². This Policy Brief aims to give an insight into the key issues likely to emerge at both events.

2.1 Methodology

The Policy Brief is based on a systematic review of documents provided online by the Secretariat of the CBD at www.biodiv.org. These documents include the relevant COP decisions, recommendations of working and expert groups, different summaries, COP 8 agenda and related documents, and general information on the work programmes. In addition, information from several related documents and summaries published by the International Institute for Sustainable Development (IISD) www.iisd.org have been integrated in the analysis.

¹ See list of parties at the official website of the CBD, at: <http://www.biodiv.org/world/parties.asp> (last visited on 28-01-06).

² UNEP/CBD/COP-MOP/3/1.

3 KEY ISSUES AT THE EIGHTH CONFERENCE OF THE PARTIES OF THE CBD

3.1 Introduction

The meetings at the COP 8 are likely to be characterized by different negotiating blocks. Major blocks are the African Group, consisting of most African countries; the European Union (EU) and Candidate States; Group of Like-Minded Megadiverse Countries;³ Latin American and Caribbean Group (GRULAC) and other OECD countries. It is also likely that any progress in the negotiations of key issues will depend on the positions of the Mega Diverse Countries, the African group and the EU.

In relation to the International Regime on Access and Benefit Sharing (ABS), the EU seems likely to agree to proceed towards an international regime with some legally binding elements. However it is also likely that the EU will stress the need for in-depth negotiations on the issue of the CBD strategic plan and the 2010 target. In return developing countries are likely to raise the issue of raising financial support. The EU will avoid any substantial commitments in financial issues such as the budget of GEF and will stress the need for streamlining implementation of different MEAs, e.g. the implementation of the CBD and the United Nations Convention on Climate Change (UNCCC). The international civil society in particular NGOs will stress the need to work on Article 8(j) and the link to ABS; technical experts groups will stand behind the in-depth topics, such as island biodiversity and taxonomic initiatives. Industry will express its fears from an overregulation in an international ABS regime.

3.2 Article 8 (j) traditional knowledge, innovations and practices

The fourth meeting of the Ad hoc Open-ended Inter-sessional Working Group on Article 8(j) and related provisions of the CBD met from 23-27 January 2006, in Granada, Spain.⁴ Delegates adopted several recommendations for COP 8. In the discussions on an international ABS regime, the delegates identified five elements considered for inclusion in an international regime on ABS that are closely related to Article 8(j). This includes the following:

- a) Measures to ensure compliance with Prior and Informed Consent (PIC) of indigenous and local communities holding traditional knowledge;
- b) Disclosure of origin of genetic resources and associated traditional knowledge in Intellectual Property Rights (IPR) applications;
- c) Recognition and protection of the rights of indigenous and local communities over their traditional knowledge;

³ 17 countries rich in biodiversity, consisting of, inter alia, Brazil, Colombia, Costa Rica, India and Tanzania.

⁴ Article 8(j) of the CBD says: "Each Contracting Party shall, as far as possible and as appropriate: ... (j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices;"

- d) Customary law and traditional cultural practices; and
- e) Instruments to ensure benefit sharing with indigenous and local communities.

In order to avoid overlap and duplication of efforts between the Article 8(j) and ABS Working Group, the Working Group recommend to the COP 8 to take decision on collaboration with the Working Group on ABS on the negotiations for an international regime on ABS and to make the necessary arrangements. In addition, The COP is asked to invite indigenous and local communities to provide with their experiences and raise the financial support for projects related to indigenous and local communities participation at the CBD events. The delegates also recommend to the COP to invited parties to develop, adopt/or recognize, as appropriate, national and local sui generis models for traditional knowledge protection with the full and effective PIC and participation of the indigenous and local communities. In addition, the Working Group recommends the COP to be given the mandate to develop the draft elements of an ethical code of conduct for consideration at COP 9.

Concerning Genetic Use Restriction Technologies (GURTs), the Working Group requests the COP reaffirms its Decision V/5 section III on GURTs and to invite parties to respect the right of farmers and indigenous and local communities to use, save, exchange their farm-saved seeds and to engage in further scientific research including a case by case risk assessment. Other international organisations and bodies, such as WIPO, UNESCO and the UN Commission on Human Rights are invited to study patents granted and pending GURTs patents, and on the ethical and spiritual consequences of GURTs.

3.3 International Regime on Access and Benefit Sharing (ABS)

3.3.1 Background

One of the three objectives of the CBD, as set out in Article 1, is the “fair and equitable sharing of the benefits arising out of the genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding”.⁵ At the World Summit on Sustainable Development (WSSD), the international community called for an international regime on ABS. Thereafter, COP 7 mandated the Working Group on ABS to initiate negotiations on an international ABS regime. COP 8 is due to negotiate the recommendations of the Working Group. The Working Group on ABS had its Fourth meeting (between 31

⁵ A framework for the implementation of this objective of the Convention with regard to access to genetic resources and benefit sharing is provided in Article 15 of the CBD. Furthermore, Article 8(j) contains provisions to encourage equitable and fair benefit sharing with indigenous and local communities. These provisions are linked to the provision on access to, and transfer of technology, exchange of information, technical and scientific cooperation, the handling of biotechnology and distribution of its benefits, and financial resources and financial mechanism. (See Articles 16-21). Many meetings have been held to draw upon all relevant resources and capacities to implement this objective, however parties experienced difficulties to legislate it at the national level. Therefore, the COP decided to establish an Ad Hoc Open-ended Working Group with the mandate to develop guidelines and other approaches for benefit sharing. Out of this Working Group the (voluntary) Bonn Guidelines on Access and Benefit-Sharing, which has been adopted at the COP 6.

January and 05 February 2006) in Granada, Spain. The parties seemed to have diverse opinion on the nature, scope, potential objectives and elements of such a regime. In the meetings in Granada delegates were burdened with many questions regarding how to design an international regime on ABS, despite the gap analysis mandated by the third meeting in Bangkok.

The meetings in Granada did not seem to enable countries to start structured negotiations. The EU and its Candidate members with Switzerland rejected an African text that was proposed by Ethiopia at the beginning of the meetings with the arguments that they were not prepared for it. Other countries, such as Australia, Japan, New Zealand and Canada opposed the idea of starting structured negotiations. The Chair of the meetings proposed a different version of the text, nevertheless, many countries rejected it or part of it. The following discusses the key topic in the negotiations.

3.3.2 Nature

In the third meeting of the Working Group on ABS (February 2005) delegates accepted the idea of an ABS regime with both binding and non-binding instruments, but they failed to confirm whether the international regime could be composed of one or more instruments within a set of principles, norms, rules and decision-making procedures that could be legally binding and/or non-binding. Where developing countries want the regime to be legally fully or partly binding, the EU, Norway and Switzerland prefer to keep this option open. It seemed that within the EU there is no real consensus on these issues. Some EU Member States, eg Spain, publicly announced their support for a binding regime. The EU was not able to come up with own proposals and therefore maintained a defensive position.

3.3.3 Scope

At COP 7 delegates decided to include the following points in the scope:

“(i) Access to genetic resources and promotion and safeguarding of fair and equitable sharing of the benefits arising out of the utilization of genetic resources in accordance with relevant provisions of the Convention on Biological Diversity; (ii) Traditional knowledge, innovations and practices in accordance with Article 8(j)”.⁶

The debate on the scope focuses on the question what is to be included within the scope of the obligation of benefit sharing. Provider countries, like Brazil, want the regime with the widest scope possible that includes channelling benefits to countries of origin, including those arising from the use of derivatives and products of genetic resources. Most user countries (mostly developed countries, in particular Australia, New Zealand, Japan and Korea) oppose the inclusion on derivatives. These countries are not convinced of the need of an international instrument at this stage and favoured the narrowest scope possible. However, some developing countries with national fast-growing research and development capacities, like Mexico, also favour a narrower scope. On the other hand, in the fourth Working Group meeting in Spain the EU

⁶ UNEP/CBD/COP/ VII/19.

reiterated the need for gap analysis in the international legal system and the relationship between the CBD and these processes prior to establishing the nature and the scope of the international regime. Therefore, decisions need to be taken on whether the regime should address the relationship with other international instruments and process, such as the International Treaty on Plant Genetic Resources (ITPGR), the World Trade Organisation (WTO), and the World Intellectual Property Rights Organisation (WIPO), and covering all activities leading to commercial use and all biodiversity elements within the jurisdictional scope of the CBD.

3.3.4 Objectives

Delegates to COP 8 will have also to address the objectives of the ABS regime. Access provider countries (mostly developing countries) propose that objectives of the regime should be to:

- a) Prevent the continued misappropriation and misuse of genetic resources and their derivatives;
- b) Ensure that benefits flow to countries of origin;
- c) Protect the rights of indigenous and local communities over traditional knowledge;
- d) Reinforce national legislation with compliance and enforcement at the international level; and
- a) Ensure transfer of technology.

Other delegates support the position that the international regime should relate directly to those of the CBD, or staying within the framework of the CBD. User countries, in particular the EU, say that the international regime should ensure or guarantee the fair and equitable sharing of benefits arising out of the use of genetic resources, rather than prevent their misappropriation and misuse and also they suggest not to refer to derivatives of genetic resources. Many user countries want the access to be included as an objective of the regime. However, developing countries strongly reject that.

3.3.5 Elements

The third Working Group meeting in 2005 showed the wide range of elements the different parties proposed. The list of elements seem too long for any regime to include, therefore delegates to the COP will have decide which binding and non-binding elements shall be included and which not. Annex III includes the list of the main elements proposed for inclusion in the international regime.

The main progress achieved at the meetings in Granada was on the ideas of the creation of mechanism to establish the legality of acquisition of genetic resources, such as a certificate of origin, source of legal provenance, and the institutional relationships with other forums, such as WIPO, where these issues are addressed. The EU and Switzerland their flexibility in the willing to negotiated these aspects. At COP 8 delegates will deal with these issues.

3.4 Strategic implementation plan and the 2010 target

COP 7 adopted the Strategic Plan, committing Parties to more effective and coherent implementation of the three objectives of the Convention in order to achieve, by 2010, a significant reduction in the current rate of biodiversity loss at the global, regional and national level.⁷ Furthermore, the COP established the Ad Hoc Open-ended Working Group on Review of Implementation of the Convention to, inter alia, consider progress in the implementation of the Convention and Strategic Plan and achievements leading up to the 2010 target, and to consider ways and means of identifying and overcoming obstacles to the effective implementation of the Convention.⁸

In the first meeting of the Working Group, COP 8 has been recommended, inter alia, to undertake, prior to COP-9:

- An in-depth review of the implementation of Strategic Plan Goals 2 and 3, including an assessment of obstacles to their implementation and of ways and means of overcoming such obstacles; and
- To develop consolidated and up-to-date guidance for the development, implementation and evaluation of National Biodiversity Action Plans (NBSAPs) and the effective integration of biodiversity concerns into relevant sectors.

In addition, the COP has been asked to consider options for the provision of increased technical support for developing countries for facilitating and promoting implementation of the CBD, such as a technical assistance programme, including consideration of the potential role of the Secretariat and other international organisations, and also to consider options to undertake, on a voluntary basis, a review of national implementation. The COP is also recommended to decide on new and additional financial resources for implementation and to make the implementation issue a permanent issue on the agenda. The COP has also been asked to decide to consider, at COP-9, the in-depth review of the implementation of Strategic Plan Goals 2 and 3, and the consolidated guidance for the development, implementation and evaluation of NBSAPs and the effective integration of biodiversity concerns into relevant sectors. In addition, COP 8 is supposed to address the special role of the private sector in the achievement of the 2010 target.

⁷ UNEP/CBD/COP/VI/26.

⁸ At its first meeting, the Working Group adopted recommendations, inter alia, on: implementation of the Convention and the Strategic Plan; review of processes; review of the CHM; review of financial resources and mechanism; private sector engagement; framework for monitoring implementation, and review of work programmes and national reporting. In addition, it has been concluded that there are two crucial, interrelated issues on the road linking policy to implementation: streamlining the Convention processes and providing assistance for national implementation. Furthermore, developing countries stressed that their main concern was to increase assistance and capacity for national implementation. In response, developed countries stressed the need to streamline processes and consolidate decisions, guidance and instruments in order to free resources currently tied up in myriad of international activities, to the benefit of national implementation. UNEP/CBD/COP/VII/30.

3.5 Taxonomy initiatives

The Global Taxonomy Initiative (GTI) has been established by the COP to address the lack of taxonomic information and expertise available in many parts of the world, and thereby to improve decision-making in conservation, sustainable use and equitable sharing of the benefits derived from genetic resources. The GTI is specifically intended to support implementation of the work programmes of the CBD on thematic and cross cutting issues. It is believed, that given the several demands for capacity building in taxonomy, activities under the GTI has to be linked to the implementation of the CBD. In the 11th Meeting of the Subsidiary Body on Scientific, Technical and Technological Advice of the Convention on Biological Diversity (SBSTTA), held in November-December 2005 in Montreal, Canada, many recommendations have been made for the COP 8.⁹ Accordingly the COP is asked to:

- a) Emphasise the need to build and retain capacity to address the taxonomic impediment, and explore options to ensure the long-term sustainability of the necessary financial support, including the possibility of establishing a special fund;
- b) Adopt as a target for the work programme “a widely accessible working list of known species, as a step towards a global register of plants, animals, micro-organisms and other organisms”;
- c) Request the Executive Secretary to consult with relevant organizations and funding agencies regarding the global taxonomic needs assessment; and
- d) Adopt the planned activities to support implementation of the work programmes on mountain biodiversity, invasive alien species (IAS), protected areas (PAs) and island biodiversity.

3.6 Other issues for in-depth consideration

In addition to the issues discussed above, thematic programmes for island biodiversity and for biodiversity of dry and sub-humid lands are also included in the agenda of the COP 8.¹⁰ Even though discussions on these thematic programmes are unlikely to gain a dominant role in the meeting the progress made in the context of the programmes will be of international importance, e.g., contributing to achieving the CBD 2010 biodiversity target. Additionally, the CBD thematic programme on dry and sub-humid lands has an important role in creating synergies between action on biodiversity, climate changes and desertification (e.g. between CBD, UNFCCC and UNCCD).¹¹

⁹ The COP is also recommended to invite parties to promote taxonomy and related research, develop and implement capacity-building activities, mobilize financial and technical resources to assist developing countries, and promote cooperation and networking. Moreover, the COP is asked to request the GEF to continue supporting the implementation of the planned activities, consider development of simplified procedures for GTI-related proposals, and provide financial resources for GTI national focal points.

¹⁰ UNEP/COP/8/1.

¹¹ UNEP/CBD/COP/VII/31.

4 KEY ISSUES AT THE THIRD CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES TO THE CARTAGENA PROTOCOL ON BIOSAFETY (COP/MOP)

4.1 Introduction

The central key issue at the COP/MOP 3 will be: handling, transport, packaging and identification of Living Modified Organisms (LMOs) for food, feed and processing (LMO-FFPs). In addition, questions of risk assessment and risk management, and liability and redress are also likely to be emphasised in the meeting.¹² The negotiations blocks differ from those of the CBD ABS regime. In these negotiations there is a stronger link between the EU and the African Group, however other developing countries are divided in several groups. Generally the parties can be divided into two groups: LMOs importing countries and LMOs exporting countries. The importing countries want clear obligation imposed on the exporting countries. Exporting countries, such as Brazil, fear that restrictive rules would harm international trade and hence they oppose it. The ruling of WTO against the EU rules restricting the access of genetically modified food into the EU will have a huge impact on the negotiations developments at the meetings. Many countries will see their arguments backed by the WTO decision to less restrictive rules.

4.2 Handling, transport, packaging and identification (Article 18)¹³

The negotiations within the context of MOP centre currently on:

- a) defining the standards of packaging and labelling of LMOs with the view of maintaining safety levels during transport;
- b) consideration of exiting international recommendations and agreements on transport;
- c) the need for coverage of transit, adoption of the precautionary approach;
- d) development of general principles on labelling, packaging and transport; and
- e) the labelling of LMOs intended for food purposes.¹⁴

Many ideas were proposed to address these issues. Some options calls for the development by the COP of the necessary standards, with others foresee drawing upon exiting international standards. The following introduces the key issues proposed by the countries to decide:

¹² UNEP/CBD/COP-MOP/3/1.

¹³ The Protocol sets requirements for labelling and packaging. Accordingly, each party has to ensure that LMOs that are subject to intentional transboundary movement are handled, packaged and transported under conditions of safety; taking into consideration relevant international rules and standards; and it has to ensure that the following LMOs are accompanied with the required documents.

¹⁴ At COP/MOP 2, celebration of more detailed documentation requirements for LMO-FFPs was the core issue on the agenda. However, COP/MOP 2 did not succeed in fulfilling its main task laid out in the text of the Protocol itself, namely adopting a decision on the detailed requirements of documentation of LMO-FFPs “no later than two years after the date of entry into force of this Protocol”. (Article 18.2 (a)). Main areas of disagreement included: requirements to specify which LMOs shipment may contain; and thresholds for adventitious or technically unavoidable presence of LMOs and whether or not they trigger the documentation requirement.

- a) Shipments containing LMOs should be clearly identified, handled and packaged to prevent accidental releases and should include details of the relevant focal point;
- b) Specific labelling of good products incorporating LMOs, and other LMOs should be labelled according to environmental health and ethical concerns;
- c) Inclusion of a movement document from the point of departure on the point of use;
- d) Adoption of precautionary measures and the right of parties to impose the necessary terms and conditions for the protection of the environment (including socio-economic imperatives and risks to agriculture and human health);
- e) Needs of developing countries and countries with economy in transition.

In addition, the negotiations also focus on the formulation of the text, such as shipments and packaging “contain” or “may contain”, and hence being voluntary or binding rules. The main concern of exporting countries is that labelling of any shipment that might include LMO-FFPs as containing LMOs might interfere with trade in several ways. On the other hand, importing countries fear that general not clear and strict documentation requirements will give too much flexibility to exporters and that all shipments they received could include a long list of LMOs the shipment may or may not include. They also fear, that uncertain information will make approval procedures for shipments more difficult. In addition, importing countries are the position that the choice between “contain” and “may contain” related to shifting the burden of proof from the exporting to the importing country.

4.3 Liability and redress (Article 27)

The issue of liability and redress for damage resulting from the transboundary movements of LMOs has been one of the agenda themes during the negotiations.¹⁵ However, the delegates have been unable to reach consensus on the liability regime. The parties have agreed to adopt within four years a concept for liability and redress mechanism, taking into account ongoing process in international law.¹⁶ In COP/MOP 1 the parties decided to establish an Open-Ended Ad-Hoc Working Group of Legal and technical experts on liability and redress in the context of the Protocol.¹⁷ The mandate of Working Group is to formulate a concept for potential and/or actual damage scenarios of concern that may be covered under the Protocol.¹⁸ The Working Group shall conclude its work in 2007. However, at COP-MOP 3 the Group is supposed to report the current stand of its work progress.

¹⁵ The term "liability" is normally associated with the obligation to provide compensation for damage caused to persons, property and the environment. Liability and redress in the context of the Protocol concern the question of what would happen should the transboundary movement of LMOs results in damage.

¹⁶ Article 27.

¹⁷ UNEP/CBD/BS/MOP/1/15 p. 69.

¹⁸ This includes: (a) Scope of “damage resulting from transboundary movements”; (b) definition of damage; (c) level of significance of the damage that should be addressed; (e) valuation of damage to biodiversity; (f) causation; (g) channelling of liability; (h) roles of Party of import and Party of export under the Protocol; (i) standard of liability; (j) insurance;(k) nature and scope of redress; and (l) standing/right to bring claims.

4.4 Risk assessment and risk management (Articles 15 and 16)

Furthermore, the COP/MOP 3 is expected to address the issues of risk assessment and risk management. Of the two, it is likely that issues related to risk assessment will dominate the discussions because the issue of risk management has a more national character. Therefore many countries oppose international regulations to replace their national policies. The issue of risk management has been a matter of dispute already in the negotiation of the Protocol between the “Miami Group”¹⁹ and the EU backed by “the Like-Minded Group”²⁰ and consumer organisations. The key dispute was whether the risk assessment should be sound scientific or scientific and what is the relationship of the risk assessment to the WTO rules. The EU and the Like-Minded Group opposed the integration of the precautionary approach into the protocol and aimed to the scientific risk assessment. The Miami Group wanted a sound and objective scientific one. Developing countries wanted the inclusion of non-scientific socio-economic considerations in the Protocol’s decision criteria for advance informed agreement.²¹

¹⁹ Negotiating group comprising Argentina, Australia, Canada, Chile, Uruguay and the USA.

²⁰ Negotiating group formed at the Cartagena meeting, comprising the G-77 countries and China, with the exception of Argentina, Chile and Uruguay.

²¹ See Gupta, A. (2001). Advance Informed Agreement: A Shared Basis for Governing Trade in Genetically Modified Organisms?, *Indiana Journal of Global Legal Studies*, Vol. 9, 1, pp. 265-281; Hodgson, J. (2000), Biosafety rules get thumbs up, *Nature Biotechnology*, Vol. 18, pp. 253-253; Miller, H.I., (1999). Cynicism and politics dominate UN biotechnology deliberations, *Nature Biotechnology*, Vol. 17, pp. 515-515.

ANNEX I: SUMMARY OF THE CONFERENCES OF THE PARTIES (COPS) OF THE CONVENTION ON BIOLOGICAL DIVERSITY (CBD)

The COP is the CBD ultimate governing authority.²² It consists of all ratified parties. It advances implementation of the Convention through the decisions it takes at its meetings. It also reviews progress under the Convention, identifies new priorities, and sets programmes of work. The COP can also make amendments to the Convention,²³ establish ad hoc working groups, create expert advisory bodies, review progress reports by member nations, and cooperate with other international organizations and agreements on issue related to the Convention. From 1994 to 1996, the COP held its ordinary meetings annually. Since then these meetings have been held somewhat less frequently and, following a change in the rules of procedure in 2000, will now be held every two years. To date the COP has taken a total of 182 procedural and substantive decisions. Table 1 includes the key decisions of the COPs. Furthermore, the Open-ended Inter-Sessional Meeting on the Multi-Year Programme of Work of the COP up to 2010 (MYPOW) was held (March 2003, Montreal, Canada) and adopted recommendations on: achieving the 2010 target and the evaluation of progress in implementing the Convention and the Strategic Plan; CBD Contribution to the Millennium Development Goals (MDGs) and the Commission on Sustainable Development process.

²² Article 23. The COP Decisions should provide an interpretation of the Articles of the Convention, and assist Contracting Parties in implementing the Convention.

²³ According to Article 31 each member state has one vote. Amendments to the Convention needs consensus. In case of absence of censuses, amendments can be taken with two-third majority Article 29 (3).

Table I: Key Decisions of the COP of the CBD

COP	Key Decisions ²⁴
COP 1, Nassau, Bahamas, (28 November – 9 December 1994).	Adopted the rules of procedures of the COP. Decided to adopt the policy, strategy, programme priorities and eligibility criteria for access to and utilization of financial resources. (Partly retired). ²⁵
COP 2, Jakarta, Indonesia, 6-17 November 1995.	Expanded the work agenda to research and to identify the needs for conservation and sustainable use of the marine and coastal biological diversity (Jakarta Mandate). (Partly retired).
COP 3, Buenos Aires, Argentina, (4-15 November 1996).	Decided to establish a multi-year programme of activities on agricultural biodiversity (Party retired). Updated the policies, strategies, programme priorities and eligibility criteria to access to and utilization of financial resources, in particular cooperation with the GEF. (Partly retired). ²⁶
COP 4, Bratislava, Slovakia, (4 – 15 May 1998).	Established an ad-hoc open-ended inter-sessional working group on Article 8 (j). Adopted a programme of work on biodiversity of inland water ecosystems and a programme work on forest biodiversity.
ExCOP 1, Cartagena, Colombia & Montreal, Canada (22-23 February 1999 & 24-28 January 2000).	Adopted the Cartagena Protocol on Biosafety.
COP 5, Nairobi, Kenya, (15-26 May 2000).	Adopted the Ecosystem Approach. Established an ad-hoc open-ended working group on access to genetic resources.
COP 6. The Hague, Netherlands, (7-19 April 2002).	Adopted guiding principle on alien species that threaten ecosystems, habitats or species. Decided to adopt the (voluntary) Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefit Arising out of their Utilization. And to integrate it into the work of the working group on access to genetic resources. Established an open-ended inter-sessional meeting to consider the multi-year programme of work for the COP 2010.
COP 7, Kuala Lumpur, Malaysia, (9-20 February 2004).	Updated the rules of procedures of the COP. Adopted a programme of works on mountain biodiversity; Protected areas; and on technology transfer and cooperation. Adopted guidelines on tourism and development. Decided to mandate the Ad Hoc Open-ended Working Group on Access and Benefit-sharing with the collaboration of the Ad Hoc Open ended Inter-sessional Working Group on Article 8(j) and Related Provisions, to negotiate an international regime on ABS.

²⁴ An updated list of retired decision see information provided online at: <http://www.biodiv.org/decisions/dec-ret-01-en.pdf> (visited on 26-08-04).

²⁵ Retired pursuant to paragraph 3 of Decision VI/27. Decides to retire the decisions and elements of decisions listed in the annex to the present decision.

²⁶ Retired pursuant to paragraph 1 of Decision VII/33 that decides to retire the decisions and elements of decisions adopted at its third and fourth meetings listed in the annex to the present decision.

ANNEX II: SUMMARY OF THE COPS SERVING AS THE MEETING OF THE PARTIES TO THE CARTAGENA PROTOCOL ON BIOSAFETY (COP/MOP)

In February 1999 an Extraordinary COP (EXCOP) was held in Cartagena, Colombia to negotiate the Biosafety Protocol. The EXCOP was resumed in January 2000 on Montreal, Canada. At this EXCOP delegates adopted the Cartagena Biosafety Protocol. The Protocol addresses the safe transfer, handling and use of Living modified organism (LMOs) that may have an adverse effect on biodiversity, taking into account human health, with a specific focus on transboundary movements.²⁷ It establishes an Advance informed agreement (AIA) procedure for imports of LMOs for intentional introduction into the environment, and also incorporates the precautionary approach, the mechanisms for risk assessment and management.²⁸ The protocol establishes a Biosafety Clearing-House (BCH) to facilitate information exchange, and contains provisions on capacity building and financial resources with special attention to developing countries and those without domestic regulatory systems.

COP/MOP 1 was held in February 2004 in Kuala Lumpur, Malaysia. There delegates adopted decisions concerning: decisions-making procedures; information sharing at the BCH; capacity building; compliance; liability and redress; monitoring and reporting; the Secretariat; guidance to the financial mechanism; and the medium-term work programme. Furthermore, the parties agreed on documentation of Living modified organism(s) intended for direct use as food or feed, or for processing (LMO-FFPs), pending a decision on detailed requirements, to: a commercial invoice or other document to accompany the LMO-FFPs; provide details of a contact point; include the common, scientific and commercial names, the transformation event code of the LMO or its unique identifier and detailed documentation requirements for LMOs destined for direct introduction into the environment.

COP/MOP 2 was held in June 2005 in Montreal, Canada. There delegates adopted decisions on: procedures of the Compliance Committee; cooperation with other organizations (e.g. WTO); financial issues; Documentation of LMOs destined for contained use or for intentional introduction into the environment;²⁹ risk assessment and risk management; Biosafety Clearing House (BCM); capacity building; liability and redress and decision on socioeconomic consideration.³⁰

²⁷ Article 1 of the Protocol.

²⁸ Article 4 (7) of the Protocol; Preamble to the Protocol Para. 4. See Preamble to the Protocol Para. 4.

²⁹ (Article 18.2 (b) and (c)

³⁰ Article 26.1 of the Protocol.

ANNEX III: ELEMENTS PROPOSED FOR THE INTERNATIONAL REGIME ON ABS

- a) Measures to promote and encourage collaborative scientific research, as well as research for commercial purposes and commercialization, consistent with Articles 8(j), 10, 15, paragraph 6, paragraph 7 and Articles 16, 18 and 19 CBD;
- b) Measures to ensure the fair and equitable sharing of benefits from the results of research and development and the benefits arising from the commercial and other utilization of genetic resources in accordance with Articles 15.7, 16, 19.1, 19.2. CBD;
- c) Measures for benefit-sharing including, *inter alia*, monetary and non-monetary benefits, and effective technology transfer and cooperation so as to support the generation of social, economic and environmental benefits;
- d) Measures to promote facilitated access to genetic resources for environmentally sound uses according to Article 15.2 CBD;
- e) Measures to promote and safeguard the fair and equitable sharing of benefits arising out of the utilization of genetic resources;
- f) Measures to ensure the sharing of benefits arising from the commercial and other utilization of genetic resources and their derivatives and products, in the context of mutually agreed terms;
- g) Measures to promote access and benefit-sharing arrangements that contribute to the achievement of the Millennium Development Goals (MDGs), in particular on poverty eradication and environmental sustainability;
- h) Measures to facilitate the functioning of the regime at the local, national, subregional, regional and international levels, bearing in mind the transboundary nature of the distribution of some *in situ* genetic resources and associated traditional knowledge;
- i) Measures to ensure compliance with national legislations on access and benefit-sharing, prior informed consent and mutually agreed terms, consistent with the CBD;
- j) Measures to ensure compliance with prior informed consent of indigenous and local communities holding traditional knowledge associated with genetic resources, in accordance with Article 8(j);
- k) Measures to ensure compliance with the mutually agreed terms on which genetic resources were granted and to prevent the unauthorized access and use of genetic resources consistent with the CBD;
- l) Addressing the issue of derivatives;
- m) Internationally recognized certificate of origin/source/legal provenance of genetic resources and associated traditional knowledge;
- n) Disclosure of origin/source/legal provenance of genetic resources and associated traditional knowledge in applications for intellectual property rights;
- o) Recognition and protection of the rights of indigenous and local communities over their traditional knowledge associated to genetic resources subject to the national legislation of the countries where these communities are located;
- p) Customary law and traditional cultural practices of indigenous and local communities;
- q) Capacity-building measures based on country needs;

- r) Code of ethics/Code of conduct/Models of prior informed consent or other instruments in order to ensure fair and equitable sharing of benefits with indigenous and local communities;
- s) Means to support the implementation of the international regime within the framework of the CBD;
- t) Monitoring, compliance and enforcement;
- u) Dispute settlement, and/or arbitration, if and when necessary;
- v) Institutional issues to support the implementation of the international regime within the framework of the CBD;
- w) Relevant elements of existing instruments and processes,

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