ECOLOMIC POLICY AND LAW

Journal of Trade & Environment Studies

Volume 3 (3/4)
July 2006

Published by EcoLomics International
16, bd des Philosophes, 6th floor
1205 Geneva, Switzerland
http://www.EcoLomics-International.org/
trade.env@EcoLomics-International.org

THE BIOSAFETY PROTOCOL AND RISK COMMUNICATION: DEVELOPMENTS AT THE 3RD MEETING OF THE PARTIES (CURITIBA 2006)

Mireia Martinez Barrabes•

• PhD candidate at the Department of International Law and Economics, School of Law, University of Barcelona (FPU scholarship from the Spanish Ministry of Education).

I would like to express my gratitude to Professor Xavier Pons Ràfols of the University of Barcelona, Faculty of Law, for his precious support and advice throughout this research.

Comments to the author are welcome and can be emailed to *mirimartinez@ub.edu* .

TABLE OF CONTENTS

The Biosafety Protocol and Risk Communication: Developments at the 3rd Meeting of the Parties (Curitiba 2006)

Mireia Martinez Barrabes

ABSTRACT

This article reviews the key results of the third Meeting Of the Conference of the Parties serving as the Meeting of the Parties[1] to the Cartagena Protocol on Biosafety[2] (COP-MOP 3). It is focusing to a large extent on one of the key elements of this meeting, i.e. Art. 18.2(a) addressing the question of handling, transport, packaging and identification of living modified organisms. This choice of a detailed analysis is justified due to the fundamental implications and links that the Protocol maintains with the WTO, and for which this specific Article is crucial because it specifies how international shipments of Genetically Modified (GM) commodities must be labeled. The sensitivity of the GM food issue in many parts of the world, combined with the huge economic stakes of this quickly growing sector of an increasingly globalized agriculture explains the complexities of a seemingly straightforward regulatory disagreement, but which in fact is based on diverging national interests.

The evolution of the labeling issue was therefore highly contested throughout the negotiations which in the end led to the adoption of the Biosafety Protocol in 2000. Subsequently, it had caused a serious and largely unexpected deadlock at the Protocol's second Meeting of the Parties in 2005, in Montréal. We shall also consider two other questions which are contentious and presently unresolved, namely liability & redress, and compliance. With the objective of presenting as much as possible an empirical rendering of these often thorny legal issues, and in order to do justice to this drawn-out, complex and often very tense negotiation process, we shall pay detailed attention to the procedural and documentary aspects of this particular MOP.

A) INTRODUCTION

The third meeting of the Cartagena Protocol's[3] COP-MOP took place in the Brazilian city of Curitiba (State of Parana),[4] between 13 and 17 March 2006. This meeting preceded the Conference of Parties of the Convention on Biological Diversity (CDB, COP-8), which also took place in the same city between 20 and 30 March 2006 .[5] The MOP 3, as the previous conferences,

[1] This very cumbersome diplomatic terminology is commonly used to denominate the official meetings of the Parties of a Protocol that is attached to a Multilateral Environmental Agreement.

[2] For an in depth overview and discussion of the Cartagena Protocol see for instance Bail, Falkner and Marquard, ed. 2002; Boisson de Chazournes and Thomas, ed. 2000; or Zerhdoud 2005.

[3] The Cartagena Protocol on Biosafety has been ratified by presently 134 states, with Congo being the last one on 13 July 2006.

[4] Rio de Janeiro, Earth Summit, 1992: adoption of the Convention on Biological Diversity.

[5] The eighth Conference of the Parties of the Convention on Biological Diversity (CBD) attracted more participants than any of the previous COPs - over 4000, including 130 ministers and heads of delegation, 340 indigenous and local people's representatives, NGOs and many representatives of the private sector. 34 decisions were adopted that can be consulted in the Doc. UNEP/CBD/COP/8/31, 15 June 2006: *Report of the Eighth Meeting of the Parties to the*

witnessed a high level of participation from Parties and non-Parties,[6] observing United Nations Members, Secretaries of international conventions, private agencies, and other related organizations (United Nations Agencies, international inter-governmental organizations, non-governmental organizations, academic institutions, industry organizations, indigenous organizations, and other observer organizations). Often, the positions taken during the week of negotiations were controversial, both among the Parties of the Protocol, and between those and the non-Parties, the resulting tensions and frictions rendering difficult the negotiation of a consensus for the relevant topics.

The opening of the meeting generated the hope of adopting certain important decisions with respect to key aspects that were not resolved in the two previous MOPs due to the deadlocks in the negotiations that were caused by pressures exerted by various states. Eighteen decisions were adopted with the main objective being to contribute to the implementation of the international law of Biosafety.[7] Among these decisions, as we shall see, it is especially worthy to note the agreement that was reached with regard to documentation requirements for exports of living modified organisms (LMOs) intended for human and animal nutrition or for further processing, as was required by the Art. 18.2(a) of the Protocol. In addition, other agreements included those concerning risk management and evaluation, the need to establish subsidiary bodies under the Protocol (Art. 30); handling, transport, packaging and identification of living modified organisms (Art. 18.3, 18.2(b) and (c)); risk assessment and risk management, liability and redress; matters relating to the financial mechanism and resources, capacity-building; operation and activities of the Biosafety Clearing House (BCH).

The work that was achieved by COP-MOP 3 was built upon the negotiations, experiences, and results – but also the frustrations - of the previous meetings: COP-MOP 1, which took place in Kuala Lumpur (Malaysia) in February 2004, and COP-MOP 2, which took place in Montreal (Canada) in

---

Convention on Biological Diversity. http://www.biodiv.org/doc/meetings/cop/cop-08/official/cop-08-31-en.pdf

These decisions have a great importance in achieving the objective of the Convention's 2010 Target and in putting into practice the CBD, as well, as for the attainment of the UN's Millennium Development Goals by the year 2015, especially the objective 7 on environmental sustainability, which supports the sustainable development principles. Among the most outstanding progresses made in the 8th COP it is worth underlining the advances in the discussion of key areas, including the adoption of a work program on island biodiversity; the continuation of the working group on protected areas to consider implementation and funding options; the identification of CBD's role on high seas; the endorsement of a framework of indicators to measure progress towards 2010; the renewed mandate given to the special group involving indigenous peoples and their knowledge; and the support given to the continuation of negotiations on an international regime on access and benefit-sharing (ABS) through a Working Group.

[6] 101 state Parties and 15 Non-party states assisted the meeting. Among the Non-party states, there are some of the main living modified organisms (LMOs) exporters: Argentina, Australia, Canada, the United States of America, Uruguay.

[7] UNEP/CBD/BS/COP-MOP/3/15, 8 May 2006, *Report of the Parties to the Convention on Biological Diversity serving as the Meeting of the Parties to the Cartagena Protocol on Biosafety*, 32-88. http://www.biodiv.org/doc/meetings/bs/mop-03/official/mop-03-15-en.pdf

June 2005[8]. Furthermore, the first MOP was preceded and prepared by the three meetings of the Intergovernmental Committee to the Cartagena Protocol on Biosafety (ICCP) that took place between 2000 and 2002.

B) SOME GENERAL POINTS ABOUT THE TWO PREVIOUS COP-MOP

a) The main contributions brought about by COP-MOP 1.

The main objective of the 2004 COP-MOP 1 was the establishment of an operative set of guidelines that would accompany the implementation of the Protocol, with the aim of making important advances concerning the documentation requirements, complaints, responsibilities, restitutions and the Biosafety Clearing House (BCH).[9] Despite many difficulties associated with the negotiations in the pursuit of a consensus, thirteen decisions were adopted. In particular, it is important to note the creation of a Compliance Committee, the consideration of the potential risks of LMOs, and the establishment of an Open-Ended Technical Expert Group on identification requirements of living modified organisms.[10] In Kuala Lumpur a set of measures was adopted that have allowed the advancement and improvement of the application of the Protocol.[11]

b) The progress achieved at COP-MOP 2.

In general terms, it can be said that the main objective of COP-MOP 2 consisted in further facilitating the application of the Protocol, with particular consideration to developing countries, as well as the interests of LMO-importing and exporting states. In this sense, and undoubtedly, one of the priorities of the COP-MOP 2 was to advance and adopt a decision concerning the documentation requirements relative to the trafficking of LMOs for direct use as human or animal nutrition, or for further processing, as required by Art. 18.2 (a).[12] Additionally, although to a lesser extent, the following topics were considered relevant: the agreements relative to risk management and evaluation, building capacity and the BCH.

At the COP-MOP 2 the following issues were examined: the function and activities of the Biosafety Clearing-House, risk management and evaluation,

---

[8]See Report of the First Meeting of the Conference of the Parties Serving as the Meeting of the Parties to the Protocol on Biosafety: UNEP/CBD/BS/COP-MOP/1/15, 14 April 2004: *Report of the First Meeting of the Conference of the Parties Serving as the meeting of the Parties to the Cartagena Protocol on Biosafety*, and UNEP/CBD/BS/COP-MOP/2/15, 6 June 2005: *Report of the Second meeting of the Conference of the Parties to the Convention on Biological Diversity serving as the meeting of the Parties to the Cartagena Protocol on Biosafety*.

[9] For more information about the Biosafety Clearing-House see http://bch.biodiv.org/.

[10] The Decisions of all three COP-MOPs are searchable at http://www.biodiv.org/biosafety/cop-mop/search.aspx?menu=mop3 .

[11] For information about COP-MOP 1 see Mackenzie 2004.

[12] Art. 18.2(a) states: *"The Conference of the Parties serving as the meeting of the Parties to this Protocol shall take a decision on the detailed requirements for this purpose, including specification of their identity and any unique identification, no later than two years after the date of entry into force of this Protocol."*

manipulation, transport, packaging, identification, socio-economic considerations, technical and scientific questions necessary for the application of the Protocol, conditions of building capacity, employment of a list of experts on biosafety notification, public awareness and participation, and international proceedings for damage responsibility and restitution.[13]

COP-MOP 2 achieved significant advances concerning the effective application of the Protocol by adopting fourteen decisions that contributed to a better implementation at the national level, of which the following stand out: the adoption of firm measures on capacity-building,[14] public awareness and participation,[15] discussions concerning risk management and assessment,[16] including an agreement on the establishment of a Group of Technical Experts between the sessions.[17] Nevertheless, the meeting fell short of completing the main task mentioned in the Protocol text, i.e. the adoption of a decision on Living Modified Organisms for Food, Feed or Processing (LMO-FFP) documentation requirements within the two following years after the Protocol is in effect.

With respect to this last point, the chair of the Working Group 1 made a great effort to present a conciliatory text for consideration in the Plenary.[18] However, this project was subjected to several objections by New Zealand and Brazil, hence, it was not adopted.[19] In fact, no consensus was reached with respect to the following basic issues:

---

[13] Two Work Groups were set up: Group I was presided by Mrs. B. Ivars (Norway), and Group II was presided by Mr. O. Rey Santos (Cuba).

[14] See Decision BS-II/3: *Status of capacity-building activities* and BS-II/4: *Capacity Building (Roster of Experts)*, in which a possible revision of the Action Plan for the creation of capacity for the effective application of the Protocol was discussed, to assure their adaptation to the current circumstances, and their capacity to respond to the necessities of the States. See Doc. UNEP/CBD/BS/2/15, *op. cit.*, Annex I, 37-45.

[15] Decision BS-II/13: *Public awareness and participation* addressed efforts to cooperate in the promotion of the education and the public understanding, with the purpose of increasing the knowledge and the understanding in relation to the safe manipulation, transfer and use. See Doc. UNEP/CBD/BS/2/15, *op. cit.*, Annex I, 54-55.

[16] Decision BS-II/9: *Risk assessment and risk management* contains an annex in which the attributions of the Group of Technical Experts are pointed out in Evaluation of the Risk. See Doc. UNEP/CBD/BS/2/15, *op. cit.*, Annex I, 49-50.

[17] With a view to facilitate an appropriate and opportune adoption of the decision set in para. 2 a) of Art. 18, the Group of Technical Experts met in the headquarters of the Organization of International Civil Aviation, in Montreal, from the 16 to 18 of March 2005. The report and the project of decision of the Group were submitted to the consideration of the COP MOP 2. For more information on this Group of Technical Experts, UNEP/CBD/BS/COP-MOP/2/10, 30 March 2005: *Report of the Open-Ended Technical Expert Group on Identification Requirements of living modified Organisms intended for food or feed or for processing.*
The meeting of the Group of Technical Experts was preceded by the creation of a working group on capacity and exchange of experiences relatives to the application of Art. 18.2 of the Protocol. The position defended by the States can be found in the same document. This workshop was organized according to the decision BS-1/6 of the COP-MOP 1, it took place in Bonn, from November 1 to 3 of 2004.

[18] UNEP/CBD/BS/COP-MOP/2/15, *op. cit.*, Annex III: *Draft Decision on Handling, Transport, packaging and identification (art. 18.2(a)) submitted by the Chair of Working Group I,* 60-61.

[19] UNEP/CBD/BS/COP-MOP/2/15, *op. cit.*, para. 163.

a) the creation of certain percentage thresholds governing the accidental or technically inevitable presence of LMOs;
b) the requirement of proper documentation of LMOs that have been approved in the importing State;
c) the necessary conditions to determine which LMOs may be transported when the purposely vague expression *"may contain"* genetically modified organisms (GMOs) is used.

In this manner, these two Parties of the Protocol finally blocked a draft agreement on Art. 18.2(a) which provided for identification of international shipments of LMOs intended for feed, food and processing. New Zealand and Brazil were the only two of 119 countries present to object to labeling provisions, insisting on the use of the expression *"may contain GMOs"* and rejecting the expression *"does contain."* With respect to the position of these States, one should note the following controversies: on one hand, New Zealand is neither an importer nor an exporter of LMOs, and as such its ideological stance on free trade left many perplexed, as it did not take into consideration any matters of environmental or health relevance. On the other hand, Brazil had been, until the arrival to power of President Lula da Silva, a member of the group of developing countries that, along with the majority of Latin American and South African States, was able to vocalize its will to approve the Protocol. This position was taken in order to fight for environmental protection, health and other interests of developing states, under the intense pressure exerted by the LMO industry and the principal exporting countries.[20]

[20] Besides, the existence of internal rules on biosafety in both States makes still more incomprehensible the position they adopted at the COP-MOP 2. In Brazil, all LMOs-FFP that are imported should have a previous formal approval of the CTNBio - the regulatory office of transgenics - after an analysis case by case. It is furthermore necessary to highlight their legal framework: Law nº 11.092, on 12 January 2005, relative to the plantation and commercialization of genetically modified soy products of *"zafra"*, and the Law nº 11.105, on 24March 2005. It should be noted furthermore that in Brazil, under their current president Luiz Inácio Lula da Silva, a Temporary Measure was introduced in 2003 that authorizes the sale of genetically modified soy of *"zafra"*, which implied a fundamental change of Brazil with regards to the regulation of GMOs. At the same time, it opened their access into Paraguay and Bolivia, since their markets are closely linked to the Brazilian one. The present year represents the fourth year in a row, in which the sale of transgenic soy is allowed by Ordinance - approved later by the Congress - to avoid that farmers in the South of Brazil, who use genetically modified seeds in spite of the existing prohibition in this sense, lose sales opportunities. http://www.mma.gov.br (Ministry for the Environment Brazil).
Regarding New Zealand, at the moment one can say the import of any LMOs-FFP is not allowed, so there is no commercial planting of genetically modified cultures, due, in part, to the strong rejection manifested by its population. New Zealand has already a rigorous system of controls in place, under the Hazardous Substances and New Organism Act 1996 (HSNO) and the Biosafety Act 1993, covering the import and domestic use of GMOs. The Imports and Exports (Living Modified Organisms) Prohibition Order 2005 was passed to enable New Zealand to comply with this obligation. The Prohibition Order came into effect on 25 May 2005. Since then, anyone who exports an LMO without getting the necessary approval would be breaking the law. Therefore, exporters need to get an authorization to export - available by contacting either ERMA or the Ministry for the Environment. http://www.mfe.govt.nz (Ministry for the Environment New Zealand).

C) THE MAIN CONTROVERSIAL ISSUES ON HANDLING, TRANSPORT, PACKAGING AND IDENTIFICATION OF LIVING MODIFIED ORGANISMS (LMOS) DEBATED AT THE COP-MOP 3

Art. 18.2(a) assumes a vital role in the analysis of the problems associated with the safety of modern biotechnological uses. Just as in the previous conferences, the most controversial topic throughout the discussions of MOP 3 was trying to adopt a set of rules under Art. 18.2(a) with respect to documentation requirements that accompany LMOs exportation intended for use as food or feed or for processing. Nevertheless, in this paragraph we are also going to pay attention to other specific aspects on Art. 18.

a) Article 18.2(a) at the heart of the COP-MOP 3.

The debate was again focused on the use of *"contains"* versus *"may contain"* GMOs. As such, two completely opposed positions emerged, reflecting the existing disagreement between LMO exporting and importing States.

On one hand, the majority of the Parties of the Protocol were favourable to the establishment of a clear identification of exports containing LMOs with *"does contain"* together with an explanation of the contents. At the same time, they specified that LMOs are not to be exported from a Party if it does not allow the importation of the LMO in question. It follows logically that it is the duty developed countries - which are the primary exporters of LMOs - to evaluate the latter before exportation, since developing countries - which are usually importers of LMOs - do not have the necessary legal and scientific capacities or resources for such a task. [21]

On the other hand, a small group of Parties - in particular, Mexico, Paraguay and Peru[22] - insisted on a convenient way of identifying exports, thus

[21] In addition to the Parties, a large number of groups belonging to civil society took an active role. They opposed the employment of the expression "*may contain"* as a documentation option, criticizing the opposition to stricter documentary requirements by certain countries and by the biotech industry due to their commercial interests. During the MOP 3 of the Protocol and of the COP 8 of the CBD in Curitiba a *Global Civil Society Forum* was organized with the purpose of providing a space and a forum for Brazilian and other civil society organizations to exchange experiences, as well as to discuss and to affirm common positions in relation to the current issues related with biodiversity. It is interesting to underline that most of them presented cases which drew special attention to the situation in Latin Amercia in relation with genetic contamination: in the first place, the testimony of Mrs. Sofia Gatica, representative of the group of Mothers of Ituzaingó – a district surrounded by transgenic soy in the city of Cordoba (Argentina), - who presented, along with other people, the disastrous effects that the indiscriminate fumigation of fields of soy produced on the population´s health. In the second p lace, we should mention the Paraguayan case of Mrs. Petrona Villasboa who declared that all her family was contaminated by the fumigations with glyphosate in the fields of transgenic soy that surrounded her house in the year 2003. As a consequence of these facts, her 11 years-old son died.

[22] These states received support from non-Parties (mainly, the big exporters of LMOs: United States, Canada and Argentina – i.e. members of the so-called Miami Group -, as well as from the biotech industry, who jointly carried out an intense lobbying effort throughout the duration of the negotiations. It should be mentioned that the United States has not signed the Protocol; Canada has only signed it but not ratified – on 19 April 2001; and Argentina also has not

supporting the use of the expression *"may contain LMOs,"* all the while being fully aware that this will make it more difficult for Parties to comply with Protocol obligations, or to efficiently control LMO imports through the adoption of sovereign decisions regarding admission and proper management of LMOs in each state's territory.[23]

Despite this general context of incompatible positions, and particularly after the failure to adopt a concrete decision in MOP 2, as well as the past due date of 11 September 2005 for the implementation of above-mentioned decision,[24] the Parties were conscious that a new deadlock in MOP 3 would not encourage the prospect of a future application of the Protocol. As a result of this situation, countries continued to operate based on an interim decision adopted at MOP 1: Decision BS-I/6. They also used as working documents a note from the Executive Secretary,[25] a text of the Open-Ended Technical Expert Group on identification requirements of living modified organisms and a text of the presidency of COP MOP 2, which made an important contribution at the moment of adopting a decision.[26]

The negotiations around this topic took place within *Contact Group, the Group of the Friends of the President, and Working Group I,* and they were centered on a draft presented by Brazil and entitled *Proposal of Initial Compromise.*[27] This draft underlined the necessity of proper labeling with the expression *"does contain LMOs"* of transnational exports destined for food, feed or processing, and that such labeling was to happen only in the event of a complete identification and separation of transgenic products. Equally, the draft admitted the use of the expression *"may contain"* in those cases where the

---

ratified it, but it signed it on 24 May, 2000. It must be remembered that, in International Law, giving binding consent is of capital importance because without it, the state is not legally liable by the international agreement. Consequently, the aforementioned states are not legally bound by the provisions of the Protocol because they did not ratify it, exercising their sovereign right not to give consent. Díez de Velasco 2005, 158-159.

[23] The tensions produced during the COP-MOP 3, due to the existence of opposed interests, are similar to those that took place in the complex negotiations of the Cartagena Protocol on Biosafety. For an in depth discussion of these negotiations see for instance Bail, Falkner and Marquard 2002; Zarilli 2000; Franconi 2001, 55 ff.; Pommerance 2000, 614-621; Mayr 2002.

[24] Art. 18.2.(a): "… no later than two years after the date of entry into force of this Protocol."

[25] UNEP/CBD/BS/COP-MOP/3/8, 22 November 2005: Note of the Executive Secretary: *Taking a Decision on the Detailed Identification/Documentation Requirements of Living Modified Organisms Intended for Direct Use as Food or Feed, or for Processing – Article 18, paragraph 2 (a)).* This document suggested elements of action that COP-MOP 1 estimated to be adequate to find a solution to this question.

[26] UNEP/CBD/BS/COP-MOP/3/8, *op. cit.*, 3-11.

[27] In fact, on the basis of the negotiations of COP-MOP 3, we may conclude that Brazil maintained a position that was completely opposed to the one it had in Montreal, because in Curitiba it defended the use of the explicit expression *"contains LMOs"*. In this sense, speculation occurred about the different roles that Brazil played at these two Meetings, and that, basically, it was due to the conjunction of a series of factors: the internal consultation process that preceded the negotiations, a stronger paper of its Ministry of the Environment, and – maybe the decisive reason - a political interest in achieving successful negotiations in its own country. Other critical voices suggested that Brazil could be having a commercial advantage in advance - in particular, in comparison with other countries of Latin America – as a consequence of having the capacity to implement a system that would allow Brazilian exporters to easily separate the biotechnological products from the conventional ones. In any case, these aspects will be analyzed more specifically later.

GMOs were not originally identified. In reality, the use of the latter expression gives rise to a legal incertitude for it does not precisely state whether a shipment contains LMOs or not. Its use therefore goes along with the precautionary principle mentioned in the same Protocol for safety purposes.[28] Eventually, Brazil's proposition was relegated to a transition period of four years before taking full effect.

Based on Brazil's proposition, the Contact Group was focused on discussions about the objectives of LMO-FFP documentation. Also, it provided a forum for exchange of ideas about the justification of the expression *"may contain"*, fields of implementation, intentional movements of LMO-FFP, and its relation to the threshold of accidental presence of LMOs in a particular product. Upon this base, the co-presidents drafted a text for the consideration of the Working Group I.[29]

The discussions in the Working Group I[30] were based on the text, in which a series of disagreements emerged with regard to several issues, such as the requirements to identify which LMOs a shipment may contain and thresholds for adventitious or technically unavoidable presence of LMOs, including whether or not they trigger the documentation requirements, among others. As a result of these deliberations, the President recommended that in MOP 5 a decision should be finally made regarding the issue of compliance with LMO regulations of importing countries, and that in MOP 6 a decision should be made regarding the *"may contain"/"does contain"* controversy.

However, Mexico and Paraguay[31] were opposed to this approach. They considered that in the case of certain States requiring further detailed information, it would be possible for them to consult the BCH.[32] Besides, it

---

[28] The Preamble of the Protocol states: *"Reaffirming the precautionary approach contained in Principle 15 of the Rio Declaration on Environment and Development…"* On the other hand, Art. 1 of the Protocol, relative to the objective, says: *"In accordance with the precautionary approach contained in Principle 15 of the Declaration of Rio on Environment and Development, the objective of this Protocol is to contribute to ensure an adequate level of protection… "*

[29] The Contact Group was presided by Mr. François Pythoud, Switzerland, and L.A. Figueiredo Machado, Brazil. This Group held interesting discussions regarding unsolved issues and produced a draft decision without brackets for the consideration of the Working Group. UNEP/CBD/BS/COP-MOP/3/15, *op. cit.,* 23, para. 142.

[30] The meeting established two working groups. Working Group I, under the chairmanship of Ms. Ivars, to consider Operation and activities of the Biosafety Clearing-House, Handling, transport, packaging and identification, Risk assessment and risk management, Subsidiary bodies and Other scientific and technical issues that may be necessary for the effective implementation of the Protocol UNEP/CBD/BS/COP-MOP/3/15, *op. cit.,* 11. The Working Group I adopted its report: UNEP/CBD/BS/COP-MOP/3/L.1/Add.1, but it is a restricted document, therefore it has been incorporated into the present report in the discussion of the appropriate agenda items.

[31] Mexico and Paraguay possess 0.1 and 1.8 million hectares respectively. Peru does not currently produce commercially genetically modified crops but it is in the process of drafting new regulations to promote biotechnology. Garton, Falkner and Tarasofsk, 4; Clive 2005.

[32] On this matter, see Rule 40 of procedures for meetings of the Conference of the Parties to the Convention on Biological Diversity. It is important to note – in order to understand the role played by Mexico and by Paraguay at the COP-MOP 3 - an explanation provided by Prof. Díez de Velasco: the consensus method frequently used consists in the adoption of a decision inside the bodies of the organizations without using to the formality of voting. This way, the president

should also be mentioned that Mexico suggested a considerable number of changes and amendments, of which the following are the most notable: use of the expression *"urge"* instead of *"require"* by Parties and considering that the expression *"may contain"* need not be accompanied with an exhaustive list of exported LMO species.[33]

Based on Mexico's insistence, the final decision included a clause that would prevent the application of the general rules approved by the COP-MOP with respect to cross-border transport between Parties and non-Parties.[34] In accordance with this idea and with the general rules of the Protocol, Article 24 already considered the possibility of bilateral agreements among Parties and non-Parties regarding cross border movements, but in a compatible way with the objective of the current Protocol of Cartagena.[35] In fact, this clause allows Mexico to maintain a series of commercial agreements with the United States and Canada since it had already ratified a regional agreement on 29 October 2003,[36] which spares it from observing the established requirements of the Cartagena Protocol, in accordance with Chapter Nine of the *North American Free Trade Agreement* (NAFTA). This trilateral agreement includes key aspects that defy the rules of the Protocol and potential future decisions. It states that exportation *"is not transgenic"* if it contains less than 5% transgenic material, that the *"unintentional"* presence of transgenic material in a shipment does not constitute a reason for obligatory labeling with the expression *"does contain"*, and that abiding by NAFTA rules is considered adequate with regard to the rules of the Protocol.[37] It is therefore obvious that Canada and the United States, being two main exporting States, would favor a very high threshold of LMO tolerance that would thereby avoid the demands imposed in the context of

---

of the organism in question or the spokesperson of a group of the member countries of it negotiates a text project with the different delegations or groups of countries, until he or she verifies that this project doesn't raise any important objection on the part of any of them, and then declares that the decision can be adopted by consent. Thus, it constitutes a method based on dialogue and commitment among groups of states (in this case, basically, between exporting countries of LMOs and developing countries), which favors the search of acceptable formulas by all parts of the negotiation. The price to pay is that this approach tends to lead to texts with ambiguous compromise contents that allow different interpretations. Not voting allows the text to be approved without the states having to explicitly show a consensus. Sometimes, this mechanism precedes other decision adoption procedures, so that when it is not possible to reach a consensus, they use a system of majorities. Díez de Velasco, 2006, 109-112; Combacau and Sur, 2004, 732-734.

[33] Amendments proposed by the delegation of Mexico to the fourth preamble para. and to operative para. 4 and by the delegation of Paraguay to operative para. 4 (i) and (ii). UNEP/CDB/BS/COP-MOP/3/15, *op. cit.*, 24.

[34] This provision could reduce the universalization of the Protocol, preventing it from achieving the acceptation and implementation of its rules internationally.

[35] Indeed, this provision is supported by Art. 14.1 as well as by Art. 24 of the Cartagena. Protocol.

[36] It is a trilateral agreement adopted under the title: *Requirements for the documentation of Living Modified Organisms Intended for Direct Use as Food or Feed or for Processing.*

[37] At present, Mexico tries to promote a similar agreement with other Latin American Countries (as Argentina, Brazil or Uruguay). The threshold established by the European Union is notably higher: 0.9 %.

the WTO. Thus there won't be a direct conflict with norms of a Multilateral Environmental Agreements (MEA).[38]

Finally, the Parties maintained a favorable position with respect to the text proposed by the President and a bracket-free *"compromise text"* was submitted for adoption by the Plenary as proposed by the Working Group.[39] In the final decision on the Art. 18.2(a), the COP-MOP urged Parties and non-Parties to adopt measures that would ensure the use of a commercial invoice or other documents that accompany the LMOs-FFP. In addition to this, it also required the submission of information about the actual application of article 18.2(a) six months before the due date of MOP 5, with the objective of a reconciliation of different documentation requirements.

Especially important were the following six requirements regarding LMOs-FFP in addition to abiding by the internal regulations of importing countries:

1) In those cases where the identity of LMOs is known through means such as identity preservation systems, the expression *"contains"* should be used.
2) In those cases where the identity of LMOs is not known through means such as identity preservation systems, the expression *"may contain"* should be used.
3) LMOs may not be intentionally introduces into the environment.
4) Common, scientific, and commercial (when possible) names should be used.
5) A unique identification code, or *"event code,"* should be used.
6) The communication of the web address to the Biosafety Clearing-House. LMO information should be available in the BCH.

Moreover, the COP-MOP also required of the CBD Executive Secretary to provide funds for the implementation of Art. 18.2(a). Additionally, COP-MOP encouraged Parties and non-Parties to cooperate in their use and development of detection technologies, and to submit related information to the CBD Executive Secretary for consideration at MOP 4.[40]

---

[38] Information assembled in: http://cronica.diputados.gob.mx/PDF/59/2004/feb/040218.pdf - Diario de los Debates, Estados Unidos Mexicanos. Órgano Oficial de la Cámara de Diputados del Congreso de los Estados Unidos Mexicanos. Poder Legislativo Federal, LIX Legislatura Comisión Permanente, 18 de febrero 2004, sesión N º10. The text of the trilateral agreement is available at http://www.cibiogem.gob.mx/normatividad/Documento%20Trilateral/Trilat-arrgmt%20Esp.htm (Requirements of Documentations for Living Modified Organisms for Food, Feed or Processing OLM /AFP). The NAFTA text is available at: http://www.nafta-sec-alena.org/DefaultSite/index_e.aspx?ArticleID=309 (NAFTA Secretariat).

[39] Draft decision UNEP/CBD/BS/COP-MOP/3/L.19 (restricted circulation), as orally amended, it was adopted as decision BS-III/10: *Handling, transport, packaging and identification of living modified organisms: paragraph 2 (a) of article 18*, in Doc. UNEP/CBD/BS/3/15, *op. cit.*, 60-62.

[40] In connection with all the obtained results - but making a special reference to the Art. 18.2(a) - Ms. Marina Silva, Minister of the Environment of Brazil, expressed that important decisions had been taken for the future of the Protocol, in the areas of capacity-building, risk analysis, the Biosafety Clearing-House and the financial mechanism of the Protocol. The negotiations on the main item on the agenda, concerning the requirements for documentation and identification of living modified organisms for use in food, feed or for processing in paragraph 2(a) of Art. 18, had been an outstanding example of mutual understanding and represented a step forward with

At the same time, it can be observed that the interim period was extended from four years (Brazil's suggestion) to six; further, there would be a revision and evaluation of this decision in COP MOP 5, in 2010, with the aim of reaching a decision after having experienced the labeling system in order to eventually reach a final decision in COP MOP 6, in 2012, with regard to the use of the expression *"does contain LMOs."*[41]

The participating delegations made concessions in order to satisfy all interests. Besides, it can be said that Mexico's position has influenced the results obtained at the COP-MOP 3, allowing for little progress with respect to the previous COP-MOPs, and leaving open the door to possible future conflicts, such as possible demands by the WTO's Appellate Body against those states that refuse to import non Protocol-documented LMOs. This would give rise to commercial discrimination that would defy the main GATT principles of elimination of commercial barriers.[42]

In any case, before closing the analysis of the results obtained with regard to Art. 18.2(a), it is important to mention the role that Brazil played throughout the conference, not only in terms of host government, but also in its intense efforts to eliminate barriers towards a final consensual decision, presenting a well-elaborated proposition that served as a reference point to many discussion and debates. In fact, Brazil, as previously indicated, maintained a position entirely opposed to that which it had defended in Montreal, at MOP 3 it was in favor of the use of the expression *"does contain LMOs."*[43]

---

respect to previous debates on the subject. She was pleased to note that the final decision explicitly authorized the Executive Secretary to mobilize funds to help Parties implement the conditions of Art. 18.2(a). UNEP/CBD/BS/COP-MOP/3/15, *op. cit.*, 30.

[41] The COP-MOP meetings are now held every two years. This rhythm is foreseen in the Rule 4 of the Rules of Procedure. Based on the Art. 29.6 of the Cartagena Protocol, the decision BS-III/18 *(Date and venue of the fourth meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol)* decided to hold its fourth meeting in conjunction with the ninth meeting of the Conference of the Parties to the Convention. Date and place for COP-MOP 4 are still in the process of being determined. UNEP/CBD/BS/COP-MOP/3/1/Add.1/Rev.1, 9 December 2006: *Organization of the Meeting: Revised annotations to the provisional agenda (reported for technical reasons),* 12 or Decision III/18: *Date and venue of the fourth meeting of the Conference of the Parties serving as the meeting of the Parties of Protocol*, in Doc. UNEP/CBD/COP-MOP/3/15, *op. cit.*, 107.

[42] See GATT Art. I (General Most-Favoured-Nation Treatment), Art.V (Freedom of Transit), Art. XI (General Elimination of Quantitative Restrictions), Art. XIII (Non-discriminatory administration of Quantitative Restrictions), Art. XIV (Exceptions to the Rule of Non-discrimination) and the Art. XX disposition (General Exceptions). See the following examples of WTO disputes concerning these questions: United States (WT/DS291), Canada (WT/DS292), Argentina (WT/DS 293), Thailand (WT/DS 205). Wiers 2002, 227-304; see also the WTO´s Web site on dispute settlement:
http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm#disputes

[43] Only Brazil, among the world's leading agricultural exporters - the largest increase in any country in 2005 was in Brazil, provisionally estimated at 4.4 million hectares - has adhered to the Cartagena Protocol. This causes the additional costs of identifying and separating transgenic products which will drive up prices, thus putting it in a disadvantageous position in the competition with other exporting countries that have not ratified the Protocol. Clive 2005, Executive Summary.

The positive attitude of Brazil was recognized by several MOP 3 Parties[44] as well as by the European Commission, which itself spoke of COP MOP 3 and declared:

> It adopted a landmark decision of detailed documentation requirements for genetically modified organisms in the international trade of agricultural commodities. In the final hours of negotiations, trade implications of documentation requirements were the main focus of major players such as Mexico and Brazil. The final compromise would not have been possible without the political commitment of the Brazilian government to make MOP 3 a success.

The Environment Commissioner states:

> This decision sets out documentation requirements that are clear, meaningful and practical for both exporters and importers of agricultural products, while being consistent with Eulaw. It provides for legal certainty for the international trade in agricultural commodities. As such, it is a landmark decision that bolsters the role of the Cartagena Protocol. I would like to express my deep appreciation to the Brazilian government that has been instrumental to achieve his outcome.[45]

b) Some other particular aspects linked with Article 18.2(a).

The Parties that have not yet implemented internal legislation on the labeling of LMOs are particularly interested in the elaboration of minimal international measures on documentation. This way they can avoid becoming *"testing grounds"* of LMOs previously rejected by third states for not fulfilling the minimum conditions of security and guarantee through their internal legislation. This situation may be accompanied by another worrisome reality: the monopolization by a reduced number of multinational corporations in the market of LMOs.[46] In the last few years, a wave of mergers resulted in a situation where only a few conglomerates control much of the global agricultural and food market. In fact, these coalitions contribute to a trend which makes developing countries more and more dependent on the industrialized world. Therefore, the concentration of the commercialization of transgenic seeds places the farmer in

[44] The representatives of Ethiopia (on behalf of the African Group), Austria (on behalf of the European Union, Bulgaria and Romania) and Kiribati (on behalf of the Asia-Pacific group) expressed their thanks to all those who had made the meeting a success. UNEP/CBD/BS/COP-MOP/3/15, *op. cit.*, BS-III/17: *Tribute to the Government and people of the Federative Republic of Brazil*, 87 and UNEP/CBD/BS/COP-MOP/3/15, *op. cit.*, 30.

[45] IP/06/335 Date: 20/03/2006.

[46] The principal agro-chemical corporations are: Monsanto, Dow, Dupont, Bayer-Crop Science and Syngenta. In addition to those "giants of nutrition" we should also make reference especially to the following: Nestlé (Switzerland), Philip Morris (USA), Coca Cola Company (USA), PepsiCo Inc (USA), IBP Inc. (USA), Mars Inc. (USA), Danone Group (France) and Diageo (Great Britain). These transnational companies are those that possess the biggest economic power, and whose sales numbers are the highest in the market.

a dependence relationship with these powerful quasi-monopolies.[47] This control can be appreciated particularly in the case of the so-called Terminator gene: these genetically modified seeds are sterile or produce sterile seeds, assuring the economic dependence of the farmers towards their suppliers.

In spite of this reality, it is certain that the lack of technical and financial conditions to implement a complete LMO identification system is progressively being overcome by resolutions that allow the Protocol's Executive Secretary to put into effect a program of technical assistance to increase the financing of biosafety systems in less developed countries. This is particularly relevant, since for the adoption of a decision relative to the proper use of LMOs, it is indispensable to have the necessary solid and responsible basis that for science-based risk management procedures. This can be only being made possible through detailed information accompanying LMO exports. Thus, the importing country will have the possibility to control its incoming shipments without third-party interferences, and the consumer will have the choice as to which products to consume based on their attached description. This has been the main motivation for most European and Asian countries to adopt strict regulations regarding genetically modified organisms. Some of these regulations go well beyond those specified by the Cartagena Protocol.[48]

---

[47] The seed suppliers usually demand from the farmers the signing of an authorization agreement to forbid the exchange of seeds with another farmer, their re-utilization, and the reservation of the best seeds in each crop for later years.

[48] Many countries have national legislations to protect themselves from illegal LMO imports. Nevertheless, some of them seem to try to keep those same rights and levels of information from the less developed countries which lack national biosafety laws and means to enforce them. In this context, see the following European, US, and Mexican regulations:

Communitarian Regulations: Council Directive of 23 April 1990 on the contained use of Genetically modified organisms (90/219/EEC), Council Directive of 26 October 1998 amending Directive 90/219/EEC on the contained use of genetically modified micro-organisms (98/81/EC); Directive 2001/18/EC of the European Parliament and of the Council of 12 March 2001 on the deliberate release into the environment of genetically modified organisms and repealing Council Directive 90/220/EEC; Regulation (EC) No 1830/2003 of the European Parliament and of the Council of 22 September 2003 concerning the traceability and labeling of genetically modified organisms and the traceability of food and feed products produced from genetically modified organisms and amending Directive 2001/18/EC; Regulation (EC) n° 1946/2003 of the European Parliament and of the Council of 15 July 2003 on transboundary movements of genetically modified organisms. For more information, see http://www.europa.eu.int/comm/environment/biotechnology/index_en.htm

- United States: In contrast to the EU, the US has not developed separate regulations for biotechnology, rather it regulates GMOs through existing legislation. While no mandatory risk assessment requirements for GMOs exist, the proposed Pre-market Notice Concerning Bioengineered Foods requires companies to submit information on safety considerations before marketing GM foods. Regarding labeling, the US Food and Drug Administration has issued voluntary draft guidelines for the labeling of GM foods. The non-approved varieties of LMOs are considered *regulated articles* under the North-American regulations on genetic engineering. To import a non-approved variety, first the exporter must obtain an importation license from the US Department of Agriculture for a regulated article. This import license must accompany the exportation. This must be addressed to closed warehouses and must arrive to a previously designed port. To use that shipment for human consumption, the exporter must make sure that the product is not impaired by pesticides under the regulations of the Environmental Protection Agency (EPA). NAPPO Biotechnology Panel. 2004. Discussion paper for development of module 4 of the NAPPO standard for importation of transgenic plants into NAPPO member

Notwithstanding the existence of specific internal legislations with regard to LMO identification, it is possible that in some, though rare, circumstances genetic contamination may occur. It is worthy to note at this point the case of the Bt-10 corn in order to better understand how difficult it is to achieve proper controls, and protection against potential risks, posed by LMOs within state or regional borders. The Bt-10 corn variety, despite not being approved for cultivation for human consumption, has been commercially distributed by Sygenta in large quantities between the years 2001 and 2004 in the United States. It has also been employed in 2001 for experimental purposes in Spain, Chile, Canada, Argentina and, increasingly, in France.[49]

Sygenta made much of the fact that the Bt-10 corn is identical to Bt-11, which is approved for human consumption in the US, the EU and Japan. As Herrera claims, they are similar but no identical. Bt-10 differs from Bt-11 in that it contains an inactive marker gene which originally conferred resistance to ampicillin, a commonly used antibiotic. This gene is a relic from the process used to select transgenic corn cells during strain construction. The release of such genes into the environment has been contested in the past because of the small chance that functional versions could transfer from crops to micro-organisms and spread problems of antibiotic resistance.[50]

In the context of food aid, it is very unlikely that the presence of LMOs is controlled. This is why many studies brought up the presence of non-authorized genetically modified organisms in shipments of humanitarian aid, especially destined to some South American and sub-Saharan Africa countries, or countries immersed in serious armed conflicts such as Iraq or Afghanistan.[51]

---

countries. North American Plant Protection Organization; interviews with USDA regulators. For more information on the respective roles of USDA-APHIS, EPA, and FDA in federal regulation of genetically engineered plants, see the United States Agencies Unified Biotechnology website: http://www.epa.gov/epahome/exitepa/htm; http://www.usda.gov/wps/portal/usdahome and http://www.cfsan.fda.gov/~lrd/biotechm.html#reg: (US Food and Drug Administration).

- Mexico: the Mexican legal framework has the Law on Biosafety and Genetically Modified Organisms, published on 18 March 2005, in force since 17 April 2005. http://sagarpa.gob.mx/.

[49] For this serious incident, see: Macilwain 2005, 423. In this article, the Director of the Pew Initiative on Food and Biotechnology, Michael Rodemeyer, comments: "The release reflects the absence of a thorough monitoring system for genetically modified products in the US food supply. This will raise questions in the minds of countries that import food from the United States about whether we have adequate controls in place. It will provide ammunition for critics of genetically modified food - and it may provide incentives for countries to look at non-genetically modified varieties."

[50] Herrera himself affirms: “We may never know exactly how or when the commingling occurred, to what extent the global food system was contaminated, or how Syngenta calculated its acreage proclamation. But, all agree that the fact that it did occur suggests that there was some sloppy handling of materials that should have been treated with the utmost of care at all times for any number of reasons – some scientific, others purely political”. Herrera 2005, 514.

[51] Another report to be highlighted is the one presented by the Institute *Genetic ID*. Genetic identity testing helps agricultural and food industry clients to grow and sustain their markets and exports – guiding them through various countries’ government regulations and procedures concerning restricted ingredients such as GMOs (http://www.genetic-id.com) that confirmed the presence of different varieties of genetically modified corn -- known as Starlink -- not for human consumption, with help from the World Food Programme (WFP http://www.wfp.org/english) and the United States Agency for International Development (USAID -- http://www.usaid.gov/about_usaid/) in Bolivia, Guatemala and Nicaragua.

Moreover, it has been scientifically proved that a part of the emergency humanitarian aid distributed in different regions affected all around the planet contain LMOs.[52] Because of this, some African countries, immersed in deep crisis, have come to the point of refusing the offer of certain corn shipments suspected of containing LMOs - principally from the United States[53] - due to several causes: first of all, due to the risk of genetic contamination of their own traditional production; secondly, for the negative repercussion that this diffusion could have in the regional and international trade; thirdly, due to sanitary and environmental considerations; and last of all, due to questions concerning intellectual property rights. More specifically, among the African countries that prohibited the importation is Zambia, on the basis of a report made by scientists of East Africa. On the other hand, countries like Zimbabwe, Mozambique or Malawi ended up accepting the North-American corn under the condition that it was milled to avoid its diffusion.[54]

Clearly, it will be a long time until humanitarian aid is strictly focused on trying to efficiently respond to the existing humanitarian crises, and that the providing countries do not use these for the diffusion of genetically modified organisms, or to find commercial possibilities for the surpluses of their national production. This way only it will be possible to achieve one of the goals of the final Declaration of the World Food Summit referring to biotechnology: *"We are committed to study, share and facilitate the responsible use of biotechnology in addressing development needs."*[55]

c) Other Specific Aspects of Article 18

The COP-MOP 3 also engaged in long discussions on the documentation of LMOs destined for both contained use and for intentional introduction into the environment under para. 2(b) and (c) of Art. 18 respectively. Basically, the

---

Jeffrey L. Fox: "StarLink contains a Cry9Cgene, encoding a variant of the insecticidal protein derived from the soil bacterium Bacillus thruingiensis that EPA did not approve for human food use. Indeed when StarLink was registered, agency officials specified that it and other types of corn grown within 660 feet be used only in animal feed, industrial non-food uses such as ethanol production, and for seed increase," Fox 2001, 11.

[52] The Commission considers fundamental that the authorities of developing countries have the lawful right to determine their own protection level and to meet the decisions they consider adequate to avoid the involuntary diffusion of genetically modified seeds. IP/03/681, 3.

[53] The United States is not only the main producer and exporter of genetically modified products, but it also has concluded numerous Free Trade Agreements with countries in South and Central America which agreed to follow, in international trade, the North-American guidelines concerning genetically modified organisms. These Agreements are: Acuerdo de Libre Comercio Andino (Peru, Ecuador and Colombia) - EEUU (http://www.tlc.gov.co/VBeContent/tlc/newsdetail.asp?id=4075&idcompany=37); the CAFTA: Free Trade Agreement between the USA and 5 countries in Central America (Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua) and Dominican Republic http://www.minec.gob.sv/default.asp?id=84&mnu=70; The Chile Free Trade Agreement (FTA), which was approved by Congress in 2003 (http://www.ustr.gov).

[54] Data from Doc. IP/03/681, done in Brussels, May 13, 2003.

[55] WFS: 2002/3: *Draft Declaration of the World Food Summit: Five Years After* http://www.fao.org/DOCREP/MEETING/004/Y6948E.HTM. Together with the 1996 Declaration, it provides a framework to introduce important changes into the policies and programs necessary to eradicate nutritional deficiencies.

discussions were centered on determining the correct use of either commercial invoices or of other required documents which are used.

With the purpose of adopting a decision on this question, a note from the Executive Secretary was taken into consideration which compiled information and communications received by the different Parties, and which served, on one hand, as a guide to examine the determination of a unique document, and on the other hand, to evaluate the experience obtained in accordance with the application of the requirements of Art. 18.2(b) and (c).[56]

In this report, in accordance with the above-mentioned objective, the Executive Secretary prepared a synthesis of the obtained data based on the different communications presented, concluding that the majority of them were similar to those presented at COP-MOP 2. On this matter, Norway and the European Community supported the use of a unique document to complete the requirements of the Protocol under para. 2(b) and (c) of Art. 18.[57] Despite Canada and the United States considered that this question was out of the context of Art. 18.2(b), affirming that the documentation in the common commercial practices would be sufficient to guarantee a correct level of security.[58]

In the final decision adopted, COP MOP indicated the limited number of cases studies received on the experience in the use of the existing systems of documentation and recognized the necessity of a expanded practical experience.[59] Consequently, it required the Parties to submit more extensive information about the documentation assembled no later than 6 months before the MOP 4 to be able to consider the adoption of an individualized document in the proper context of the revision process of the application of the Protocol. Also, it recognized the right of the Parties to adopt internal measures, requesting from exporters of LMOs destined for contained use to implement standardized formats, independent documents and other systems of documentation. Furthermore, it mandated the Executive Secretary to make a

[56] The Executive Secretary's note addresses the reports of the European Community and its member countries, Norway, Canada and the United States of America: UNEP/CBD/BS/COP-MOP/3/8/Add.1, 3 January 2006: *Handling, transport, packaging and identification of living modified organisms. Synthesis of information on experience gained with the use of documentation to fulfill the identification requirements of paragraphs 2 b) and 2 c) of Article 18. Note by the Executive Secretary*, 2.

[57] Only Norway offered illustrative examples of a unique document to be used in the transborder movement of LMOs for restricted use and LMOs for intentional introduction in the environment. UNEP/CBD/BS/COP-MOP/3/8/Add.1, *op.cit.*, 4-5; UNEP/CBD/BS/COP-MOP/3/8/Add. 1, I Annex 1ª, *op. cit.,* 6-11.

[58] UNEP/CBD/BS/COP-MOP/3/8/Add. 1, 3-4. To obtain a more complete vision of the submissions presented by the Parts and other Governments, see Doc. UNEP/CBD/BS/COP-MOP/3/INF/2, *Handling, Transport, Packaging and Identification (Article 18): Compilation of information submitted by Parties and other Governments and by organizations on experience gained with the use of documentation requirements under paragraphs 2 (b) and (c) of Article 18 of the Cartagena Protocol on Biosafety*, 3.

[59] See Decision BS-III/8: *Handling, transport, packaging and identification of living modified organisms: paragraphs 2 b) and 2 c) of Article 18*, UNEP/CBD/BS/COP-MOP/3/15, *op. cit.*, 58.

report which analyzes the received information in order to study it at the moment of the revision of the Protocol, in accordance with article 35.[60]

With respect to Art. 18.3, if it is necessary when elaborating norms related to identification, handling, packaging and transport practices, COP-MOP engages in consultations to international organizations that are in some way related to the requirements of Art. 18.3 of the Protocol. In order to make this possible, the Executive Secretary invited some organizations to both provide their points of view about the rules or effective international practices regarding packaging and transport of LMOs, and about the convenience of elaborating norms and their different procedures.[61]

The discussion on this matter, which took place in Working Group I, focused on the necessity of developing standards regarding the practices related to handling, transport, packaging and identification (HTPI) in the trans-boundary movements of LMOs.

In this regard, after intense discussions, the final decision recognized the necessity of making subsequent consultations in order to develop measures concerning HTPI practices, with the intention of avoiding duplication of efforts. It also invited the governments and organizations to submit to COP-MOP 4 visions and information on the adjustment of the existing rules and measures and the voids that can justify the development of new rules and measures for consideration. Moreover, it asked the relevant international bodies to modify or to expand their existing rules and measures. Finally, it required the Executive Secretary of the CBD to assemble information about the existing rules and measures, and to make it available in COP-MOP 4 and 5.[62]

D) OVERVIEW OF THE OTHER ASPECTS ADDRESSED BY THE COP-MOP 3

Based on what was mentioned previously, the following matters debated during the COP MOP 3 are also of interest: capacity-building, risk assessment and risk management, the establishment of a process to evaluate and to revise the execution of the Protocol, the subsidiary bodies. Responsibility and compensation matters related to damages resulting from LMOs during international transport were also discussed, as well as cooperation with other

[60] Such as it was foreseen in the point 4 of the Decision BS-II/10: *Operations and activities of the Bio-safety Clearing-House*, Doc. UNEP/CBD/BS/COP-MOP/2/15, *op. cit*., 33.

[61] A reference is made of the following organizations: Economic Commission of the NNUU for Europe (UNECE), the International Organization of Normalization (ISO), the Universal Postal Union, the World Customs Organization and the International Air Transport Organization. The Secretary also invited the Commission of the Codex Alimentarius and the Centre of combined research, the Health and consumer's protection Institute or the European Commission. To observe how the different mentioned organizations try to cooperate and to upgrade the techniques for sampling and detection, UNEP/CBD/BS/COP-MOP/3/8/Add.2, 16 January 2006; *Consideration of the need for and modalities of developing standards with regard to identification, handling, packaging and transport practices in the transboundary movement of living modified organisms* (Paragraph 3, article 18) and UNEP/CBD/BS/COP-MOP/3/INF/3, 31 January 2006: *Compilation of information submitted by Parties and other Governments and by organizations on the Article 18 paragraph 3 of the Cartagena Protocol on Biosafety*.

[62] Decision III/9: *Handling, transport, packaging and identification of living modified organisms: paragraph 3 of Article 18,* UNEP/CBD/BS/COP-MOP/3/15, *op. cit.*, 59.

organizations, conventions or programs. Parties also discussed public perception and participation in the implementation of the Protocol. All these different aspects are going to be analyzed in the following paragraphs.

a) Liability and Redress (Art. 27).

The Working Group was mandated with the task of elaborating options for elements of rules and procedures for liability and redress, which may include the definition of damage; valuation of damage to biodiversity and human health; threshold of damage; causation; analysis of damage scenarios of potential concern, and the application of international rules and procedures on liability and redress to such scenarios; channeling of liability; the role of parties of import and export; the standard of liability; mechanisms of financial security; and the right to bring claims.

After the consideration of the report of the special Work Group, the President worked jointly with the Secretary with the objective of achieving a decision draft that was discussed in the plenary session, and from which the Decision BS-III/12 arose.[63] At the same time, it was recognized that many developing countries and economies in transition are unable to elaborate international rules and procedures in conformity with Art. 27 due to a lack of financial resources.

b) Compliance: Report of the Compliance Committee (Art. 34).

The COP-MOP 3 proceeded to approach this question taking in consideration the report of the second meeting of the *Compliance Committee,*[64] and a note

[63] The draft decision submitted by the President consisted of Doc. UNEP/CBD/BS/COP-MOP/3/L.2 - this document could not be consulted because it is not available for the public, but its data have been obtained from UNEP/CBD/BS/COP-MOP/3/15, *op. cit*., 26. On its side, the final Decision III-12: *Liability and redress under the Biosafety Protocol* can be consulted in Doc. UNEP/CBD/BS/COP-MOP/3/15, *op. cit*., 66.

[64] The Compliance Committee was created by Decision BS-I/7 of COP-MOP 1, according to Art. 34 of the Cartagena Protocol. The Compliance Committee consists of 15 members elected by the COP-MOP itself on the basis of a geographical criterion: three members from each of the five United Nations regional groups. Decision BS-I/7: *Establishment of Procedures and Mechanisms on Compliance under the Cartagena Protocol on Biosafety* in Report of the First Meeting of the Conference of the Parties Serving as the Meeting of the Parties to the Protocol on Biosafety: UNEP/CBD/BS/COP-MOP/1/15, *op. cit*., 98. Concerning the Compliance Committee, Ruth Mackenzie states: "With regard to how the procedure will function, the key issue to be resolved was how the procedure could be triggered. It was generally agreed that, in common with similar procedures established under other multilateral environmental agreements, any party could make a submission to the committee with respect to its own compliance with obligations under the Protocol. Eventually, it was also decided that a party could also trigger the compliance procedure in respect of another party, where it was affected or likely to be affected. This opens the possibility that a Party of import or Party of export could initiate the compliance procedure where, for example, it is of the view that another party has failed to abide by the Protocol's advance informed agreement procedure." Mackenzie 2004, 273.

from the Executive Secretary on measures in cases of repeated non-compliance.

The Committee drafted a decision with a list of 12 recommendations for consideration in the COP-MOP 3. The second meeting of the *Compliance Committee* analyzed the questions relative to the application of the regulation of the Committee approved by the COP-MOP 2.[65] Regarding rule 14.1, it parted from the decision of the COP-MOP 2 in which it was recommended to the Committee to discuss and adopt a reasoned decision on the question of whether their meetings should be open or closed.[66] The Parties opted on a case by case basis to carry out electronic consultations in order to adopt a decision.[67] Also, the Committee debated the topic as to who should be present in the open sessions. It agreed to the general rule that only those Parties that express their desire to the Secretary could be present in these sessions of the *Compliance Committee*, although it left open the possibility to invite observers.[68] As for Art. 18, the idea of establishing a majority of 2/3 remained after COP-MOP 2 due to a lack of consent in this respect. After some deliberations, the Committee recommended to the COP-MOP 3 the study of a final decision in this regard.

If we proceed to analyze the question of the adoption of measures in the event of reiterated non-fulfillment, it should be pointed out that the *Compliance Committee* possesses the capacity to adopt measures with the objective of promoting the execution and to respond to cases of non-fulfillment. In this context, the Committee will consider the following factors: the capacity of the Party in question, the cause, the type, the grade and the frequency of the non-fulfillment. It was decided that it would be the COP-MOP 3 that would be in charge of integrating these questions in the revision process according to the Protocol's Art 35.[69]

The Working Group considered paragraphs 1,2,3,5 and 15 of the draft decision in the report of the *Compliance Committee*[70] and the elements of a

---

The first meeting took place in Montreal – 14-16 March 2005 and was focused in developing the Regulations for their meetings and the preparation of a Working Plan.

[65] Decision BS-II/1: *Rules of procedure for meeting of the Compliance Committee*, UNEP/CBD/BS/COP-MOP/2/15, *op. cit*., 29.

[66] This way, COP-MOP 2 modified what the Committee had agreed in its first meeting on this question. That is, holding all their meetings behind closed doors unless otherwise decided.

[67] In those cases in which the Committee would decide to meet in open session, the Secretary shall announce it on their Web Site.

[68] Several members of the Committee expressed their worries on the possible disadvantaged position that this rule could offer to Parties from developing countries, in case they were interested in taking part in the open sessions. This way, an equitable balance between developed and developing States would be impossible because of financial reasons.

[69] UNEP/CBD/BS/COP-MOP/3/2/Add.1, 3 January 2006, *Compliance* (Article 34): Measures in cases of repeated non-compliance. For this purpose, Art. 35 states: "The Conference of the Parties serving as the meeting of the Parties to this Protocol shall undertake, five years after the entry into force of this Protocol and at least every five years thereafter, an evaluation of the effectiveness of the Protocol, including an assessment of its procedures and annexes."

[70] UNEP/CBD/BS/COP-MOP/3/2/annex, *op. cit.*, 12-13. Para. 1: Decides to remove the square brackets around Rule 18 on voting, in order to ensure efficiency, effectiveness, and independence in the work of the Committee and its members; para. 2: Calls upon Parties that still have no appropriate legal and administrative mechanisms in place at the national level to take the necessary measures and specifically to give appropriate attention to the development of

draft decision on repeated cases of non-fulfillment contained in section III of the note by the Executive Secretary. The other paragraphs of the draft decision in the report of the Compliance Committee were considered under the relevant agenda items.

Finally, COP-MOP 3, based on the draft decision elaborated by the Working Group, adopted decision BS-III/1, which decides to review and to reconsider the effectiveness of the procedures and execution mechanisms as foreseen by the Section VII Decision BS-I/7,[71] including the adoption of measures relative to the cases of non-accomplishment as well as the question between quotation marks in the rule 18 of the rule of procedures in their fourth meeting.[72] Also, it mandates the *Compliance Committee* to gather wider information about the experience of other environmental and multilateral agreements in connection with repeated cases of non-accomplishment for consideration at the COP-MOP 4. Furthermore, it requests the Parties that still don't have an appropriate legal and administrative framework, to elaborate it at the national level. Subsequently, it invites the Parties and other governments with well developed structures to cooperate and to share practical experiences with those parties that need it.[73] In the end, the COP-MOP 3 chose five individuals to become members of the *Compliance Committee* for a four year period.[74]

c) Other Issues

In the previous sections, some elements of the Protocol have been reviewed in a detailed manner. We shall proceed now with a more general analysis of some selected elements.

First, with regards to *capacity-building*, the delegates started from the principle that it is necessary for all Parties to the Protocol to have the capacity to execute their dispositions, to possess the capacity of understanding the

national biosafety frameworks as enabling tools in their efforts to effectively implement their obligations under the Protocol, and urges those Parties that have duly completed the development of their national biosafety frameworks to take measures necessary to make these frameworks effective; para. 3: Calls upon Parties to allocate the resources necessary to make the frameworks operational; para, 5: Invites Parties and other Governments with a well developed and functional biosafety framework or system to cooperate and share their practical experiences with those Parties that have a demand in this regard; para. 15: Elects/re-elects…as members of the Compliance Committee to replace those who resigned and those whose term will end by 31 December 2006. See UNEP/CBD/BS/COP-MOP/3/2/Add.1, *op. cit.*.

[71] Section VII: *Review of the procedures and mechanisms*, Decision BS-I/7: *Establishment of the procedures and mechanisms on compliance under the Cartagena Protocol on Biosafety:* "The Conference of the Parties as the meeting of the Parties to the Protocol shall, at its third meeting and thereafter, in line with article 35 of the Protocol review the effectiveness of these procedures and mechanisms, address repeated cases of non-compliance and take appropriate action."

[72] UNEP/CBD/BS/COP-MOP/3/15, *op. cit.*, 14, 65.

[73] Decision BS-III/, *Compliance*, in UNEP/CBB/COP-MOP/3/15, *op. cit.*, 33.

[74] UNEP/CBD/BS/COP-MOP/3/15, *op. cit.*, 14.

potential effects of an LMO on their biological diversity and to take the appropriate decisions on the import.[75]

As a consequence, the COP-MOP pointed out the necessity to assure the existence of financial resources to guarantee an appropriate capacity to all Parties, including training and infrastructures. Furthermore, it stressed the necessity to increase the South-South and North-South cooperation, as well as to intensify the cooperation at national and regional levels. The Secretary presented a report relative to the progress observed in connection with the implementation of the *Plan of Action of Creation of Capacities.*[76] The report stated that it was necessary to establish and execute national regulatory rules.

Regarding the position of developing countries concerning biotechnology, its defenders are of the opinion that it offers certain benefits for the economies of these countries, once they understand that it allows to increase the production in a sustainable way, an efficient use of the natural resources, increases in the productivity of crops, and contributing to eradicate hunger. The Food and Agriculture Organization of the United Nations (FAO), however, in its Reports on the evaluation of transgenic crops, is more cautious: in *The State of Food and Agriculture* of 2004 and in *The State of Food Insecurity in the World-2005*, it notes that there are few research programs of the public or the private sector dedicated to the problems of the developing countries, in spite of intensive research and large investments in biotechnology. Furthermore, there is not much research available on agricultural products whose characteristics would be of interest to poor countries.[77]

FAO Director Dr. Jacques Diouf requested new investments in research, education and technical assistance for the developing world: *"The developing countries need help, not only in laboratory techniques and knowledge, to carry out field tests of genetically modified crops, and other derived products."*[78]

---

[75] At present, this is a complex task for most of the developing countries because biotechnology is a new and unknown field for them. In addition, their lack of infrastructure and technical capacity that prevents them from controlling LMOs importations (Glass 2001, 508).

[76] UNEP/CBD/BS/COP-MOP/3/4, 28 February 2006: *Status of Capacity-Building Activities: Report on the progress in, and effectiveness of, the implementation of the Action Plan for Building Capacities for the Effective Implementation of the Cartagena Protocol on Biosafety*, and Doc. UNEP/CBD/BS/COP-MOP/3/4/Add.1, 31 January 2006: *Status of Capacity-Building Activities (Addendum): Draft updated Action Plan for building capacities for the effective implementation of the Cartagena Protocol on Biosafety*. The Plan of Action consists of a key element at the moment of achieving a solution of the situations provoked by a lack of human, technical and financial resources in several States that an effective implementation of the protocol prevents them from carrying out (Falkner and Gupta 2004, 9-10).

[77] *The State of Food Insecurity in the World 2005* http://www.fao.org/docrep/008/a0200e00.htm. , *The State of Food and Agriculture 2000,* Rome, 2000, available at: http://www.fao.org/docrep/x4400e/x4400e00.htm . FAO helps countries to make progress toward the World Food Summit (WFS) goal of reducing the number of the hungry by half by 2015. It also works toward the *Millennium Development Goals*.

[78] Statement presented at the International Conference *Seed modified genetically, why not?*, organized by the Royal Swedish Academy of Agriculture and Forestry, Stockholm, May 14, 2001. FAO's official press statements oo1/31. From the analysis of the available data and in spite the existence of claims to the contrary, we can conclude that LMOs are not being used, at present, to the benefit of humanity and the less favored, but they primarily benefit a small number of multinational companies. These are generating relationships of economic and social dependence for the farmers. This type of risks should be taken in consideration urgently in order

We may conclude, as Simonetta Zarrilli points out, that the developing countries can benefit from biotechnology applied to agriculture, but only if certain minimum conditions are respected: first, the biotech products should not damage human health and the environment; second, these products should become available at reasonable prices; and third, biotechnology should be applied to eradicate nutrition problems and poverty. Nevertheless, at the present time, the private sector is patenting practically all its research, which may result, in the near future, in great damage to farmers in developing countries.[79]

The COP-MOP 3 decisions include the following points: adopting an updated version of the *Action Plan for Building Capacities;* requesting the Executive Secretary to prepare a synthesis report for COP-MOP 4 to undertake a comprehensive review of the Action Plan; inviting developing country Parties and Parties with economies in transition to coordinate and harmonize biosafety frameworks at the regional and sub-regional level; urging countries to integrate biosafety in sustainable development strategies.[80]

Second, in the final decision, the COP-MOP requested the CBD Executive Secretary to expand the compilation of available guidance documents on *risk assessment and risk management* contained in the Biosafety Information Resource Centre of the Biosafety Clearing-House (BCH). Also, it invited governments and organizations to provide the BCH with additional links to relevant databases and information sources. The COP-MOP decided to consider the need for further guidance and the appropriate modalities for development of any such guidance at COP-MOP 4.[81]

Third, *the negotiations on the establishment of a process to evaluate and to revise the execution of the Protocol* were carried out in Working Group II based on a Note by the Executive Secretary in this sense.[82] In this Note it was emphasized that a medium-term work program had been adopted by the Parties in Decision BS-I/12; the program envisaged the initiation of a process of review and assessment at the third meeting. The Executive Secretary was requested to prepare a report that compiles the submissions presented by the Parties relative to difficulties incurred when executing the provisions of the Protocol.[83]

Fourth, in relation to the *subsidiary bodies*, the discussions took place in Work Group I: the Secretary introduced a Note on subsidiary bodies and documents[84], which was a compilation of views submitted by Parties and other

---

to avoid a worsening of rural poverty which will be very difficult to reverse once GM crops have become widespread.

[79] Zarilli 2000, 545.

[80] Decision BS-III/3: *Capacity-Building,* in UNEP/CBD/BS/COP-MOP/3/15, *op. cit*., 36-38. See also: Annex to Decision BS-III/3: *Updated creation Plan for Building Capacities for the effective implementation of the Biosafety Protocol*, in UNEP/CBD/BS/COP-MOP/3/15, *op. cit.,* 38-42.

[81] Decision BS-III/1: *Risk assessment and risk management*, UNEP/CBD/BS/COP-MOP/3/15, *op. cit.*, p. 63-65.

[82]. UNEP/CBD/BS/COP-MOP/3/13, 9 January 2006, *Assessment and Review (Article 35): Initiating a process of evaluation of the effectiveness of the Protocol.*

[83] Decision BS-III/15: *Assessment and review*; UNEP/CBD/BS/COP-MOP/3/15, *op. cit*., 85.

[84] Decision BS-III/13: *Subsidiary bodies (article 30),* UNEP/CBD/BS/COP-MOP/3/11, 16 January 2006, *op. cit., 67.*

governments on the need for subsidiary bodies to address scientific issues including risks assessment and risk management. Later on, the president of Working Group I, Mr. Ivars, introduced a decision draft on the matter. Some Parties were in favor of the establishment of a scientific subsidiary organ. Others considered the possibility of relying on the CBD Subsidiary Body on Scientific, Technical and Technological Advice, while still others considered it more important to concentrate efforts on capacity building.[85]

In the Decision, the COP-MOP pointed out that there are several mechanisms through which recommendations or scientific and technical advice can be provided to the COP-MOP. The COP-MOP also requested the Executive Secretary to prepare, for COP-MOP 4, a review of the results of the Ad Hoc Open-Ended Working Group on the Review of the Implementation of the Convention, and any decisions adopted by the CBD COP 8 relative to the revision of existing processes according the Convention. It was considered appropriate to review the estimated costs for a potential mechanisms for the provision of scientific and technical advice.[86]

Fifth and last, relative to the *Cooperation with other organizations*, the COP-MOP highlighted the importance of strengthening common objectives, and to increase efforts in the creation of capacities. Regarding this last point, it expressed concerns about the emergence of potential conflicts in the concurrent implementation of the WTO Agreements and the Biosafety Protocol. In light of the fact that - in spite of its requests - the CBD has still not been guaranteed an observer status in the SPS and TBT Committees of the WTO, it was decided to increase efforts to achieve such a status.[87]

C) CONCLUSIONS

Looking at the brief history of the Biosafety Protocol we can conclude that the COP-MOP 3 represents a significant progress in the international regulation of biotechnology, although one of its key objectives, i.e. adopting a final decision on detailed requirements regarding how to identify and to document LMO-FFP exports, was met only partially for the time being.

The entry into force of the Protocol has by no means eliminated the potential emergence of future problems.[88] Nevertheless, it can be said that the

[85] The Conference of the Parties serving as the meeting of the Parties to the Protocol, in this medium-term programme of work adopted in Decision BS-I/12, had decided to consider subsidiary bodies at its third meeting. Furthermore, in its Decision BS-I/11 on other issues, it had decided to consider the need for designating or establishing a permanent subsidiary body that provided it with advice on scientific and technical issues arising in relation to the implementation of the Protocol.

[86] UNEP/CBD/COP-MOP/3/15, *op. cit*., BS-III/13: *Subsidiary bodies*, 67.

[87] In this respect, on 29 May 2006, Pascal Lamy –WTO's Director-General - met in Geneva with the Convention on Biological Diversity's Executive Secretary, Mr.Ahmed Djoghlaf, to discuss how the two organizations may work together to fulfill their mandates, achieve sustainable development and be mutually supportive. This first-ever meeting of the WTO Director-General and CBD Executive Secretary opened up new avenues of collaboration. See Decision BS-III/6: *Cooperation*, UNEP/CBD/BS/COP-MOP/3/15, *op. cit.*, 47.

[88] See for instance *Grain*, 2003, Blinded by the gene, Seedling, July 2003.

Cartagena Protocol, in its present state, already represents a remarkable success in the codification and progressive development of the international regulation of trade in genetically modified food because it improves the legal certainty of the trading nations.

Since the main aim of the Protocol is to avoid as much as possible the potential adverse effects on the conservation and sustainable use of biological diversity, taking into account the risks to human health, and focusing on the movements of these kinds of organisms, particular emphasis must be placed on the identification and labeling requirements. This way, the international community can be ascertained that trans-boundary movements are accompanied by the necessary documents based on the acquisition of the pertinent shipping details from the responsible individuals and institutions. This requirement is an important element when giving to the importing country some security at the moment of taking decisions regarding the permission to import a shipment, allowing it to be clearly and accurately informed about when it will receive it. On this question, the agreement achieved in COP-MOP 3 on Art. 18.2(a) represents a step forward that could in fact have been more important if the biotechnological industry and trade interests of some exporting countries had not blocked the achievement of a better protection of the developing countries that lack adequate internal regulations, and also of biological diversity as such.

With respect to this last point, the most interested Parties in elaborating minimal international specifications on documents are primarily the countries that have not yet implemented internal legislations on LMOs labeling. These countries are trying to make sure that the absence of such regulations does not turn them into *testing grounds* of LMOs previously rejected in other countries for not fulfilling the minimal conditions stipulated in their own laws.

For this reason, COP-MOP 3 made an appeal to the Parties who do not have yet an adequate internal legal and administrative framework to make an effort to create one and, in this way, to effectively comply with the obligations as they are foreseen in the Protocol. This means that in most cases the failure to comply with some of the security measures included in the Protocol by the Parties is not due to their lack of willingness and commitment, but to their lack of available means and resources. To correct this situation, COP-MOP 3 emphasized that the developed countries should give financial resources and share practical experiences with the economically less advanced ones with the aim to create the required capacities. It is a necessary way for the *"machinery"* of the Protocol to work effectively in the near future.

As far as the decisions adopted by COP-MOP 3 are concerned, some of them deserve to be highlighted, since they have an important implication in the production, as well as in the trade and exportation of LMOs. To achieve these results, the Parties made important mutual concessions to obtain a consensus that, more or less, could satisfy all Parties and avoid finishing COP-MOP 3 *"empty-handed".* In most instances, however, the decision was taken to defer certain points to later negotiations. The various Working Groups and Committees have been mandated with assembling information about practical experiences by the Parties for a consideration in COP-MOP 4.

---

www.grain.org/seedling/?id=239 and *Grain* 2004, Confronting contamination. 5 reasons to reject co-existence, Seedling, April, 2004. www.grain.org/seedling?id=280.

The most difficult problem, perhaps, consists in the fact that the most important GMO exporting countries have not yet ratified or not even signed the Protocol (only Parties of the CBD can sign or ratify a protocol to the convention). This is an obstacle for the Parties in taking strong and binding decisions on implementation. The key to overcome this adverse situation lies in trying to find a balance between the desire of making a more strict and precise Protocol and the necessity of encouraging some of the most important LMO exporters to ratify the Protocol.

Basically, the main LMO exporting countries have an interest in taking part directly in the transformation and evolution of the Protocol, and in having a more effective participation with a view of defending their interests. In view of the blockages that have taken place in the COP-MOPs, it is a great challenge to try to entice these non-Parties towards ratification. This is crucial nevertheless to achieve firm, binding and implemented decisions on the requirements of identification, responsibility and compensation. The non-Parties will have to choose between adhering to the Protocol, despite not agreeing to some aspects of it, and so being able to influence directly its later evolution, or else to stay on the sidelines for an important period of time. In the meantime, they are limited to exerting an indirect influence through the lobbying and pressuring of certain like-minded Parties or Parties whom they manage to influence accordingly.

In addition to the environmental impact of LMOs, their economic, social and ethical effects needs to be taken into consideration by the international community. Given GM agriculture's enormous economic potential in the international markets, it is not surprising that the questions of access to genetic resources and of sharing their economic benefits in most cases strongly polarizes the industrialized and the developing countries' negotiation positions. This cleavage has been aggravated over the past few years by a quickly developing monopolization and control of the market through a small group of multinational corporations and interconnected distribution networks.[89] This dynamics has undoubtedly increased prevailing inequities between developed and developing countries, since the latter have difficulties in gaining access to (increasingly patented!) new technologies and germplasm, and in introducing their products in Northern markets. For all these reasons, the key concern for many developing countries lies in the impact of these agricultural techniques on their often extreme levels of rural poverty. Last but not least, however, they are in many cases also very much concerned about damaging their export potential, especially on the European markets, which so far have been highly recalcitrant to accepting GM food on their supermarket shelves.

The developing countries will only be able to benefit from these applications of biotechnology to farming if they manage to exert a sufficient measure of control over it. Under these circumstances, biotechnology may make a contribution in solving the problems of hunger and underdevelopment. Unfortunately, in spite of good intentions, the market-driven dynamics governing international trade yield the opposite result. Furthermore, economical and social dependency relations are being developed which are detrimental for the poor

[89] Matringe and Moretti 2006

farmers. It should be noted in this context that a large number people in many countries unfortunately are still affected by alimentary food emergencies.[90]

In order to feed a more and more numerous global population, it is evident that agriculture has to produce more food, but it is also true that this increase must be accompanied by better distribution patterns. This is why, in achieving this aim, biotechnology has *"two faces"*: on one side, it is presented, by its proponents, as a real guarantee of future benefits. On the other side, its critics point out, it can also become a destructive force regarding the world's biodiversity, endangering global food security.

To conclude, the effectiveness and operationability of the Protocol will depend on the principles, regulations and guidelines in the Protocol itself, on the decisions of the COP-MOPs, and on how the related regulatory frameworks are applied domestically. The progress achieved at the COP-MOP 3 in the implementation of the Cartagena Protocol, as the primary mechanism to guide international cooperation to prevent and manage possible environmental risks from LMOs, has been widely recognized. Last but not least one should mention that related important work is also being carried out under the auspices of other intergovernmental organizations, such as especially the FAO/WHO Codex Alimentarius or the FAO's International Plant Protection Convention.

E) BIBLIOGRAPHY:

Bail, Christopher, Robert Falkner and Helen Marquard. 2002. *The Cartagena Protocol on Biosafety – Reconciling Trade in Biotechnology with Environment and Development.* London, Earthscan, 579 p.

Bernauer, Thomas. 2003. *Genes, Trade, and Regulation - the Seeds of Conflict in Food Biotechnology.* Princeton and Oxford: Princeton University Press, 230 p.

Boisson de Chazournes, Laurence and Urs P. Thomas, editors. 2000. The Biosafety Protocol: Regulatory Innovation and Emerging Trends, *Swiss Review of International and European Law* 10 (4): 513-557.

Bourrinet, Jacques et Sandrine Maljean-Dubois, éd. 2002. *Le commerce international des organismes génétiquement modifiés.* Aix-Marseille/Paris: CERIC/La documentations française, 384 p.

Clive, J. 2005. *Executive Summary of the Global Status of Commercialized Biotech/GM Crops:, Hightlights of ISAAAA Briefs*, Brief 34-2005. http: //www.isaaaa.org/kc/bin/briefs34/pk/index.htm.

[90] FAO *Hunger Map*. http://www.fao.org/es/ess/faostat/foodsecurity/FSMap/map14.htm; and *The State of Food Insecuritiy in the World 2006. Eradicating World Hunger -- Taking Stock Ten Years after the World Food Summit:* http://www.fao.org/docrep/009/a0750e/a0750e00.htm

Combacau, J. et S. Sur. 2004. *Droit International Public*, Paris : éd. Montchrestien, 6ème éd, 809 p.

Diez de Velasco, M. 2006. Organizaciones internacionales. Madrid : Ed. Tecnos, 14ª ed., 884 p.

Diez de Velasco, M. 2005. Instituciones de Derecho Internacional Publico. Madrid : Ed. Tecnos, 15ª ed., 1124 p.

Echols, Marsha. 2001. *Food Safety and the WTO – The Interplay of Culture, Science, and Technology.* New York : Kluwer Law International, 180 p.

Falkner, Robert. 2004. The First Meeting of the Parties to the Cartagena Protocol on Biosafety. *Environmental Politics* 13 (3): 635-641.

Falkner, Robert and Aarti Gupta. 2004. *Implementing the Biosafety Protocol: Key Challenges.* London: Sustainable Development Program, SDP BP 04/04, Chatham House.

Fox, J.L. 2001. EPA Re-evaluates StarLink License. *Nature Biotechnology* 19, p. 11.

Franconi, F. 2001. *Environment, Human Rights and International Trade*. Portland, Oregon; Hart Publishing, 361 p.

Garton, A., Falkner, R. and TARSOFSKY, R. 2006. *Documentation Requirements Under the Cartagena Protocol on Biosafety: The Decision by the Third Meeting of Parties on Article 18.2 a).* Background note for expert meeting: "Will the Decision on the Biosafety Protocol at the 3rd Meeting of Parties Work? Chatham House (Royal Institute of International Affairs).

Glass, J.A. 2001. The Merits of Ratifying and Implementing the Cartagena Protocol on Biosafety. *Northwestern Journal of International Law & Business* (21): 491-517.

Herrera, S. 2005. Syngenta' s gaffe embarrasses industry and White House. *Nature Biotechnology* (23): 514.

IISD 2006. Summary of the Third Meeting of the Parties to the Cartagena Protocol on Biosafety. 13-17 March 2006, Earth Negotiations Bulletin, IISD Reporting Services (Vol. 9, Nº 350 and 351, March 2006).

Macilwain, C. 2005. US launches probe into sales of unapproved transgenic corn, *Nature* 434 (7032), 24 March 2005.

Mackenzie Ruth. 2004. The Cartagena Protocol after the First Meeting of the Parties, *RECIEL*, 13 (3): 270-278.

Mackenzie Ruth et al. 2003. An Explanatory Guide to the Cartagena Protocol on Biosafety. *IUCN Environmental Policy and Law Paper* No. 46. Gland/Geneva: IUCN, Field, WRI. 294 p.

Matringe, Olivier and Irene Musselli Moretti. 2006. Tracking the Trend Towards Market Concentration: the Case of the Agricultural Input Industry. Geneva: UNCTAD, 55 p. http://www.unctad.org/en/docs/ditccom200516_en.pdf

Mayr, J. 2002. Doing the Impossible: The Final Negotiations of the Cartagena Protocol, in *Cartagena Protocol on Biosafety from Negotiation to Implementation. Historical and New Perspectives.* CBD News Special Edition. The Secretariat of the CBD. Montreal, Canada. http://www.biodiv.org/doc/publications/bs-brochure-02-en.pdf

Meléndez-Ortiz, Ricardo and Vicente Sánchez, editors. 2005. *Trading in Genes - Development Perspectives on Biotechnology, Trade and Sustainability.* London: Earthscan, 295 p.

Pomerance, R. 2000. The Biosafety Protocol: Cartagena and Beyond. *New York University Environmental Law Journal.* 8 (3): 614-621.

Wiers, J. 2002. *Trade and Environment in the EC and the WTO. A Legal Analysis*. Europe Law Publishing, 502 p.

Zarilli, Simonetta. 2000. “International Trade in Genetically Modified Organisms: Developing Country Concerns and Possible Options.” In Boisson de Chazournes, Laurence and Urs P. Thomas, editors. The Biosafety Protocol: Regulatory Innovation and Emerging Trends, *Swiss Review of International and European Law* 10 (4): 513-557.

Zerhdoud, Badr. 2005. Le régime juridique international des biotechnologies: entre libre-échange et protection de l’environnement. *EcoLomic Policy and Law* 2 (5/6) : 1-64. www.ecolomics-international.org/ecolomic_policy_and_law.htm

F) WEB SITES

- www.biodiv.org (Convention on Biological Diversity)
- www.bch.biodiv.org/Default.aspx (Biosafety Clearing-House)
- www.cfsan.fda.gov (U.S.Food and Drug Administration)
- www.cibiogem.gob.mx (Comisión Intersecretarial de Bioseguridad y Organismos Genéticamente Modificados de Méjico)
- www.EcoLomics-International.org
- www.epa.gov (U.S. Environmental Protection Agency)
- www.etcgroup.org/en/ (Erosion, Technology and Concentration)
  www.europa.eu.int (Gateway to the European Union)
- www.fao.org (Food and Agriculture Organization of the United Nations)
- www.genetic-id.com (Genetic ID)
- www.grain.org (Grain- international non-governmental organization)

- www.ictsd.org (The International Center for Trade and Sustainable Development)
- www.ielrc.org (International Environmental Law Research Center)
- www.iisd.ca (Earth Negotiation Bulletin)
- www.isaaa.org (International Service for the acquisition of Agric-Biotech Applications)
- www.mfe.govt.nz (Ministry for the Environment New Zealand)
- www.minec.gob.sv (Ministerio de Economía. Gobierno de El Salvador)
- www.mma.gov.br (Meio Ambiente. Ministério do Meio Ambiente Brasil)
- www.nafta-sec-alena.org (Nafta Secretariat)
- www.nature.com/index.html (Nature)
- www.riia.org/ (Chatham House, Institute of International Affairs)
- www.sagarpa.gob.mx (Secretaría de agricultura, ganadería, desarrollo rural, pesca y alimentación de Méjico)
- www.tlc.gov.co (Tratado de Libre Comercio Andino-EEUU)
- www.twnside.org.sg (Third World Network)
- www.usaid.gov (United States Agency International Development)
- www.usda.gov (United States Department of Agriculture)
- www.ustr.gov (Office of the United States Trade Representative)
- www.wto.org (World Trade Organization)
- www.wfp.org (World Food Programme)