The Cartagena Protocol on Biosafety, negotiated under the Convention on Biological Diversity, was adopted in Montreal on 29 January 2000, after six years of preparatory discussions and negotiations.

It addresses the safe transfer, handling and use of Living Modified Organisms (LMOs) that may have an adverse effect on biological diversity, also taking into account effects on human health, and focuses on transboundary movements of LMOs.

'The Cartagena Protocol recognizes that biotechnology has an immense potential for improving human welfare, but that it could also pose risks to biodiversity and human health,' said Klaus Töpfer, Executive Director of UNEP, at the occasion of the third meeting of the Intergovernmental Committee on the Cartagena Protocol (ICCP). 'The Protocol promises to minimize these risks by establishing an effective system for managing the transboundary movement of living modified organisms.'

ICCP was established by the Conference of the Parties to the Convention on Biological Diversity, to prepare for the first meeting of the Parties to the Protocol. It first met in Montpellier (France) in December 2000 (see Environmental Policy & Law, Vol. 31 (2001) No. 1, at page 23) and again in Nairobi (Kenya) in December 2001 (see Environmental Policy & Law, Vol. 31 (2001) No. 6 at page 276). ICCP 3 met in the Hague (Netherlands) from 22 to 26 April 2002, immediately following the sixth meeting of the Conference of the Parties to its parent Convention.

It was attended by nearly 500 participants, with 147 States and some 100 intergovernmental, non-governmental, and industry organizations represented.

ICCP 3 continued the work of the two previous meetings in preparing for the entry into force of the Protocol, in particular in preparing for its first Meeting of Parties. It adopted 13 recommendations for consideration by this meeting.

Only 17 States, however, have ratified or acceded to the Protocol so far, making entry into force of the Protocol (90 days after the deposit of the 50th instrument of ratification or accession) unlikely in the near future, and virtually impossible before the World Summit on Sustainable Development (WSSD), a target which many had hoped would be met.

It is now planned to hold the first meeting of the Parties to the Protocol in conjunction with an extraordinary session of the Conference of the Parties to the Convention on Biological Diversity (CBD COP) if the Protocol enters into force within a year, or in conjunction with the 7th CBD COP in 2004, if later.

ICCP 3 was split into two Working Groups, which considered the following subjects:

- information sharing; handling, transport, packaging and identification (HTPI); monitoring and reporting; other issues for effective implementation (Working Group I); and
- liability and redress; compliance; capacity building (including the roster of experts) (Working Group II).
Among these subjects, HTPI, liability and compliance were the most difficult, and lengthy debates in the relevant Working Group and Contact Groups created to attempt resolving differences achieved little concrete progress, or at least less progress than hoped for.

Considering HTPI, discussions focused on the interpretation of the terms of Article 18.2, in particular on specifying the identification requirements for LMO-FFPs (as ‘may contain LMOs’), for LMOs destined for contained use, and for LMOs for intentional introduction into the environment.

The recommendation adopted reflects divergence of views between those wishing a strict interpretation of the terms of Article 18.2, and those favouring a broader interpretation, requiring more identification information to be provided.

On liability and redress, the debate concentrated on process rather than substance, and many favoured an information-gathering approach, while others stressed that it was delaying substantive work on a liability regime. The recommendation adopted (with an appended questionnaire) is nevertheless a further step in nurturing a process which may lead to a common understanding of the elements of a future liability regime.

The draft procedures and mechanisms for compliance were further considered, and delegates agreed to concentrate on text remaining in brackets from the discussions at ICCP 2. A controversy arose in the final plenary as to whether or not all elements (versus remaining bracketed text) of the draft would be subject to further discussions, a prospect which is likely to lead to the reopening of part of the text on which compromise had been reached earlier.

The recommendation forwards the annexed draft procedures and mechanisms with options regarding bracketed text to the first meeting of the MOP, and invites governments to submit comments on bracketed text no later than six months prior to MOP I.

Many participants were disappointed at the lack of ‘real’ progress at ICCP 3, and complained that the ‘spirit of Montpellier’ was fading away – an expression coined to reflect the atmosphere of goodwill which permeated ICCP 1 (and 2) discussions.

Others pointed out that this evolution is a natural one: Montpellier mapped the issues to be tackled in order to facilitate MOP 1. With each step taken to concretize action to be taken on these issues, it is only natural for debates to become more difficult and polarized. Above all, the nature of ICCP – as a facilitator for decisions to be taken by MOP 1 – limits its possibilities in the political context: it seems that the point has now been reached where a number of negotiators are more worried about keeping their political options open for MOP 1 than making progress in its preparation. (François Burhenne-Guilmin)

New York. Among the topics on the agenda were the following:

- The election of new members to the International Tribunal for the Law of the Sea as well as to the Commission on the Limits of the Continental Shelf.

- The approval of the Tribunal’s budget and the continued consideration of the Tribunal’s draft financial regulations.

The Meeting was opened by Christian Maquieria (Chile), President of the Eleventh Meeting. He called for a moment of silence to commemorate the death of Judge Edward A. Laing, of the International Tribunal for the Law of the Sea, and Elisabeth Mann-Borgese, President of the International Oceanographic Institute of Canada, who died earlier this year (see also page 173).

Don MacKay (New Zealand) who was elected as President, welcomed three new members – Bangladesh, Madagascar and Hungary. He emphasised in his opening statement that all States Parties to the Convention must work to ensure the widest possible acceptance of its principles. He noted that delegates had a full agenda before them, and said that he considered their most important tasks to be the election of seven members to the International Tribunal and 21 members to the Commission on the Limits of the Continental Shelf.

He stated that the just-concluded Third Meeting of the United Nations Consultative Process on Ocean Affairs (8–15 April) had been very successful, and reminded delegations that the General Assembly would review the consultative process later this year.

Matters related to Convention Article 319

Article 319 of UNCLOS spells out responsibilities entrusted to the Secretary-General under the Convention, including an obligation to report to all States Parties, the International Seabed Authority and competent international organisations on issues of a general policy nature that have arisen with respect to the Convention.

The perceived lack of a forum for discussion and coordination of such issues, under the framework of the Convention, had been identified by the Secretary-General as one factor that has prevented the emergence of more effi-

Note: In addition to the official report of ICCP 3, a detailed report by ENB (Earth Negotiations Bulletin) of the meeting and its results is available at www.iisd.ca/forums/biodiv/iccpp3/