

Cartagena Protocol

Second Meeting of the Intergovernmental Committee

The second meeting of the Intergovernmental Committee for the Cartagena Protocol on Biosafety (ICCP) was held in Nairobi from 1-5 October 2001.

One hundred and seventeen States were represented, as well as forty-seven governmental, non-governmental and industry organisations, making participation significantly higher than that of the first ICCP meeting in December 2000 (see *Environmental Policy and Law*, Vol. 31, No. 1 at page 22).

The Meeting started with an address from ICCP Chair, Philémon Yang (Cameroon), who highlighted progress made since the first meeting, as well as areas requiring further attention in order to prepare for the entry into force of the Protocol. He stressed the fact that the work of ICCP would also facilitate the ratification process.

The Protocol needs 50 ratifications to enter into force. Only six ratifications had been deposited until the start of ICCP 2. A seventh ratification (Czech Republic) has, since then, been deposited. The limited number of ratifications achieved so far was a palpable concern throughout the meeting, and was addressed by a number of speakers during the opening plenary session.

As in ICCP 1, work was divided between two Working Groups (WG I and WG II), chaired respectively by François Pythoud (Switzerland) and Mohammad Reza Salamat (Islamic Republic of Iran).

The issues considered by WG I were information sharing, handling, transport, packaging and identification. Those addressed by WG II were capacity building; the roster of experts; guidance to the financial mechanism, decision-making procedures; liability and redress; and compliance.

In addition, a group chaired by Veit Koester (Denmark) was convened to consider the Rules of Procedures of the future Meetings of the Parties (MOP).

The report of the ICCP on the work of its second session (UNEP/CBD/ICCP/2/15) contains 13 recommendations adopted by the meeting:

- 2/1 Liability and redress
- 2/2 Monitoring and reporting
- 2/3 Secretariat: Programme budget for the biosafety work programme for the biennium following the entry into force of the Protocol
- 2/4 Guidance to the financial mechanism
- 2/5 Rules of Procedures for meetings of the Conference of the Parties serving as the meeting of the Parties to the Protocol
- 2/6 Consideration of other issues necessary for the effective implementation of the Protocol
- 2/7 Decision-making
- 2/8 Information-sharing

- 2/9 Capacity-building and the roster of experts
- 2/10 Handling, packaging, transport and identification
- 2/11 Procedures and mechanisms on compliance under the Cartagena Protocol
- 2/12 Cooperation between the Cartagena Protocol and the International Plant Protection Convention (IPPC) regarding risk analysis procedures for phytosanitary risks that may be arising from living modified organisms
- 2/13 Need for further preparatory work by the ICCP before the first meeting of the Conference of the Parties serving as the meeting of the Parties to the Protocol

It is beyond the scope of this short information note to report on each of these decisions, which all address important elements of the implementation of the Protocol. Only three are highlighted below, because of their interest from the point of view of international law development.

2/1 Liability and Redress

Important for the discussion of this issue is the relationship between the liability provisions of the Convention on Biological Diversity (CBD) (Article 14.2) and those in the Protocol (Article 27). A Workshop on Liability and Redress in the context of the CBD was held in Paris in June 2001, which recommended to keep the issues, and related processes, separate.

This approach was followed by ICCP 2, and discussions concentrated on creating a liability regime, while some delegations also called for consideration of the possible elements of such a regime.

The resulting recommendation stresses the need for information gathering on, and analysis of, the issue of liability and redress pursuant to Article 27 of the Protocol. It further requests governments and relevant international organisations to provide information to the Executive Secretary regarding national, regional and international measures in this field, with a view to preparing a synthesis report of the information provided to the first meeting of the Parties to the Protocol. Parties to the CBD are invited to organise workshops to consider case studies and analyse the information gathered, as well as to point out gaps in such information.

It further recommends the establishment of an open-ended *ad hoc* group of legal and technical experts to carry out the process of elaborating a liability regime under Article 27 of the Protocol by the first meeting of the Parties, with terms of reference adopted by that meeting.

2/11 Procedure and Mechanisms on Compliance under the Cartagena Protocol

The meeting stressed the differences between the liability regime and the compliance mechanism, and reviewed the results of the Open-ended Meeting of Experts on Compliance held in Nairobi in September 2001.

Process versus substance was again an important element of the discussion, with consideration of the text of the draft procedures and mechanisms on compliance under the Cartagena Protocol annexed to the above-mentioned report of the Meeting of Experts.

The resulting recommendation agrees to forward the text of this Annex to the first meeting of the Parties to the Protocol, and invites CBD Parties to provide comments on its content to the Executive Secretary, with a view to their consideration by the Parties to the Protocol along with the draft procedures and mechanisms.

2/12 Cooperation between the Cartagena Protocol and the International Plant Protection Convention (IPPC) regarding risk analysis procedures for phytosanitary risks that may be arising from living modified organisms

The discussion of this issue is interesting from two points of view: first, as a step towards synergies in the implementation of the Protocol and other relevant international agreements; second, because IPPC is recognised

as a standard-setting body under the WTO SPS Agreement (World Trade Organisation Agreement on the Application of Sanitary and Phytosanitary Measures).

The recommendation adopted by ICCP 2 notes the results of work undertaken under the aegis of the IPPC Interim Commission on Phytosanitary Measures on specifications for an international standard for phytosanitary measures on living modified organisms (LMOs), in particular the recommendations to coordinate IPPC efforts in this field with activities under the Cartagena Protocol. It further urges the Interim Commission to ensure that the international standards, which it develops regarding LMOs, are in harmony with both the objectives and the requirements of the Protocol, and encourages Parties to the CBD and IPPC to work toward that goal.

The closing Plenary also discussed the possibility of holding a third session of the ICCP before the first meeting of the Parties to the Protocol, anticipating that the number of ratifications needed to hold the first meeting of the Parties to the Protocol in April 2002 (as originally planned) may not be reached in time to do so. A recommendation was adopted, mandating the ICCP Bureau to explore convening a third ICCP meeting in conjunction with the Sixth Conference of the Parties to the Convention on Biological Diversity (CBD COP-6) if the 50th instrument of ratification to the Protocol is not deposited by 8 January 2002.

ICCP 2 was a productive meeting, which contributed significantly to preparation of the entry into force of the Protocol.



From left to right:
Environment Minister Noah Katana Ngala (Kenya), Chair Philémon Yang (Cameroon), CBD Executive Secretary Hamdallah Zedan and Reuben Olemba (Special Adviser to Minister Ngala)
Courtesy: UNEP

