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The Liability and Redress Protocol

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Basic concepts

In legal terms

Liability: Being legally responsible or answerable under the law.

Criminal Liability:

- Involves breaking criminal laws.
- Penalties include prison, fines, or other punishments.

Civil Liability:

- Focuses on compensation for harm or loss through a lawsuit.
- Results in monetary payment to the injured party but no prison or fines.

Liability means being legally accountable for harm caused by your actions, whether through financial compensation or other corrective steps.

| Basic concepts

Types of liability

1. Fault-Based Liability:

- The injured party (plaintiff) must prove the defendant was negligent or acted intentionally to cause harm.

2. Strict Liability:

- The plaintiff only needs to prove that the defendant's product or object caused the damage.
- Example: Product Liability – Manufacturers are responsible if their product causes harm, even if they weren't negligent.

| Basic concepts

In legal terms

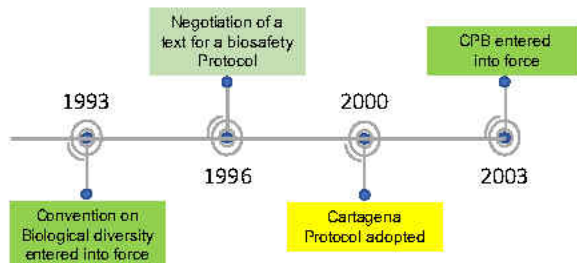
Redress: refers to providing a remedy, such as:

- Compensation for damages.
- Restoration of the situation to its original state.
- Taking corrective measures to fix the harm caused.

Redress ensures that those affected by damage or wrongdoing are properly compensated or/ and the issue is addressed through corrective action.

Origin of The Supplementary Protocol

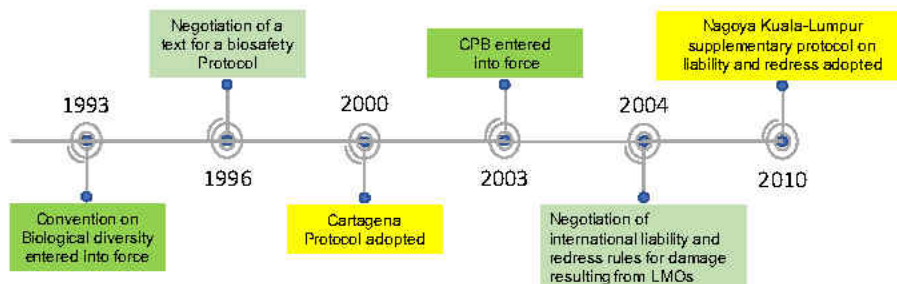
Historical overview



At the time of adopting the Cartagena Protocol, negotiators were unable to reach an agreement on the issue of 'liability and redress'. They decided to revisit and address this contentious matter after the Protocol's entry into force.

Origin of The Supplementary Protocol

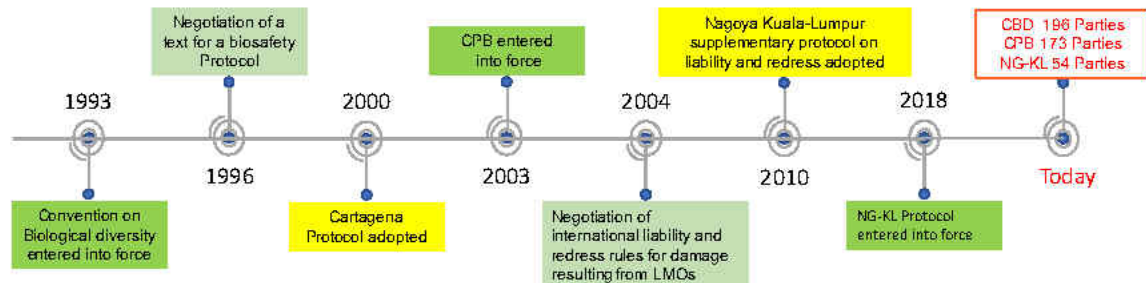
Historical overview



In February 2004, at their first meeting, the parties to the Cartagena Protocol agreed to start negotiations on international rules for liability and redress related to damage from LMOs. These negotiations continued until they were finalized in October 2010.

Origin of The Supplementary Protocol

Historical overview



The NG-KL Protocol on Liability and Redress was adopted on October 15, 2010, at the fifth meeting of the COP-MOP in Nagoya, Japan, and came into force in March 2018. Today, there are 196 parties to the CBD, 173 parties to the Cartagena Protocol, and 54 parties to the NG-KL Protocol.

The NG-KL Supplementary Protocol

Objective **Art. 1**

Contribute to **the conservation and sustainable use of biological diversity**, taking also into account risks to human health, by providing international rules and procedures in the field of liability and redress relating to living modified organisms.

It supplements the Cartagena Protocol, focusing on damage prevention, response measures, and compensation.

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Objective **Art. 1**



Art.1 the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.



Art.1 Contribute to ensuring an adequate level of protection in the field of the safe transfer, handling and use of LMOs from modern biotechnology that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, and specifically focusing on transboundary movements.

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Use of terms

- Definitions under the Cartagena Protocol also applies to the Supplementary Protocol.
- E.g. terms like Living Modified Organisms and Modern Biotechnology.

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Use of terms Art. 2

- Damage:

Adverse effect on the conservation and sustainable use of biological diversity taking into account human health that is

Measurable or otherwise observable

Baselines where available

Significant

- The inclusion of such qualifiers as 'or observable' and 'where available' softens the otherwise stringent requirement of science-based proof of damage.

The NG-KL Supplementary Protocol

Use of terms Art. 2

- Damage:

Adverse effect on the conservation and sustainable use of biological diversity taking into account human health that is

Measurable or otherwise observable

Baselines where available

Significant



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Use of terms Art. 2

- Damage:

- Response measures:

Reasonable actions to

A. Prevent Minimize Contain Mitigate Avoid

B. Restore biological diversity in the following order of preference

1. The condition that existed before the damage occurred

2. Its nearest equivalent

3. with other components of biological diversity for the same use

4. For another type of use

5. At the same location

6. At alternative location

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Use of terms Art. 2

- Damage:

- Response measures:

- Operator:

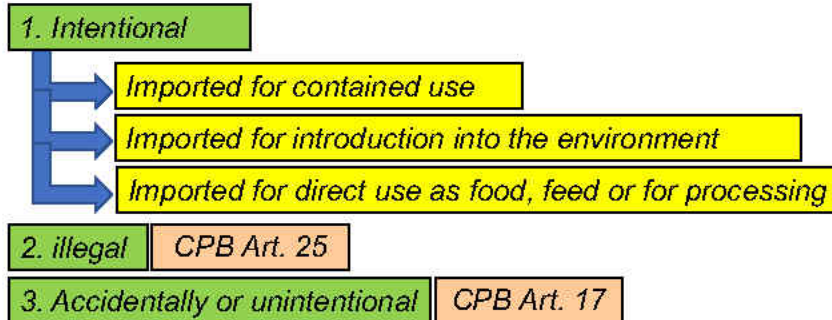
means any person in direct or indirect control of the living modified organism which could, as appropriate and as determined by domestic law, include, inter alia, the permit holder, person who placed the living modified organism on the market, developer, producer, notifier, exporter, importer, carrier or supplier

The determination of who the specific operator might be in any given circumstance is left to domestic law.

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Scope Art. 3

Damage to Biological Diversity resulting from Living Modified Organisms which find their origin in **a transboundary movement.**



The NG-KL Supplementary Protocol

Scope Art. 3

Damage to Biological Diversity resulting from Living Modified Organisms which find their origin in a transboundary movement.

Resulting from a transboundary movement of LMOs that started after the entry into force of this Supplementary Protocol for the Party

Temporal

Occurred in areas within the limits of the national jurisdiction of Parties.

Geographical

- Domestic law implementing this Supplementary Protocol shall also apply to damage resulting from transboundary movements of living modified organisms from non-Parties.

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Handling damage under the Supplementary Protocol

The Nagoya – Kuala Lumpur Supplementary Protocol delineates two pathways to dealing with damage:

1. Administrative Approach.
2. Civil Liability Option.

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Handling damage under the Supplementary Protocol

Administrative approach

How, when and who should take response measures **Art. 5**

Definitions of damage and response measures **Art. 1**

- Empowers the competent authority to address damage resulting from LMOs administratively by determining and imposing which **response measures** are to be taken by **operators**, without initial recourse to courts or the intervention of a judicial authority.

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Handling damage under the Supplementary Protocol

Administrative approach

- The Protocol includes optional provision for creating domestic civil liability rules.
- Unlike response measures, which can be enforced by administrative authorities, civil liability rules are typically handled by the courts.

Civil Liability Option

Continue to apply their existing domestic law on the subject and/or establish rules to deal specifically with the matter

Art. 12

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Causation

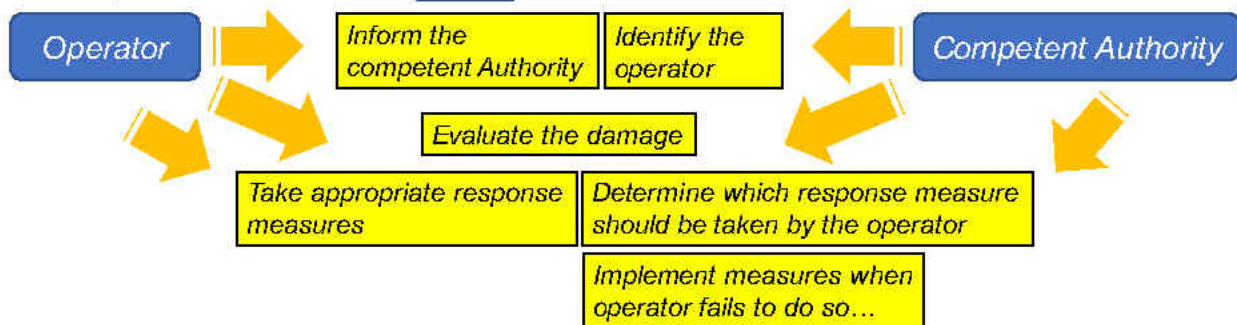
- During the negotiations of the Supplementary Protocol, it was noted that Parties have varying interpretations of how Article 27 applies to processed materials from living modified organisms origin.
- One interpretation is that the Supplementary Protocol can address damage caused by these processed materials, as long as a link to the original living modified organism can be established.

Art. 4

A causal link shall be established between the damage and the living modified organism in question in accordance with domestic law.

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Response measures Art. 5



- The competent authority has the right to recover from the operator the costs and expenses of the evaluation of the damage and implementation of response measures.
- The decisions of the competent authority requiring the operator to take response measures should be reasoned; and they should be notified to the operator, along with available remedies.

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Implementation and relation with civil liability Art. 12

Parties must create rules in their domestic laws to address damage from living modified organisms. They can do this by:

- Using their existing civil liability laws,
- Developing new civil liability rules specifically for this situation, or
- Combining both approaches.

When creating or updating these laws, Parties should consider:

- The types of damage covered,
- The standard of liability (whether fault-based or strict),
- How liability is assigned,
- The right to make claims.

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Optional provisions that may be addressed in domestic regimes

Exemptions: Art. 6

Parties may exempt operators from the obligation to take response measures if the damage is the result of force majeure, acts of war or civil unrest. Such exemptions are common in rules on liability and redress.

Time limits: Art. 7

Parties may exempt operators from the obligation to take response measures to exempt operators from taking response measures in case of damage resulting from a transboundary movement of living modified organisms that started before a certain date.

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Optional provisions that may be addressed in domestic regimes

Financial security: Art. 8

- Parties can set up financial security rules in their domestic laws.
- These rules must align with international law and the Protocol's principles.
- Financial limits help make financial risks foreseeable and acceptable.
- They also ensure that risks are insurable, allowing for recovery of costs related to response measures.

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Role of the Biosafety Clearing House

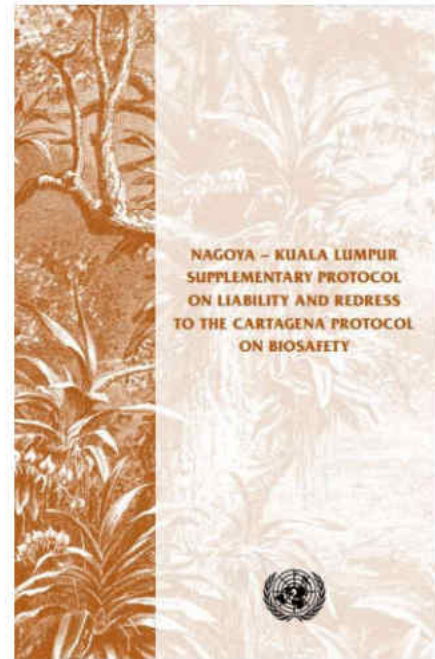
- Maintain data on activities involving LMOs and operators.
- Maintain criteria on monitoring and evaluation of damage to biological diversity and human health.
- Maintain a mechanism for notifying and consulting with affected or potentially affected states in the event of incidents (Art. 17 of the CPB);
- Inform operators of their obligations and available remedies as well as laws and regulations;
- Make available information on incidents of damage to biological diversity and appropriate response measures taken or to be taken.

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Role of the Biosafety Clearing House

- Promote public awareness and education concerning damage to biological diversity resulting from LMOs and act as Source for information on the likelihood of occurrence of damage (art. 5.3 of the supplementary protocol).
- Make available information on incidents of illegal transboundary movements (art. 25 of the CPB).

Questions and Discussions



Thank you !

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