

# GENERALLY SPEAKING

- **Liability:** is the state of being legally responsible for something or answerable in law. Legal liability concerns both civil law and criminal law
- Civil Liability (the potential responsibility for payment of damages)
- Criminal liability (open to punishment for a crime)
- Strict liability Vs Fault based liability
- Strict Liability is set upon the defendant without need to prove intent, negligence or fault; as long as you can prove that it was the defendant's object that caused the damage. E.g. **Product liability** is the area of law in which manufacturers, distributors, suppliers, retailers, and others who make **products** available to the public are held responsible for the injuries those **products** cause.



# PROJECT FOR SUSTAINABLE CAPACITY BUILDING FOR EFFECTIVE PARTICIPATION IN THE BIOSAFETY CLEARING HOUSE

## THE SUPPLEMENTARY PROTOCOL ON LIABILITY AND REDRESS IN BRIEF

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# HISTORICAL OVERVIEW

1992

Convention on biological diversity adopted

1993

Convention on biological diversity entered into force

1996

Negotiation of a text for a biosafety Protocol

2000

Cartagena Protocol on Biosafety adopted

2003

Cartagena Protocol on Biosafety entered into force

2004

Negotiation of international liability and redress rules for damage resulting from LMOs

2010

Nagoya kuala-lumpur supplementary protocol on liability and redress was adopted

2018

Nagoya kuala-lumpur supplementary protocol entered into force

# AS OF TODAY

Entry into force

Number of Parties

**Convention on  
Biological Diversity**

CBD

December 1993

196

**Cartagena Protocol on  
Biosafety**

CBD

September 2003

171

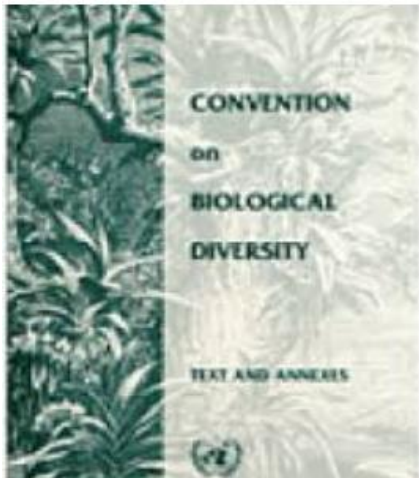
**Nagoya Kuala Lumpur  
Supplementary Protocol**

CBD

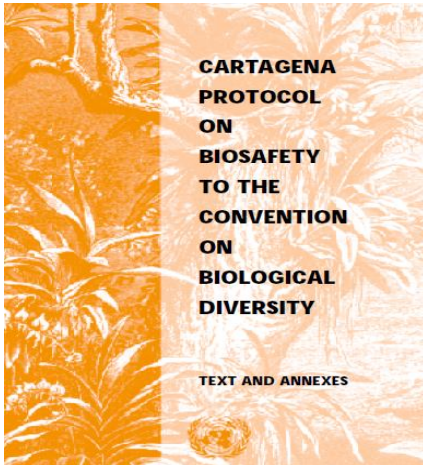
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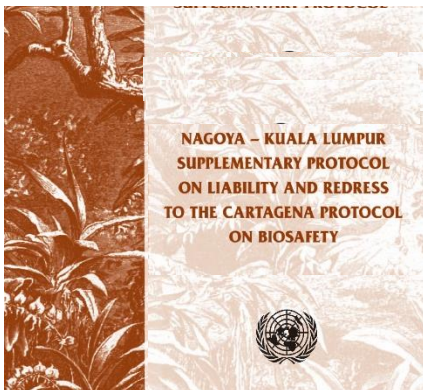
# OBJECTIVES



- 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.



- Contribute to ensuring an adequate level of protection in the field of the **safe transfer, handling and use of living modified organisms resulting 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.



- 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.**

# THE SUPPLEMENTARY PROTOCOL

- Administrative approach
  - How, when and who should take response measures
  - Definitions of damage and response measures

# SCOPE

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

*Intentional*

*Imported for contained use*

*Imported for introduction into the environment*

*Imported for direct use as food, feed or for processing*

*Entered national jurisdiction illegally*

*CPB Art. 17*

*Entered national jurisdiction accidentally or unintentionally*

*CPB Art. 25*

# SCOPE

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

**Temporal**

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

**Geographical**

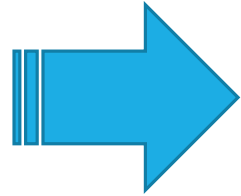
*Damage that occurred in areas within the limits of the national jurisdiction of Parties.*

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

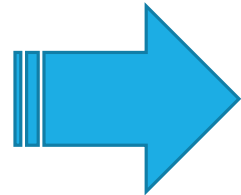


# DAMAGE

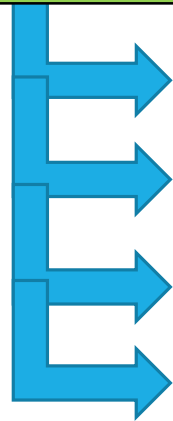
*Adverse effect on the conservation and sustainable use of biological diversity taking into account human health*



*Measurable or observable*



*Significant*



*Long-term or permanent change*

*Extent of the qualitative or quantitative changes*

*Reduction of the ability to provide goods & services*

*Extent of any adverse effects on human health*

*Baselines*

# CAUSATION

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

# RESPONSE MEASURES

*Prevention*

*Avoid*

*Contain*

*Minimize*

*Mitigate*

*Restoration*

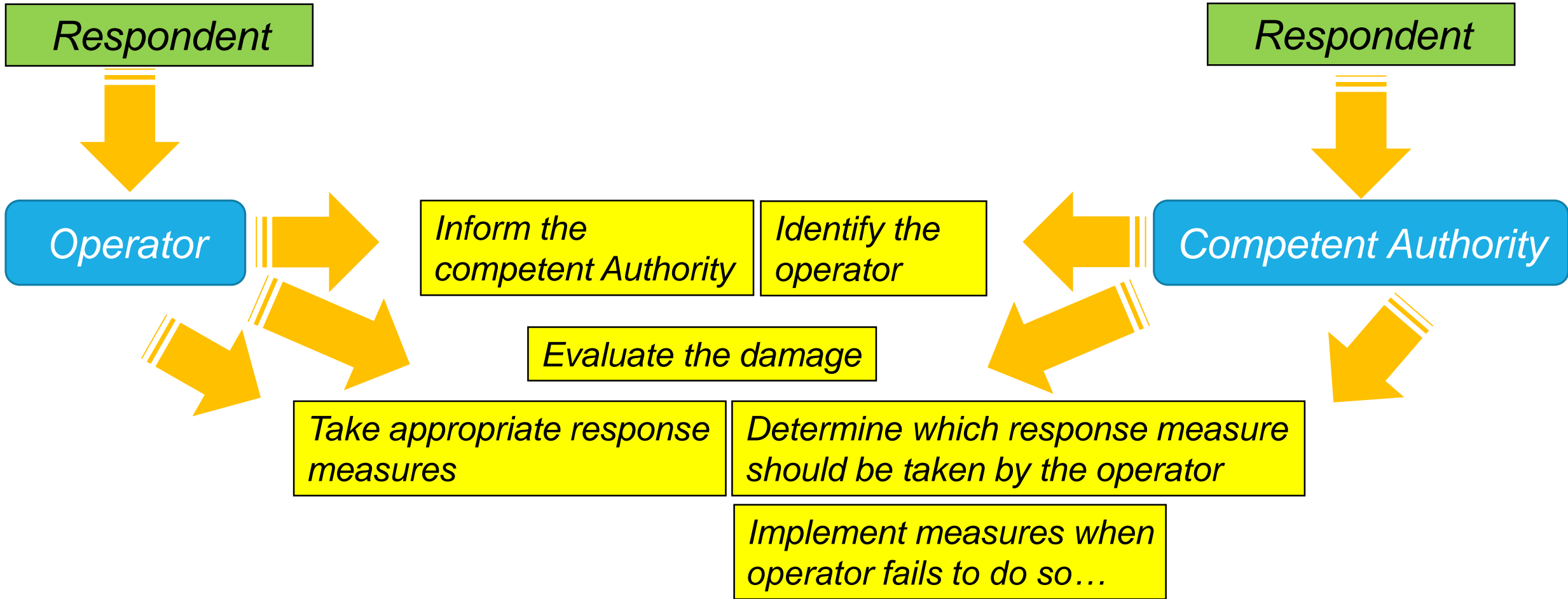
*Restore biological diversity to the condition that existed before the damage occurred, or its nearest equivalent*

*Replace the loss of biological diversity with other components biodiversity for the same or another type of use at the same or at an alternate location*

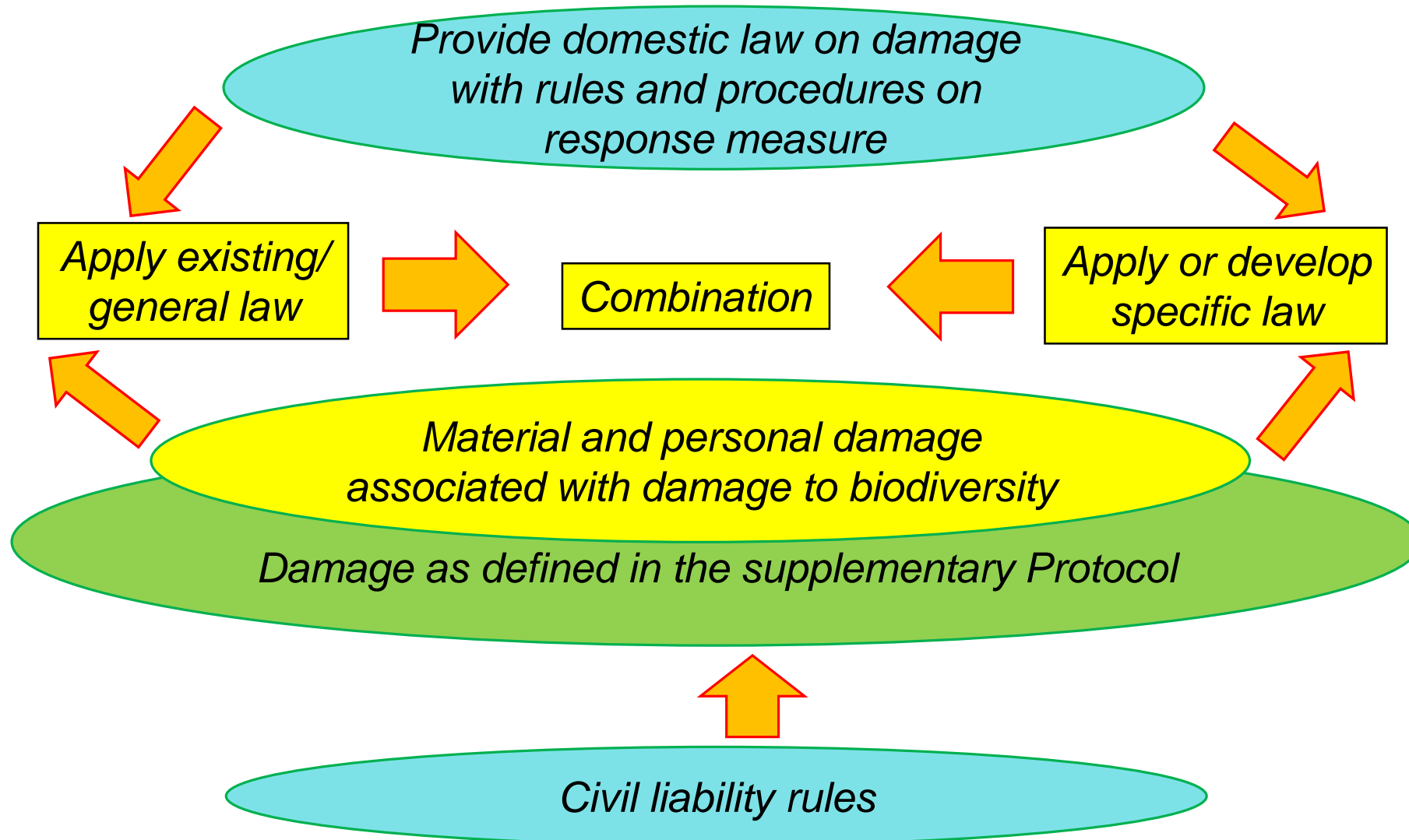
# OPERATOR?

“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;

# RESPONSE MEASURES



# IMPLEMENTATION



# ROLE OF THE BIOSAFETY CLEARING HOUSE (1/2)

- 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.

# ROLE OF THE BIOSAFETY CLEARING HOUSE (2/2)

- Make available information on incidents of illegal transboundary movements (art. 25 of the CPB)
- 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)





# QUESTIONS AND DISCUSSIONS

For more information, please email

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Thank you !