



Legal Aspects of Implementing the Cartagena Protocol on Biosafety

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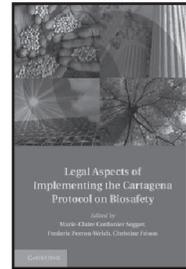
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The Cartagena Protocol on Biosafety (CPB) to the Convention on Biological Diversity was adopted in 2000. It has been hailed as a significant step forward for providing an international regulatory framework to reconcile the respective needs of trade and environmental protection with respect to a rapidly growing global biotechnology industry. The use and trade of living modified organisms (LMOs) has made the safe use of biotechnology (i.e., biosafety) an issue of global relevance. The CPB and its implementation have been deliberated and discussed in various platforms and by various scholars/authors worldwide. There are some noteworthy books too which deal with this issue and the underlying sub-themes in quite details such as Traavik and Ching's *Biosafety First* (2007); Bail and Falkner's *The Cartagena Protocol on Biosafety: Reconciling Trade in Biotechnology with Environment and Development* (2001); and Horna, Zambrano and Falck-Zepeda's *Socioeconomic Considerations in Biosafety Decisionmaking* (2013). However, this book edited by Segger, Perron-Welch and Frison is a fresh and unique attempt to look into the CPB from legal perspective more so in the domain of sustainable development law. Editors argue that this Protocol, as a legal instrument that aims to promote sustainable development and use of biological resources, is part of the emerging body of sustainable development law, integrating economic and social development and environmental protection by setting an international regime in place to govern the transboundary movements of living modified organisms (LMOs). In spite of multilateral initiatives for the implementation of national biosafety frameworks, the international biosafety obligations remain a challenge for developing countries.

This book analyses the legal aspects of implementing the CPB and makes a serious contribution to current legal and academic debates on biosafety. It does so by reviewing key issues under the CPB that affects the design and implementation of national biosafety regulatory regimes. The book takes into account the principles of sustainable development law, and informs future evolution of the international regime. It also examines recent experiences with domestic laws and regulations on biosafety, canvassing the practical, legal, political, and socio-economic challenges encountered in the design and implementation of these regulatory schemes while placing special emphasis on diverse law and policy approaches taken in developing countries.

According to Segger *et al.*, sustainable development law refers to a set of legal instruments and related principles that include, among their objectives, the realisation of sustainable development. In 2002, at the 70th Conference of the International Law Association (ILA), a resolution by the Committee on the Legal Aspects of Sustainable Development, the ILA New Delhi Declaration of Principles of International Law Relating to Sustainable Development, which was annexed to the outcomes of the 2002 World Summit on Sustainable Development (WSSD), provided an important benchmark that is used in much of the relevant academic and legal literature today. The New Delhi Declaration elaborates on seven central principles that are common to most international treaties related to sustainable development, many of which were recognised and reaffirmed in the 2002 Johannesburg Plan of Implementation from the World Summit. In this book, these principles provide a benchmark against which the Cartagena Protocol can be analysed to assess its commitment to realisation of sustainable use of biological resources, and ultimately, to sustainable development. These principles include the duty of States to ensure sustainable use of resources; the principle of equity and the eradication of poverty; the principle of common but differentiated responsibilities; the principle of the precautionary approach to human health, natural resources, and ecosystems; the principle of public participation and access to information and justice; the principle of good governance; and the principle of integration and interrelationship in particular as these relate to human rights and social, economic, and environmental objectives.

This edited volume is structured in five parts with 26 chapters in total. Part I (Essentials of Biosafety and Sustainable Development Law) lays the foundations for the book. It begins with Chapter 1 by Kathryn Garforth, Worku Damena Yifru, and Mai Fujii. This chapter discusses in detail the historical evolution of CPB and establishes the connection between CPB and sustainable development. This chapter also provides a general explanation of the key obligations in the Cartagena Protocol, with emphasis on its main decision-making provisions. Authors state that the Protocol is not solely economic, environmental, or social but incorporates elements of pillars of sustainable development. *The CPB has strong links to environmental law through its foundation in the precautionary principle and the development of sound science; links to social and human rights law through its elements of public awareness, public participation, and the public right to know, as well as by permitting consideration of the socioeconomic impacts of living modified organisms (LMOs); and links to trade law because of its focus on the transboundary movement of LMOs. (p.11)*

The next chapter, by Christine Frison *et al.*, outlines certain challenges faced in the development of National Biosafety Frameworks (NBF) and related regulatory regimes and comments on the role of such national policies and laws in the promotion of sustainable development. Authors argue that implementing the CPB, taking into account the various and often conflicting environmental, social, and economic interests at stake, is not an easy task, especially for developing countries. They also mentioned about the UNEP-GEF Biosafety Unit project, which aims to implement the strategy by assisting countries in establishing their NBFs; promoting information sharing and collaboration, especially at the regional and sub-regional level; and promoting collaboration with other organisations to assist capacity building for the Protocol. Part I concludes with a chapter by Greg Jaffe that details the components and characteristics of a functional and protective biosafety regulatory system. He argues that such a system should be comprehensive; has sufficient legal authority and a clear safety standard; carry proportional risk-based reviews; provide for post-approval oversight; and is transparent and understandable. He further says that such a system should be participatory, flexible, adaptable, efficient, workable and fair. He also mentions that there are several other international agreements that

may have a direct impact on countries establishing the national Biosafety regulatory systems such as Agreement on Sanitary and Phytosanitary Measures, General Agreement on Tariffs and Trade, Technical Barriers to Trade Agreement, *Codex Alimentarius Commission* and International Plant Protection Convention.

Part II (Sustainable Development Law and Policy on Biosafety) expands on the constituent elements of the CPB and in many cases discusses how these provisions reflect important principles of international law on sustainable development and seek to contribute to the safe and sustainable use of genetic resources. It begins with Chapter 4 by Ryan Hill, which addresses issues and challenges related to risk assessment and risk management in the context of LMOs. Chapter 5 by Worku Damena Yifru *et al.* examines the relevance and validity of the Advanced Informed Agreement (AIA) and Prior Informed Consent procedure and related procedure for LMOs intended for direct use as food or feed or for processing. Chapter 6 by Thomas Redick examines key issues regarding the handling, transport, packaging, and identification of LMOs bound for use as seed or in food, feed, or processing, and the models for implementation with minimal trade disruption. Chapter 7 by Julian Kinderlerer and Christine Toczeck explores the question of public participation in the debate over the safe use of biotechnology, explaining the importance of meaningful public participation and transparency in decision-making processes. Chapter 8 by Frederic Perron-Welch discusses the role and importance of the Biosafety Clearing-House. Chapter 9 by Tomme Young considers progress in the implementation of the Biosafety Clearing- House, drawing on a careful analysis of recent domestic legislative experiences to constructively highlight important legal and policy challenges for the regime. Chapter 10 by Frederic Perron-Welch examines the socio-economic considerations that relate to biosafety in the context of the CPB and how they can play a role in decision-making to help promote sustainable development. He makes a very valid point that many people, societies and nations express concern over the social and economic changes that will accompany the wide scale use of biotechnology and its products. He further argues that it is not a visible part of the international development agenda though. He talks about Chapter 16 of Agenda 21 which clearly states that:

“Like with most new technologies, research in biotechnology and the application of its findings could have significant positive and negative socio-economic as well as cultural impacts. These impacts should be carefully identified in the earliest phases of the development of biotechnology in order to enable appropriate management of the consequences of transferring biotechnology.”

This led to many countries that are adopting biotechnology insist on using a decision making process that looks beyond the narrow range of impacts covered by the scientific risk assessment of a specific LMO and link it with socio-economic impacts. This is a reflection of the fact that when considering the use of new technologies, scientific, ethical, and social issues cannot be wholly separated from one another. The Cartagena Protocol allows Parties to take socio-economic considerations into account in biosafety decision making through Article 26. Lack of a mechanism for including socio-economic considerations in decision making and lack of capacity have been identified as important reasons why assessment was lacking from the decision-making system. Human resources and informational and financial challenges were identified as challenges to the inclusion of socio-economic considerations in decision making. Chapter 11 by Veit Koester discusses the implications and effectiveness of compliance procedures and mechanisms under the Cartagena Protocol. Finally, Chapter 12 by Frederic Perron-Welch and Olivier Rukundo examines issues of liability and redress in the context of biotechnology and the Kuala Lumpur-Nagoya Protocol on Liability and Redress to the CPB.

Part III (National Implementation of Biosafety Regulatory Aspects) conducts a detailed analysis of the implementation of the Cartagena Protocol on Biosafety through the development of national biosafety frameworks. It opens with a discussion of legislative options for national implementation in Chapter 13 by Tomme Rosanne Young. Through the analysis of the experiences of various countries and regions in Chapter 14 by Liina Eek and David Duthie on Central and Eastern Europe; Chapter 15 by Gregory Jaffe and Papa Miessa Dieng on West Africa; Chapter 16 by Gregory Jaffe on East Africa; Chapter 17 by Nizar Mohamed on Asia; and Chapter 18 by Jorge Cabrera Medaglia on the Americas, the third Part identifies specific problems related to the development of national biosafety regulatory regimes

and seeks to outline key lessons for future capacity-building activities in biosafety.

Part IV (Case Studies of Domestic Regimes and Sustainable Development) builds on the analysis in Part III with case studies of specific legislative approaches to the CPB. This part opens with an overview of various responses to key aspects of the Protocol in Chapter 19 by Tomme Rosanne Young. Chapter 20 by Jorge Cabrera Medaglia explains Costa Rica's legal framework concerning GMOs in the agricultural sector. Chapter 21 by Frederic Perron-Welch describes New Zealand's biosafety framework in the context of that country's unique history and geography. In Chapter 22 by Kathryn Garforth and Paige Ainslie the issue of liability and redress in Canadian case law is investigated by following the case of a group of organic farmers seeking to bring a class action suit against Monsanto and Bayer for damages allegedly caused by the companies' genetically modified varieties of canola. Lastly, Chapter 23 by Konstantia Koutouki and Paula Honorato Marin discusses the implications of GMOs in Chile for the protection of Indigenous culture.

Part V (Global Policy Trends in Biosafety) explores global policy trends in the implementation of the Cartagena Protocol on Biosafety. Chapter 24 by Frederic Perron-Welch *et al.* draws on the experience of the authors in reviewing the design of numerous national biosafety frameworks and regulatory regimes to draw certain conclusions about the diverse approaches being adopted by Parties to the Protocol. The chapter identifies key future legal research questions and priorities, and provides preliminary recommendations regarding the future design and implementation of biosafety rules in the context of sustainable development law. Chapter 25 by Marie-Claire Cordonier Segger and Markus Gehring examines the findings and corresponding implications for sustainable development of the European Communities Biotech Dispute submitted to the World Trade Organisation (WTO). Chapter 26 by Martin Endicott explores the fraught relationship between food aid and biosafety.

This book concludes with a final scholarly and practical legal analysis of implementation of the Cartagena Protocol on Biosafety from a sustainable development law perspective, summarising key conclusions on the strengths and weaknesses of implementation efforts across the world, and offering

advice to the countries seeking to set laws and policies in place related to biosafety and to further refine their international regime for biosafety.

Thus, this book has made a commendable effort in dealing with the crucial CPB in a very holistic manner covering various tenets of the protocol in coherence with the various principles of sustainable development. The book identifies the aspects of international law on biosafety that are pertinent to and reflective of the treaty objective of sustainable development and use of biotechnology and genetic resources, as well as related principles of international law. It also analyses the national implementation of international law on biosafety, focusing on the design and enforcement of biosafety regulations from a sustainable development law perspective, and examines the practical, legal, political, and socio-economic challenges encountered in implementing international biosafety obligations. Lastly, the book discusses the future legal practice and research agenda in this field.

On the overall assessment, this book is an interesting, informative and suggestive volume. In terms of readership, the book would be useful to researchers, students, academics and policymakers interested in the issues related to the biosafety and sustainable development; evolution of international biosafety protocol and regulatory systems worldwide; and the implementation of Cartagena Protocol on Biosafety. Hope the publishers would come out with an abridged and cheaper paperback version so that the book becomes affordable and manageable.

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