



HIGHLIGHTS OF BSWG-5 THURSDAY, 20 AUGUST 1998

The BSWG-5 Sub-Working Groups completed their first look at the Groups' assigned articles and began "round two." Contact Group I also met throughout the day.

SUB-WORKING GROUP I

On **Articles 3A** (Scope of Protocol) and **3B** (Application of AIA Procedure) delegates largely agreed to separate articles distinguishing between scope of the protocol and of AIA procedures. Many countries reserved comment on Article 3A pending discussion of related articles, but several said the scope must conform with CBD Articles 19.3, 8(g) and Decision II/5. Several called for simplified procedures under Article 3B, and some said it should cover the first transboundary movement of an LMO. Some delegates called for an exemption for low-risk LMOs intended for contained use. Statements were mixed as to whether the AIA should apply to transit. In the afternoon a drafting group introduced a discussion paper that listed articles that Article 3B will directly affect: Article 4 (Notification); 5 (Acknowledgment of Receipt of Notification); 6 (Decision Procedure for AIA); 7 (Review of Decisions [Under AIA]); 8 (Notification of Transit); 9 (Simplified Procedures); 10 (Subsequent Imports); and 25 (Illegal Traffic). The paper also outlined several articles whose application may be affected by the outcome of Article 3B: Articles 1 *bis* (General Obligations); 12 (Risk Assessment); 13 (Risk Management); 15/16 (Unintentional Transboundary Movements and Emergency Measures); 17 (Handling, Transport, Packaging and Labeling); 19 (Information Sharing/Biosafety[Clearing-House]/[Database]); and 27 (Liability and Compensation). All other articles will not be affected by the outcome of the scope.

Several speakers said elements in **Article 9** (Simplified Procedure) could be included in other articles, specifically Articles 6 (Decision Procedure for AIA) and 11 (Multilateral, Bilateral and Regional Agreements), but did not support a stand-alone article. One country stressed the article's importance and another supported text regarding a simplified procedure for subsequent imports of the same LMO if notification is maintained.

CG-I Co-Chair Gert Willemse (South Africa) presented an *aide memoire* on the **annexes**. It lists nine annexes various delegates believed would be included in the protocol. He noted overwhelming

support for Annexes I (Information Required in Notifications for AIA) and II (Risk Assessment). He said some of the annexes listed in UNEP/CBD/BSWG/5/Inf.1 are no longer referred to in the draft text. Several delegates said proposed annexes on "LMOs not likely to have adverse effects," "LMOs to be exempted from AIA procedure" and/or "Cases of explicit consent" were not appropriate for the protocol. One speaker said Annexes I and II are the only necessary annexes. Another offered to withdraw the proposal for an annex on risk assessment, but one delegate supported that annex. Another proposed placing the definitions in an annex. SWG-I delegates asked CG-I to elaborate Annexes I and II into as clean a text as possible.

On **Article 11** (Multilateral, Bilateral and Regional Agreements) most delegates favored establishing such arrangements (option 1) in some form (paragraph 1), provided they do not exempt the need for an AIA. Some also supported paragraph 4 (notification of Secretariat). A few said reference could be made elsewhere if there were no such provision (option zero). A drafting group was formed. On paragraph 6 (rights of a regional economic integration organization (REIOs)), several countries said the paragraph attempted to circumvent obligations and called for more information. SWG-I was assured it did not, but rather attempted to address situations where a REIO already has a biosafety regime in place. Discussion was deferred pending the results of CG-II's definition of REIO.

During their second reading of **Article 8** (Notification of Transit), some developing countries preferred deleting the option for no provision. Other countries supported that option. One country suggested that the option calling for notification of transit could indicate that Parties "may," not "shall," require notification of transit; another bracketed these options. Several delegates supported moving the text calling for the Party of export to assume responsibility for accidental release to Article 27 (Liability and Compensation). Several delegates supported deleting paragraphs on acknowledging receipt of notification, failure to notify and/or transport requirements. Some said Articles 4 (Notification) and 6 (Decision Procedure for AIA) covered issues related to Article 8.

The Friends of the Chair (FOC) on **Article 4** (Notification) introduced a paper identifying three main "concepts": notifier is the importer; export-driven notification /AIA; and importing Party decides whether the importer or exporter notifies. The concept proposals reflect the view that the exporter and importer will most



likely cooperate in providing required information. The FOC also decided that either a natural or legal person may trigger the notification process and the start of the notification process may be in either the Party of import or export. The FOC will continue working on the Article.

SUB-WORKING GROUP II

In discussion of Co-Chairs' draft text on **Article 18** (Competent Authority/Focal Point) one delegation supported the option for one or more focal point(s). In paragraph 2, detailing what information should be provided to the Secretariat and CH, several delegations requested bracketing or deleting the reference to the CH. One delegation suggested providing information on which competent authority deals with which LMO. Several delegations said the paragraph requiring the Secretariat to report information about focal points and competent authorities to Parties was redundant. Co-Chair Herity suggested setting Article 18 aside pending further consideration of Article 19.

On **Article 17** (Handling, Transport, Packaging and Labeling) some delegations preferred no option and one requested that it be bracketed. Several delegates specified that the article refer to LMOs "subject to AIA." In a sub-paragraph requiring documentation from transfer to the point of use, one delegation emphasized that the protocol only addresses transboundary issues and preferred "entry into importing Party" over "point of use." Many delegations preferred using international rules and standards over the protocol's, and supported deleting language permitting the MOP to develop such standards. Some delegations preferred protocol standards, noting potential gaps in existing international standards. One delegation underscored that standards used by exporting Parties should not be less strict than those applied domestically, and that consideration of protocol standards should be based on a review of existing ones. Some countries proposed adding "and products thereof" after LMOs. Many countries preferred the term "transboundary movement" over transport, with one delegation preferring the qualification "intentional." Some countries requested removing labeling, claiming coverage under text calling for "clearly identified LMOs." Some developed countries requested deleting text on risks to human health. Co-Chair Herity convened a small group to address policy issues associated with standards and content for labeling and documentation.

In presenting draft text on **Articles 15/16** (Unintentional Transboundary Movements and Emergency Measures) Co-Chair Herity noted difficulties in the drafting process, prefacing discussion with a riddle: if Party A is importing an LMO from Party B, carried by a ship of Party C that crashes off Party D's coastline, who is responsible? Some Parties said the Party of origin should be responsible, as it would have technical information regarding the LMO. Some countries requested that links between responsibility and liability should be dealt with in Article 27 (Liability and Compensation). One country said the "delegation" of responsibility could delay/deter prompt notice of accidents. Noting difficulties in promptly establishing responsibility, one country supported an emergency fund. Several countries supported language on the provision of assistance, including financial, from responsible Parties. In regard to language on "Parties concerned," many delegates stressed it should relate to any Party with information regarding the accident, LMO or mitigation measures in accordance with Principle 18 (Good Citizenship) of the Rio Declaration.

Several countries supported differentiating accidents into those that occur during transboundary movements and those that occur domestically with possible transboundary impacts. Several delegations proposed removing text limiting notification to domestic releases that would be subject to AIA, stating that all unintentional transboundary movements should be reported. One delegate said information requirements should not be so prescriptive as to inhibit the notification process. One regional group proposed four categories of information: circumstances of the movement, date, amount and intended use; information for risk assessment and management measures; appropriate methods for monitoring, control and mitigation/emergency measures; and a contact point for further information.

On **Article 20** (Confidential Information) most developing countries preferred no provision. One said protection of confidential information had no place in a safety-related agreement; another stated it was unnecessary as it is addressed in other international instruments. One developed country, drawing from the Prior Informed Consent negotiations and provisionally supported by several speakers, suggested substituting four paragraphs with "Parties that exchange information pursuant to this Protocol shall protect any confidential information as mutually agreed." One delegate said it could be incorporated in the AIA framework. One delegation proposed confidential information be protected "unless mutually agreed." Another noted that its scope seemed limited to Parties. One delegate called for more detail on the rights of the notifier. A few delegates proposed deleting the reference to intellectual property rights. Others suggested that the importing Party should inform the notifier "prior to disclosing the information" if information identified by the notifier will not be treated confidentially.

Co-Chair Herity announced that discussion on Article 24 (Non-discrimination) would incorporate a discussion on Article 34 (Relationship with Other International Agreements) currently within CG-II.

CONTACT GROUPS

CG-I continued to remove brackets from and refine definitions of LMO, living organism and modern biotechnology, and discussed "products thereof." The Group prepared a matrix comparing scopes for the protocol, AIA, risk assessment, risk management and national regulations to assist them in identifying where it might be appropriate to reference "products thereof." CG-I convened an evening meeting. CG-II did not meet Thursday.

IN THE CORRIDORS

As negotiations enter a crucial period of compromise, some delegates noted the growing importance of regional, bilateral and interest group meetings involving such new faces as Miami +, Valdivia and industry. One participant noted that the implicit and explicit results of this weekend's meetings (including G-77/China) would be a tell-tale sign for the rest of the negotiations.

THINGS TO LOOK FOR

SUB-WORKING GROUPS: SWG-I is expected to discuss revised text on Articles 4, 5, 6 and 8 beginning at 10:00 am. SWG-II will convene at 10:00 am to discuss revised text on Articles 19 and 22. A late afternoon session is scheduled to start at 4:30 pm.

CONTACT GROUPS: CG-II is expected to convene at 1:00 pm to discuss Article 35 *bis*.