



## HIGHLIGHTS OF BSWG-5 MONDAY 24 AUGUST 1998

BSWG-5 delegates continued negotiating the biosafety protocol in two Sub-Working Groups, two Contact Groups and numerous drafting, informal, regional and interest groups.

### SUB-WORKING GROUP I

In consolidating **Article 12** (Risk Assessment) SWG-I said Articles 4 (Notification), 6 (Decision Procedure for AIA), 14 (Minimum National Standards) and 21 (Capacity-Building) should also be considered. Many supported deleting paragraph 2 as its concepts were similar to 1 (undertaking of risk assessment and principles). Simplified proposals for risk assessment included that it be undertaken in a scientifically sound and transparent manner, on a case-by-case basis and considering the precautionary principle and socioeconomic factors. Delegates differed over whether risk assessment principles should be retained or included in an annex. A few delegates favored deleting paragraph 4, while others supported separating the concepts. Several supported undertaking risk assessment prior to the first import or first release of an LMO. Some delegates favored deleting paragraph 5, provided reference is made to Annex II in paragraph 1. Several delegations supported deleting paragraphs 6 (responsibility for reliability of information); 7 (financial responsibility for risk assessment); 8 (international harmonization of risk assessment); and 9 (risk assessment of microorganisms). Others supported them, with many stating the exporter should be responsible for the reliability of information provided and that financial responsibility should rest with the Party of export or exporter.

On **Article 14** (Minimum National Standards) several delegates supported moving to Article 1 *bis* (General Obligations) text on national measures fulfilling protocol requirements and whether Parties may impose more stringent requirements. Delegates differed as to whether more stringent requirements should be based on "the precautionary principle" or "scientific considerations." Several delegates supported moving text regarding establishment of national level measures and risk assessment procedures to Article 21, but one developing country said the text related to country obligations.

In **Article 7** (Review of Decisions) delegates differed on whether to delete or retain, with minor amendments, paragraphs 2 (someone affected by decision has right to review it) and 3 (response by importing Party). In paragraph 1 (importing Party has right to review

decision in light of new scientific information), many countries supported removing all brackets. However, "unilaterally," in reference to review, was bracketed. One developing country requested referencing the precautionary principle. A drafting group was formed to consider and consolidate the overlapping concepts in Articles 4, 5, 6 and 7.

Delegates agreed to delete **Article 8** and incorporate its elements elsewhere, as presented in CRP.4. Delegates also deleted **Article 10** (Subsequent Imports), as contained in CRP.6, on the understanding that related provisions would be covered in Articles 6 (Decision Procedure for AIA), 9 (Simplified Procedure) and 12 (Risk Assessment).

Several developing countries supported removing all brackets in **Article 13** (Risk Management). Some developed countries noted that the first paragraph juxtaposes domestic (CBD Article 8(g)) with international obligations (Parties shall establish implementation mechanisms). Some delegates said the options for paragraph 2 (impose measures to prevent adverse effects of LMOs or the Party of export shall collaborate with the Party of import if the latter lacks capacity) were complimentary; others preferred the second option and some proposed moving it to text on capacity building. Some said text calling for cooperation with the view to ban or phase out LMOs that adversely effect conservation should be deleted and was too specific for Article 1 *bis*. Others supported it.

During a night meeting, SWG-I proposed amendments to **Article 3B** (Application of the AIA Procedure) constituting textual amendments rather than substantial modifications, which a drafting group will consider.

**CONTACT GROUP I:** CG-I Co-Chair Van der Meer reported on progress regarding definitions and scope, noting brackets on "nucleic acid" within the definition of modern biotechnology and on whether intentional transboundary movements of processed products containing dead modified organisms and/or non-living LMO components are within the protocol's scope. Van der Meer also presented proposed compromise text providing relevant information on products containing LMO fragments through the CH. CG-I did not discuss the types of transboundary movements subject to AIA procedures. Several developing countries said such products are within the protocol's scope given CBD Article 19.3. One stated that the precautionary principle should be sufficient for inclusion of these products.



Others reasserted that products containing dead or non-living components of LMOs are not within the protocol's scope. One delegate stated that the definition on modern biotechnology was unsatisfactory given circular references and elements (e.g., *in vitro*) which would have to be defined. Co-Chair Schoonejans sent the discussion back to CG-I for resolution. During a night meeting, CG-I reported its progress on the compromise proposal. CG-I delegates agreed to regional consultations.

The Secretariat briefly discussed the rules governing annexes. CBD Article 30 (Adoption and Amendments of Annexes) governs annexes unless otherwise noted, and annexes have the same legal weight as protocol text, unless otherwise noted. A Party unable to approve an annex to a protocol notifies the Depository within one year of communicating adoption; the annex enters into force one year after communicating adoption.

### **SUB-WORKING GROUP II**

In discussing **Article 26** (Socio-economic Considerations), most developed countries preferred either addressing the issue in the Preamble or not at all, neither was reflected in the Co-Chairs' working text. One delegate suggested retaining research on socio-economic considerations to clarify it, and another suggested bracketing all of Option 2 outlining Parties' obligations. One delegate said if necessary the issue could be dealt with in Article 13 (Risk Management). Many developing countries supported Option 2, with one proposing no reference to "products thereof." SWG-II will address the article again as a revised Co-Chairs' text.

On CRP.2 for **Article 18** (Competent Authority/Focal Point) one delegate expressed concern that language regarding multiple competent authorities implied a division of labor, whereas some countries might have a single authority. Delegates added qualifying language on this point. Delegates also discussed whether there was a need to inform only the Secretariat or the Secretariat and the Clearing-house (CH). One said the Secretariat could serve as a conduit for information to the CH, especially for those without Internet capabilities. One country proposed adding "national" to the title.

Some countries questioned the relevance of **Article 1 bis** (General Obligations and [Provisions]) as specific obligations exist elsewhere in the protocol. Most countries suggested shortening it citing duplication with provisions of the protocol and the Convention. Developing countries said no reference to trade was necessary; developed countries noted its discussion by the trade group. Two developed countries supported language permitting countries to take more comprehensive and stringent requirements based on scientific considerations. One delegate said Parties should have the discretion to determine which measures were "necessary," and not just appropriate, to implement the protocol. Some countries said the obligation to implement was sufficient and recommended deleting Parties' obligation to "enforce" the Protocol. Several developing countries proposed obligating Parties of export to prohibit export of LMOs banned domestically. Most developing countries opposed reference to the UN Convention on the Law of the Sea, stating it was too specific and covered elsewhere. One delegate proposed reference to the precautionary principle.

On **Article 25** (Illegal Traffic) Co-Chair Herity noted the definition of illegal traffic developed by CG-II and will produce a Co-Chairs' draft text for discussion Tuesday.

**DRAFTING GROUPS:** Four drafting groups reported on discussions held during the day and over the weekend on Articles 15/16 (Unintentional Transboundary Movements and Emergency

Measures), Article 19 (Information Sharing/Biosafety Clearing-house), Article 20 (Confidential Information), and Article 21 (Capacity-building). All will be produced as CRPs and revisited by SWG-II. **Article 15/16** contains six paragraphs stipulating measures to notify affected Parties, information required for notification as well as its confidentiality, and responses to prevent further release and/or transboundary movement.

Text on **Article 19** outlines the objectives of the CH to facilitate information exchange and assist Parties to implement the Protocol. It also lists bracketed options for information to be included in the CH. For SWG-II's reference Co-Chair Herity noted three existing biosafety information systems: UNIDO's Biosafety Information and Advisory System, UNEP's International Registry on Biosafety and OECD's BioTrack. On **Article 20** a drafting group retained only one option, with text permitting the notifier to identify confidential information, requiring the importing Party to consult with the notifier on the confidential status of information and clarifying non-confidential information. The entire article was bracketed at some participants' request. On **Article 21** a drafting group retained bracketed text regarding whether biotechnology should be included in capacity-building. A bracketed paragraph on facilitating private sector involvement was added, and a paragraph on financial matters was referred to CG-II's discussions on Article 28 (Financial Mechanism).

### **CONTACT GROUP II**

On **Article 28** (Financial Mechanism and Resources) CG-II delegates deleted a paragraph on developed countries' obligations to provide new and additional resources to the financial mechanism as it would duplicate CBD Article 20 (Financial Resources). Another paragraph detailing the financial mechanism's accountability to the COP was deleted as it would duplicate CBD Article 21 (Financial Mechanism). Delegates will revisit a revised text. A small group was created to clarify country/group positions on **Article 27** (Liability and Compensation), which will report back to CG-II.

### **IN THE CORRIDORS I**

As discussions approach a crucial juncture with delegates maintaining their intractable positions on whether articles will be in or out, some delegates are raising the question of what incentives are necessary to sustain momentum in the negotiations. To avoid new buttons reading "No Incentive, No Protocol," one participant stressed the need to maintain forward progress through the end of BSWG-5.

### **IN THE CORRIDORS II**

Those on Executive-Secretary-vacancy-watch report many new developments. Some report UNEP is ready to announce the Officer-in-Charge. The position has been posted on the WWW and some think it may be filled as early as November. Some also noted that familiar Convention, but new Protocol, faces have appeared in Montreal, perhaps to influence the selection process.

## **THINGS TO LOOK FOR**

**SUB-WORKING GROUPS:** SWG-I is expected to consider Articles 4, 5, 6 and 11 beginning at 10:00 am. SWG-II is expected to convene at 10:00 am to discuss Articles 17, 18, 19 and 22.

**CONTACT GROUPS:** Check the schedule for CG-I and CG-II meeting times. CG-I is expected to consider the annexes. CG-II is expected to discuss Article 27 and possibly notification, AIA and compliance pending progress in SWG-I.