



## THE SIXTH SESSION OF THE AD HOC WORKING GROUP ON BIOSAFETY 14-19 FEBRUARY 1999

The Sixth Session of the Open-ended *Ad Hoc* Working Group on Biosafety (BSWG-6) will be held from Sunday, 14 February to Friday, 19 February 1999 in Cartagena de Indias, Colombia. The first extraordinary meeting of the Conference of the Parties (COP) to the Convention on Biological Diversity will be held from 22-23 February 1999. Regional and inter-regional meetings were held from 12-13 February 1999. Working from a draft negotiating text prepared by the Secretariat, delegates will meet in two sub-working groups and two contact groups with a view to finalizing a protocol for adoption by the COP.

### A BRIEF HISTORY OF THE AD HOC WORKING GROUP ON BIOSAFETY

The Convention on Biological Diversity (CBD), negotiated under UNEP's auspices, was adopted on 22 May 1992 and entered into force on 29 December 1993. As of August 1998, there are 174 Parties to the Convention. Article 19.3 of the CBD provides for Parties to consider the need for and modalities of a protocol setting out procedures in the field of the safe transfer, handling and use of LMOs that may have an adverse effect on biodiversity and its components.

**COP-1:** The first Conference of the Parties (COP-1) to the CBD, held in Nassau, the Bahamas, from 28 November - 9 December 1994, established an Open-ended Ad Hoc Group of Experts on Biosafety, which met in Madrid from 24-28 July 1995. According to this meeting's report (UNEP/CBD/COP.2/7), most delegations favored development of an international framework on biosafety under the CBD. Elements favored unanimously for such a framework included: all activities related to living modified organisms (LMOs) that may have adverse effects on biodiversity; transboundary movement of LMOs; release of LMOs in centers of origin/genetic diversity; mechanisms for risk assessment and management; procedures for advance informed agreement (AIA); facilitated information exchange;

capacity-building and implementation; and definition of terms. Elements with partial support included: socio-economic considerations; liability and compensation; and financial issues.

**COP-2:** At COP-2 in Jakarta, Indonesia, in November 1995, delegates considered the need for and modalities of a protocol on biosafety. Amidst debate over the protocol's scope, the COP adopted compromise language (Decision II/ 5) calling for "a negotiation process to develop in the field of the safe transfer, handling and use of living modified organisms, a protocol on biosafety, specifically focusing on transboundary movement of any LMO that may have an adverse effect on biological diversity." COP-2 also established an Open-ended *Ad Hoc* Working Group on Biosafety (BSWG) to elaborate the need for and modalities of a protocol based on elements from the Madrid report. Other terms of reference for the BSWG state that it shall: elaborate key terms and concepts; consider AIA procedures; identify relevant categories of LMOs; and develop a protocol that takes into account the precautionary principle and requires that Parties establish national measures.

**BSWG-1:** At its first meeting, held in Aarhus, Denmark, from 22-26 July 1996, the BSWG elected Veit Koester (Denmark) as its Chair and began the elaboration of an international protocol on biosafety. Although the meeting produced few written results, it functioned as a forum for defining issues and articulating positions characteristic of the pre-negotiation process. Governments listed elements for a future protocol and outlined the information required to guide their future work.

**COP-3:** At COP-3, delegates adopted Decisions III/5 (additional guidelines to financial mechanisms) and III/20 (biosafety issues). In so doing, the COP affirmed its support for a two-track approach through which the promotion of the application of the UNEP Guidelines could contribute to the development and implementation of a protocol on biosafety, without prejudicing the development of such a protocol.

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**BSWG-2:** Delegates to BSWG-2, held from 12-16 May 1997 in Montreal, discussed a range of issues, including: objectives; AIA; notification procedures for transfers of LMOs; competent authorities/focal points; information-sharing and a clearing-house mechanism; capacity-building; public participation and awareness; risk assessment and management; unintentional transboundary movement; handling, transportation, packaging and transit requirements; and monitoring and compliance. BSWG-2 convened a contact group to consider definitions of key terms and directed the Secretariat to compile an alphabetical list of terms requiring definition, as submitted by countries, for consideration at BSWG-3.

**BSWG-3:** The third BSWG session met in Montreal from 13-17 October 1997. Delegates produced a consolidated draft text to serve as the basis for negotiation of a biosafety protocol. The meeting established two Sub-Working Groups to address the core articles of the protocol, as well as a contact group on institutional matters and final clauses. It also extended the mandate of the existing contact group on definitions to address annexes. Delegates addressed outstanding issues in Plenary, including: socio-economic considerations; liability and compensation; illegal traffic; non-discrimination; trade with non-Parties; as well as objectives, general obligations, title and preamble for the protocol.

**BSWG-4:** At the opening of BSWG-4, which met in Montreal from 5-13 February 1998, Chair Koester underscored that the BSWG was entering the negotiation phase and that participants must attempt to reduce, through negotiated consensus, the number of options under each article. BSWG-4 followed the structure adopted at BSWG-3, using two open-ended Sub-Working Groups to address the core articles of the protocol and two Contact Groups on definitions and annexes and on institutional matters and final clauses. Delegates began consideration of several articles that had only received preliminary discussion at BSWG-3, including: principles/objectives, general obligations, non-discrimination, socio-economic considerations, and liability and compensation. Delegates also continued work on other issues previously addressed, including: matters relating to AIA, risk assessment and management, minimum national standards, emergency measures and capacity-building.

**COP-4:** The Fourth Meeting of the Conference of the Parties (COP-4) to the CBD took place from 4-15 May 1998 in Bratislava, Slovakia. In Decision IV/3, "Issues related to biosafety," the COP provided for two more meetings to finalize the biosafety protocol, the first to take place in August 1998 and the second in early 1999, followed by an extraordinary meeting of the COP to adopt the protocol. The decision also: determined the composition of the BSWG Bureau and that it should remain in office under the chairmanship of Koester until the adoption of the protocol; established the agenda for the Extraordinary COP; and set a deadline of 1 July 1998 for government submissions of comments on provisions in the protocol.

**BSWG-5:** BSWG-5 met from 17-28 August 1998 in Montreal, Canada. Delegates consolidated options for 45 articles in the revised consolidated draft to 40 articles in the conclusions of the Sub-Working and Contact Groups. Delegates thus achieved the objective BSWG Chair Koester set out at the beginning of the meeting: consolidation of the text into a single option for each article. Thirteen articles remain entirely bracketed, however, indicating that delegates still have not agreed on the elements of the protocol, let alone what the articles' contents shall be. Many commented that the BSWG has not yet begun negotiating and this session was a further exercise in text consolidation. Polarized positions continued to emerge during discussions over whether the protocol's scope included "products thereof," whether the protocol would address questions of liability and redress, and if the protocol would facilitate information exchange for trade in living modified organisms or reflect a more precautionary approach. Nevertheless, the issues to be negotiated were clarified and this should facilitate delegates' work for BSWG-6.

**BSWG EXTENDED BUREAU:** The Extended Bureau of the BSWG met from 21-22 October 1998 in Montreal to facilitate the organization of work for BSWG-6 and the Extraordinary COP. In considering the heavy workload on delegations in finalizing the draft protocol, the Extended Bureau reached a number of conclusions regarding the structure of the meeting. They concluded that many of the draft Articles could be considered as clusters where elements of Articles affected other related Articles. They requested the Secretariat to analyze the draft negotiating text and to develop a table of clusters of related Articles. The resulting document (UNEP/CBD/BSWG/6/3) contains a table that identifies primary Articles for each heading and related Articles where discussion of some elements of the primary Articles could affect discussion or resolution of an element in the related Articles.

### **IN THE CORRIDORS**

Many delegates could be seen in the corridors of the Cartagena Convention Centre headed for regional meetings and busily preparing for the week ahead. Several opted for an optimistic outlook on whether they could agree on a protocol within the week, but varied on how strong such a protocol would be. Some saw debates on "products thereof" and liability as areas ripe for movement from past positions. The stakes for a successful protocol are high institutionally, as indicated by the expected attendance of the UNEP Executive Director throughout the week. Eleven ministers, with a strong African representation, are expected so far for the Extraordinary COP.

### **THINGS TO LOOK FOR TODAY**

**Plenary:** Opening plenary is scheduled for 3:00 pm on Sunday, 14 February. BSWG Chair Koester, Minister Mayr of Colombia, UNEP Executive Director Toepfer and CBD Executive Secretary Zedan will address the delegates. Statements from regional groups and nominations for the Legal-Linguistic Group are also expected.