



## HIGHLIGHTS FROM BSWG-6 MONDAY, 15 FEBRUARY 1999

Delegates to the sixth session of the Open-ended *Ad Hoc* Working Group on Biosafety (BSWG-6) met in a series of groups throughout the day. Sub-Working Groups I and II also met to consider the various groups' results and other outstanding issues. Contact Groups reconvened in the evening and worked into the night.

### SWG-I

SWG-I met briefly in the morning to hear progress reports on the work of the informal groups on "commodities" and "products thereof." Co-Chair Schoonejans (France) requested the informal groups to continue work and report back to SWG-I in the afternoon.

SWG-I reconvened at 3:40 pm to hear reports from the informal groups. The Co-Chairs of the informal group on "products thereof" (Germany and Iran) circulated a paper containing options for dealing with "products thereof:" full inclusion, full exclusion and a Co-Chairs compromise proposal. SWG-I Co-Chairs distributed an additional paper. Many delegations supported a proposal in that paper that "purified products thereof, not containing genetic material (DNA and RNA), need not be addressed in the protocol." Some agreed with the SWG-I Co-Chair's proposal that, as agreement seemed unattainable before Friday, the COP could adopt a decision to conduct further work on the issue. Others opposed this option. SWG-I agreed to forward both papers to the BSWG Chair as a basis for further discussion. At the evening session, Co-Chair Schoonejans informed delegates that the Friends of the Chair (FOC) had invited the informal group to continue its work on the treatment of "products thereof," and to report directly to the FOC on Tuesday morning.

The Co-Chair (Switzerland) of the commodities group referred to issues raised in the group including: obligation of the exporting party; format of information; and method of making information available. He noted a non-paper by Canada, recommending obligations for parties to share information about domestic approvals of LMOs intended for consumption or processing. He proposed that the Canadian non-paper and the outlined issues form the basis for further discussion. The SWG-I Co-Chairs presented an additional proposal. Many developing countries objected to elements in the Co-Chairs proposal suggesting potential differentiation in the level of risk between LMOs intended for deliberate release and LMOs intended for food, feed and processing. They supported the subjection of all LMOs to the AIA procedures. A few developing and many developed countries supported differentiation. Some developed countries preferred

the informal group's proposal to the Co-Chairs'. SWG-I agreed to present the BSWG Chair with three options: exclusion of LMOs destined for food, feed and processing from the AIA process; the SWG-I Co-Chairs' proposal; and the informal group's proposal.

The SWG-I Co-Chairs presented a working paper containing their suggestions for tightening the text. In Article 4 (Scope), one group of delegations proposed adding language excluding from the scope of the protocol "LMOs that are pharmaceuticals for humans," as a footnote to that effect had earlier been deleted. The working paper was accepted with the suggested modification.

SWG-I took up Article 15 (Risk Management) in the evening. Several delegations proposed deletion of some or all of paragraphs 2-9, stating that the details of risk management were a matter for national legislation. Other delegations supported their retention, as issues at stake exceeded national legislation. Some delegations stated that SWG-I should first decide whether Article 15 should be included in the protocol. Co-Chair Wint (Jamaica) convened an informal group, co-chaired by Chile and the Seychelles, to continue work on risk management and report to SWG-I on Tuesday at 10:00 am.

### SWG-II

In SWG-II's morning session Co-Chair Herity (Canada) proposed establishing two small groups to consider Articles 22 (Capacity Building) and 27 (Socio-economic Considerations). Co-Chair Herity held informal consultations with delegations on the precautionary principle. SWG-II resumed at 12:00 pm to hear the groups' reports. Switzerland, for the group on Article 22, noted agreement to delete a paragraph referring to needs of developing countries, citing that such concerns are covered in other paragraphs. There was no agreement on the rest of the Article. New Zealand, on behalf of the group on Article 27, reported that the discussion had focused, but not reached consensus, on the consideration of socio-economic impacts in risk management. There was general agreement to retain language on researching socio-economic considerations and to delete the reference to assistance to affected parties by those substituting imports. Co-Chair Herity said his informal consultations on the precautionary principle reflected some concern over the scientific uncertainty of LMOs' adverse effects on biodiversity. Discussions continued in small groups into the late afternoon.

SWG-II reconvened briefly in the afternoon to hear from the informal groups. Co-Chair Herity said his informal consultations did not result in agreement on the precautionary principle and that the fundamental difficulty for some participants was reference to the prin-



principle in operational articles. He said he would recommend wording to convey the principle without making specific reference to it. On Article 22 (Capacity-Building), the informal group Chair noted that problems still existed regarding a reference to biosafety in one paragraph and financial resources in a chapeau. On Article 27 (Socio-Economic Considerations), the informal group Chair said the group discussed whether a paragraph on notification would be more appropriately included under Article 20 (Information Sharing/Biosafety Clearing-House).

Co-Chair Herity reconvened SWG-II in the evening, informing the group that the Co-Chairs' meeting had transferred issues on socio-economic considerations and the precautionary principle to the FOC for further consideration. He reiterated his intention to convene a group dealing specifically with trade-related issues involving Articles 24 (Non-Parties), 25 (Non-discrimination) and 34 (Relationships with Other International Agreements).

In considering Article 18 (Handling, Transport, Packaging [And Labelling]), delegates discussed options for deleting some phrases and removing brackets, but reached no consensus. Many developing country delegations supported a mandatory provision on handling, transport, packaging and labelling. One developed country delegation requested deletion of a paragraph, stressing that such documentation requirements listed therein should be defined in national policies. Delegates discussed references to relevant international rules and standards. Many developed countries supported them, noting existing standards to be taken into consideration. Most developing countries opposed any reference to them, stating that these standards do not fit well with the protocol.

Co-Chair Herity asked delegates to distinguish between labeling and accompanying documentation with respect to LMOs subject to transboundary movement. Some delegates supported a clearly defined label on the package or container in addition to accompanying documentation, one noting that workers handling the package should be made aware of, *inter alia*, proper storage and risks associated with handling the LMO. A number of delegates proposed either documentation or labeling. Others preferred only accompanying documentation. Co-Chair Herity said he would produce a Chair's version of the Article for further discussion.

On Article 24 (Non-Parties), many delegates supported a paragraph prohibiting trade with non-parties, noting that this prohibition would encourage countries to sign the protocol. One delegate said trade with non-parties would jeopardize the validity of the protocol. Others said prohibition of trade with non-parties would deter countries from signing on. One delegate noted that it was unrealistic to prohibit trade with non-parties. Some preferred, instead, a paragraph conveying that parties shall conduct their trade in LMOs with non-parties in a manner consistent with the objectives of the protocol. Delegates differed on the inclusion of Article 34 (Relationship with Other International Agreements) in the protocol. Some developed country delegations saw no need for the article, noting that it would isolate the protocol from the context of international law. Several supported the Article, but not the reference to an exception where the exercise of rights and obligations under other international agreements would cause serious damage to biodiversity. Many developing country delegations preferred deleting the Article, claiming conflicts between international agreements and overlap with CBD Article 22 (Relationship with Other International Conventions).

**CG-I:** CG-I, co-chaired by Piet van der Meer (Netherlands) and Osama El-Tayeb (Egypt), discussed definitions of "LMO," "living organism" and "modern biotechnology." The results of their work will be submitted to SWG-I. Several delegations said agreement on the definition of LMO and its reference to cell fusion would depend on the

resolution of the inclusion of "contained uses and/or pharmaceuticals." The group started reviewing Annex I (Information Required in Notification for AIA) and will continue tomorrow.

**CG-II:** CG-II, co-chaired by Katarina Kummer (Switzerland), discussed definitions of transboundary movement, export, import, exporter, importer, parties of export and import. Delegates differed on including language excluding transit from definitions on transboundary movement, export and import. Noting the issue's connection to the scope of the protocol and AIA procedures, CG-II did not change existing formulations and forwarded the issue to SWG-I for consideration under Articles 4 (Scope) and 5 (AIA). Delegates refined text, removing the majority of existing brackets, to be produced as a conference room paper. CG-II agreed that there was no need for a definition on illegal traffic as it could be covered in Article 26 (Illegal Traffic). On Article 36 (Compliance), CG-II added language stressing the cooperative, non-punitive nature of compliance procedures and dropped brackets around the Article. Co-Chair Ashe (Antigua and Barbuda) led discussions on the Preamble, which added language on modern biotechnology's rapid expansion and growing public concern to an existing formulation covering relevant CBD Articles, COP decision II/5, biotechnology's potential and the limited capabilities of many countries. On Article 29 (Financial Mechanism) several delegates objected to language providing guidance to the financial mechanism on capacity-building, stating that this could only be done by the CBD COP. Additionally, some were concerned about removing references to specific elements of capacity-building without their assured inclusion in Article 22 (Capacity Building). Co-Chair Ashe noted that Article 29's resolution depends upon the outcome of Article 22.

**CG-II SUB-GROUP ON LIABILITY AND REDRESS:** Delegates considered a non-paper from Chair Cook (UK) setting out possible elements for consideration in addressing liability and redress in the future. The paper posed a number of questions, including: what constitutes damages for the purposes of a possible regime on liability; what is the threshold of damage; and what standard of care underlies liability. Some delegations reiterated longstanding positions, with some calling for no liability provisions and others characterizing "zero" liability as unacceptable. Delegates also discussed middle ground positions. The group will reconvene Tuesday morning.

### IN THE CORRIDORS

While some delegates followed the Colombian Environment Minister's advice to loosen their formal neckties, most BSWG-6 delegates went a step further and rolled up their sleeves to get down to serious work. As Chair Koester's Wednesday deadline approaches, over nine contact groups, as well as Sub-Working Groups, regional groups and informal groups met, some running late into the evening. Despite this effort, delegates did not report major breakthroughs on any of the longstanding, polarized disagreements. A mixed chorus of voices was heard reiterating their preference for "no protocol rather than a bad protocol." Still others recalled that position shifts in negotiations, especially for legally binding agreements, frequently await the final hour. Some predicted that the Friends of the Chair meeting held in the evening would intensify the impetus for agreement.

### THINGS TO LOOK FOR

**SWG-I:** SWG-I will meet at 10:00 am and hear a report from the informal group on risk management.

**SWG-II:** SWG-II will meet briefly at 10:00 am and then break into various groups.

**CG-I:** CG-I will meet at 10:15 to discuss Annexes I and II.

**CG-II:** The CG-II sub-group will meet at 11:00 am to discuss liability and redress. Check the afternoon schedule for other CG-II discussions.