



## EXCOP HIGHLIGHTS

### 24 JANUARY 2000

Delegates to the resumed session of the first Extraordinary Meeting of the Conference of the Parties (ExCOP) for the Adoption of the Protocol on Biosafety to the Convention on Biological Diversity (CBD), met in Plenary to hear opening statements and address organizational matters. After this brief Plenary, the "Vienna setting" convened to discuss the work of the contact groups. Contact groups on commodities and scope met in afternoon and evening sessions.

#### PLENARY

COP-4 President Laszlo Miklós (Slovak Republic) officially opened the ExCOP for the Adoption of the Protocol on Biosafety (ExCOP), welcoming delegates on behalf of the COP-4 Bureau. ExCOP President Juan Mayr invited delegates to build on the work accomplished during the recent informal consultations. He stressed the urgency to build on this momentum to solve outstanding issues and to adopt the protocol as the first international environmental treaty of the new millennium. He encouraged Ministers to attend and drew attention to a ministerial dinner roundtable he will host on Wednesday evening.

Hamdallah Zedan, Executive Secretary of the CBD, emphasized the significance of the negotiations for the CBD and sustainable development. He referred to the benefits of biotechnology and said the protocol would ensure that humanity enjoys the benefits of science and trade, while protecting the environment. He noted the atmosphere of cautious optimism apparent during the informal consultations and expressed appreciation to Parties that provided financial support for the participation of developing countries and those with countries in transition.

Delegates then adopted the provisional revised agenda (UNEP/CBD/ExCOP/1/1/Rev.2) and its annotations (UNEP/CBD/ExCOP/1/1/Rev.2/Add.1). Regarding the organization of work, Mayr said that the Plenary and the "Vienna setting" involving the spokespersons for each negotiating group (the Central and Eastern European countries, the Compromise Group, the EU, the Like-Minded Group and the Miami Group) would be used and both would have transla-

tion and follow official rules of procedure. He also stated that there would not be more than two contact groups meeting in parallel. Mayr proposed keeping the contact groups on scope and commodities which were established during the recent informal consultations. ETHIOPIA, on behalf of the Like-Minded Group, suggested that the contact groups be merged. Mayr invited regional groups to submit names of three representatives for the Legal Drafting Group to be chaired by Lynn Holowesko (the Bahamas). Participants heard reports from the CBD Secretariat on the credentials of representatives and on available documents, including the Draft Report of the First ExCOP (UNEP/CBD/ExCOP/1/L.2/Rev.1) and the Report of the Sixth Open-ended Working Group on Biosafety (UNEP/CBD/ExCOP/1/2).

#### VIENNA SETTING

The "Vienna setting" then convened in the Delta Hotel, where Chair Mayr proposed continuing the two contact groups on commodities and scope. Expanding on its statement in the opening Plenary, the Like-Minded Group reiterated the need to maintain an inclusive article on scope, stressing that any exemptions focus on the advanced informed agreement (AIA) procedure and other relevant articles on a case by case basis. As such, he noted the need to address related elements of Article 5 (Application of the AIA Procedure) in discussions on scope, which the other negotiating groups generally supported. The EU inquired about initiating discussions on the protocol's relationship with other agreements. Mayr announced that the contact group on scope would address relevant elements of Article 5, but would not discuss issues related to commodities. He further noted that Article 31 (Relationship with Other International Agreements) would be addressed later. The two contact groups met in afternoon and evening sessions.

**CONTACT GROUP ON COMMODITIES:** Chair François Pythoud (Switzerland) commenced discussion on Article 17 (Information Sharing and the Biosafety Clearing-House) by drawing attention to the proposed amendments in Chair Mayr's non-paper. One group claimed that a broader range of information requirements regarding national legislation is reflected in the Cartagena draft text than in the non-paper proposal. He noted that in providing information on national legislation, it is not necessary to limit such informa-



tion to implementation of the protocol. Another group noted that the amendment regarding information requirements for LMOs intended for food or feed or for processing (LMO-FFPs) in domestic regulations repeats Article 9 *bis* of the non-paper and that this issue had been sufficiently discussed during the informal consultations. He also suggested deletion of the reference to implementation of the protocol. Groups agreed to ignore the proposed amendments in the non-paper and to reconsider this article based on the Cartagena draft text.

On Article 15 (Handling, Transport, Packaging and Identification), the group engaged in a conceptual discussion on the Package Proposal on the Text of the Draft Protocol contained in Annex II of the ExCOP's report (UNEP/CBD/EXCOP/1/L.2/Rev.1).

The significance of documentation requirements to the implementation of the protocol was highlighted. Discussions focused on how proper documentation helps Parties to take measures to reduce damages in case of accidents and that without documentation, Parties are unable to identify whether the protocol's provisions have been respected. One participant proposed that LMOs be divided into three categories in this regard: LMOs to be released into the environment that should have stringent documentation requirements; LMOs for contained use that should be clearly identified; and LMO-FFPs that should be clearly indicated.

One group recognized the importance of safe handling, transport, packaging and identification of LMOs to the AIA procedure. Another group emphasized that all LMOs should be identified, and documentation should not only apply to the first transboundary movement, but also to subsequent movements. He supported language in the package proposal requiring a review of Article 15's effectiveness. One group expressed its concern over the differentiated treatment of LMO-FFPs in terms of documentation, and highlighted that documentation requirements must be workable for commercial actors. One group said that Article 15 is closely linked with other issues such as commodities and the scope of the protocol, and that since his group viewed the Cartagena draft text as more balanced, discussion on this article should not be reopened.

The group then proceeded with a conceptual discussion on the package proposal paragraph by paragraph. In considering requirements for Parties to take measures for safe handling, transport and packaging of LMOs, two groups emphasized that such requirements should apply to all LMOs.

Questions were raised regarding LMO identification for movements subsequent to the first movement. Some insisted that subsequent movements must be identified. Conceptual difficulties were expressed regarding timeframes and if LMOs currently traded in the marketplace would be subject to the same identification requirements. Participants expressed views on the degree of certainty a Party could expect to have regarding the percentage of LMO content in a given shipment. Some noted that a threshold regarding what percentage of LMO content requires identification does not exist, which raises difficult legal questions. Others indicated that it is impossible to know the final destination of a shipment of LMOs or the exact quantity of LMOs in a given shipment, hence identification requirements are not obvious. In closing the discussion on the package proposal, some expressed their desire to keep Article 15 as reflected in the Cartagena draft text while others wished to further explore a revised text based on the package proposal.

Delegates met again in the evening and began focusing their discussion on Article 9 *bis* (on the decision procedure for LMO-FFPs) in Chair Mayr's non-paper, particularly on language dealing with information provision subject to domestic regulations. The group continued its discussion into the night and will report back to the "Vienna setting" in the morning.

**CONTACT GROUP ON SCOPE:** The contact group on scope met in the afternoon to discuss outstanding issues related to Article 4 (Scope). Chair John Herity (Canada) invited the negotiating groups to present their general perspectives. One group expressed its apprehension about the approach within the existing text to exempt certain categories of LMOs from the protocol's scope and stressed that in principle the protocol should apply to all LMOs. This would allow for a clear scope, while exemptions could be addressed in the respective articles. The group referred to Article 27 (Conference of the Parties serving as the meeting of the Parties), stating that limiting the scope would compromise the COP's competence to respond to future developments. The group also suggested that Articles 4 and 5 should be dealt with together. Another group stated that these questions had been discussed in previous consultations and that work should now build upon the concepts and key elements generally agreed upon in the Cartagena draft text of the protocol. Some delegates pointed out that the COP, as the supreme body, would be able to address any issue it deemed necessary.

Upon one group's proposal to start working on the substance of the exemptions, delegates discussed the status of pharmaceuticals. One group expressed the need for the protocol to take into account genetically modified plants and animals which produce pharmaceutical substances. Concern was also expressed about future developments in the field of gene-therapy and the potential adverse effects of modified viruses and microorganisms on the environment. Others said that the World Health Organization would be the competent and appropriate forum to deal with pharmaceuticals. A delegate responded, noting that there were no existing international standards referring to genetically modified viruses and microorganisms in gene-therapy and their effects on the environment. One group suggested that due to a lack of information on the possible adverse environmental effects of pharmaceuticals, the COP would have to decide whether the protocol would address this issue in the future. During an evening session, delegates continued discussions on the scope of the protocol in relation to pharmaceuticals, contained use and transit. The group will report back to the "Vienna setting" in the morning.

### **IN THE CORRIDORS**

After the brief opening Plenary, some ministers were seen wandering the halls with their undelivered opening statements in hand. With notice of a ministerial dinner on Wednesday, delegates pondered how far an increased political profile could push the negotiations. Many participants were especially hopeful that the Environment Minister of Canada, David Anderson, would also appear.

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

**VIENNA SETTING:** The negotiating groups will reconvene in the Vienna setting at 10:00 am in the Delta Hotel to hear the reports of the contact groups on scope and commodities.