



## EXCOP HIGHLIGHTS WEDNESDAY, 26 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 CBD, met during the morning in the "Vienna setting" to hear contact groups' reports on commodities and trade-related issues. The contact group on commodities met in a morning session and then merged with the contact group on scope and met in afternoon and evening sessions. The contact group on Articles 31 (Relationship with Other International Agreements) and 22 (Non-discrimination) met throughout the day. The "Vienna setting" convened at 11:20 pm to hear reports of the contact groups and a round of views on the precautionary principle.

### VIENNA SETTING

Upon reconvening the "Vienna setting," in the morning, Mayr requested progress reports from the contact groups. François Pythoud (Switzerland), Chair of the commodities contact group, presented text on the decision procedure for LMO-FFPs, claiming that groups were close to agreement. The text covers: information provision regarding decisions for LMO-FFPs; legal requirements for the accuracy of information provided; requests for additional information; financial and technical support for decision-making; and decision procedures subject to domestic regulatory frameworks. He noted bracketed language on decision procedures for countries without national regulatory frameworks, and stated that there is still disagreement over a reference to their "consistency" with the protocol. Attention was also drawn to a paragraph relating to the precautionary principle, which pends discussion on Article 8 (Decision Procedure). The group also briefly discussed Annex 1B (Information Required in Notification).

Chair of the contact group on Articles 31 and 22, Ambassador Philémon Yang (Cameroon), noted that, on Article 31, some groups supported the preambular proposal in Chair Mayr's non-paper, although there was a suggestion to delete language on the equal status of the protocol with other international agreements. One group supported retaining the existing Article 31.

Chair John Herity (Canada) of the contact group on scope reported that informal consultations had not yet been resumed and proposed that they continue.

Mayr then requested that the contact groups on commodities and trade-related issues reconvene. He added that after further informal consultations, the groups on scope and commodities would be merged. He requested final text for presentation at a late evening

"Vienna setting." The Miami Group inquired as to when and how other issues would be addressed, such as Article 8.7 on the precautionary principle. The Like-Minded Group requested that the contact groups concentrate solely on their original mandates. The Compromise Group and the EU supported Mayr's proposal to continue discussions. Mayr stated that related issues can be examined by the contact group Chairs after the core issues are resolved.

**CONTACT GROUP ON COMMODITIES:** Chair Pythoud presented his Chair's text on Article 15 (Handling, Transport, Packaging and Identification). He said his text reflects all the principles in the Cartagena text, but allows for flexibility when dealing with different categories of LMOs. Delegates addressed a provision on the safety conditions of LMOs when handled, packaged and transported. Certain groups expressed concern that the application of safety measures required qualification on a case-by-case basis and that they should be applied "as appropriate." Others disagreed with this concern. Given unresolved discussions on scope, the group encountered difficulties on a provision presenting a differentiated approach to providing accompanying documentation for: LMO's intended for introduction into the environment; for contained use; or for food, feed or processing.

On accompanying documentation in the transport of LMOs, some groups stressed that documentation was a minimum requirement. There was discussion on ensuring that the provision covered not only the first, but also subsequent movements of LMOs. Negotiating groups confirmed the need for documentation identifying LMO-FFPs, but disagreed on how LMO-FFPs should be identified. One group proposed that "any unique identification" in addition to "identity" of LMO-FFPs be specified. Another supported identification of LMO-FFPs "as not intended for intentional introduction into the environment." One group noted difficulties with the documentation requirements for LMO-FFPs, and requested the proposals be bracketed.

One group questioned the appropriateness and clarity of a provision requiring a declaration that the movement of LMO-FFPs conform with the protocol's requirements. To clarify who should make the declaration, one group suggested the provision apply to exporters. The provision was bracketed. One group stated that a provision requiring the meeting of the Parties to consider the need for and modalities of developing standards with regard to identification, handling, packaging and transport was unnecessary. A representative stated that a reference to collaboration with other international bodies undermines the CBD and the protocol and suggested language refer-



ring to consultations with other international bodies used in the Cartagena draft text. As suggested by the Chair, the group agreed to bracket the whole provision with this amendment.

#### **CONTACT GROUP ON COMMODITIES AND SCOPE:**

Co-Chair Pythoud opened the first session of the merged contact group on scope and commodities. In presenting the Chairman's Summary for the Contact Group on Scope, Co-Chair Herity noted that the summary text deals with various categories of LMOs in the context of the Protocol's scope: LMOs that may have adverse effect on biodiversity; LMOs that are pharmaceuticals for humans; LMOs in transit; and LMOs for contained use. On a provision dealing with which articles apply to LMOs in transit, Co-Chair Pythoud invited comments on the two options in the summary text. Option one, the "positive list," states that only articles 2, 14 and 15 shall apply; while option two, the "negative list," states that Articles 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 18, 20, 22, 23, 24, 27, 28, 29, 30, 31 and 34 shall not apply. Discussion resulted in a consensus decision to support the positive list. Participants started reviewing the articles for the positive list, but no agreement was reached.

After a lengthy break, the contact group was presented with a text based on informal consultations. On a provision exempting the transboundary movement of pharmaceuticals for humans, groups suggested qualifying the exemption by adding references stating that such LMOs are covered by other international agreements and organizations or that they would not be intentionally introduced into the environment. These provisions remained in brackets. Groups also responded to informal text on inclusion of transit and contained use in the scope of the protocol, which suggested that AIA procedures would not apply to these two categories of LMOs. They noted that this was a vast improvement over positive and negative lists of applicable articles debated earlier, yet reserved the right to discuss the extent of the exemptions further.

**CONTACT GROUP ON ARTICLES 31 AND 22:** Chair Yang invited negotiating groups to present their views on Article 22. Some considered a reference to non-discrimination redundant but noted flexibility to discuss the proposal in Chair Mayr's non-paper. One group stated that Article 22 runs contrary to the terms of reference agreed at COP-2 and exceeds the CBD's scope. Another group questioned the location and scope of a provision in the non-paper ensuring that Parties denying access to imports extend that ban to all sources, both domestic and international. Some stressed the importance of principles of non-discrimination to prevent conflicts between the protocol and other international instruments. Another group disagreed, stating that the protocol does not include many other equally fundamental trade rules and that non-discrimination is difficult to use when resolving conflicts between international instruments. Noting ambiguities in the difference between LMOs and non-modified products, another group stated that it is hard to apply rules on products to LMOs.

In the afternoon, Chair Yang asked for comments on preambular language replacing Article 31 on the protocol's relationship to other international agreements proposed in Chair Mayr's non-paper. One group noted inconsistency between terminology on "international agreements related to sustainable development" and "trade and environment agreements." Some groups objected to a provision noting the equal status of the protocol with other international agreements. Another group asked for consideration of relevant issues in Articles 21, 24 and 8.7 before drafting text. The delegate also focused on Article 31 and suggested removing a clause excepting Parties' obligations to existing international agreements where there might be serious threat to biodiversity. Some delegates argued that Article 31 was unacceptable, since it would subordinate the protocol to international trade agreements.

After a break, Chair Yang distributed a draft proposal, deleting Articles 31 and 22 and adding three preambular provisions with language from the Convention for the Prior Informed Consent (PIC)

Procedure. One group noted that use of language from the PIC Convention was inappropriate given that trade in international hazardous substances is an entirely different context from biosafety. Two groups stated that language emphasizing that nothing in the protocol shall imply a change in obligations under any existing international agreement was too strong. One group stated that the preambular format was acceptable, while many stressed the need to reflect further on both the format and substance.

#### **VIENNA SETTING**

Mayr welcomed the ministers and asked the contact groups for reports.

Co-Chair Pythoud reported on the commodities and scope group's progress on Article 15, noting that the new text contained some brackets, which should be easily removed. Co-Chair Herity said that the discussion gave him confidence and that brackets in Article 4 and in the article on pharmaceuticals for humans should not constitute major problems. Regarding a new article on LMOs in transit and for contained use, Chair Pythoud noted the broad range of options discussed and that remaining problems could be readily resolved.

Chair Yang presented results of the day's discussions on Articles 31 and 22. He reviewed a chairman's draft text, which deleted the two articles and suggested preambular text, which still requires further discussion. He noted requests to address trade-related issues, which he was unable to grant given the group's mandate.

In a round of comments, the negotiating groups indicated their general satisfaction with the contact group on commodities. With regards to Articles 31 and 22, the CEE and Compromise Group approved of their proposed deletion and support for preambular language. The Miami Group suggested deletion of Article 22 and indicated they would consider the Chair's proposed text, while the EU suggested deleting Article 31 and retaining Article 22.

Chair Mayr then requested a round of views on the precautionary principle. Several groups underlined that the protocol by nature embodies the precautionary principle. The Miami Group indicated that references in the preamble and Article 1 (Objective) were sufficient and that operationalization in Article 8 was not necessary. The EU stressed the need for an operable precautionary principle, such as that embodied in Article 8. The Compromise Group noted the need for precision and the inter-relation of Article 8 with 31 and 22. The Like-Minded Group supported the existing provision in Article 8. The CEE stressed the need to consider the minimum level of precaution for effective implementation.

Chair Mayr stated that the contact groups on Articles 31 and 22, and commodities and scope should meet to deliver text to the "Vienna setting" on Thursday morning.

#### **IN THE CORRIDORS**

As progress emerged in the areas of scope and commodities, delegates struggled with the Gordian Knot of negotiating on the trade cluster, which is intertwined with related issues, yet constrained by a limited mandate. With debate focusing on the protocol's relationship to the WTO, the corridors were a-buzz with musings of what a deal on the savings clause, precautionary principle and scope might entail. The question remains: who will be able to sever the knot?

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

**CONTACT GROUP ON ARTICLES 31 AND 22:** The group will meet at 9:00 am in room 5 of the ICAO building.

**VIENNA SETTING:** The Vienna setting will reconvene at 10:00 am in the Delta Hotel to hear reports from the contact groups on scope and commodities and Articles 31 and 22. Further discussion on the precautionary principle is expected.