

## COP/MOP 4 HIGHLIGHTS: WEDNESDAY, 14 MAY 2008

COP/MOP 4 delegates met in working groups (WG) and contact group sessions throughout the day. WG I considered draft decisions on compliance, and on handling, packaging, transport and identification (HTPI) of living modified organisms (LMOs). WG II considered draft decisions on the Biosafety Clearing House (BCH), capacity building, and risk assessment and risk management. The contact groups on liability and redress and the budget met throughout the day and in the evening.

### WORKING GROUP I

**COMPLIANCE:** Delegates considered a draft decision on the report of the compliance committee. Delegates agreed to the following amendments: an addition to the preamble, suggested by the EU, highlighting the low number of submissions of first national reports; a compromise, suggested by BRAZIL, to defer consideration, “or as appropriate” adoption, of measures in cases of repeated non-compliance; a modified paragraph urging parties to renew their efforts to facilitate agreement on Rule 18 (voting) of the Compliance Committee’s Rules of Procedure; a suggestion by JAPAN that the Committee meet “less than twice a year if it deems necessary” and within the budget adopted by the MOP; and an additional paragraph proposed by the EU inviting parties to submit their views on how to improve the supportive role of the Committee for consideration at COP/MOP 5. Delegates adopted the report, pending discussions on the budget and considerations of related issues in WG II.

**HTPI: Identification requirements:** Delegates approved a draft decision stating that consideration of identification requirements will be deferred to COP/MOP 6 without amendment.

**Standards:** Delegates considered a draft decision on standards for HTPI. MALAYSIA, supported by ETHIOPA, but opposed by the EU, BRAZIL and INDIA, suggested revising a provision requesting the Executive Secretary to prepare a compilation on gaps in standards prior to COP/MOP 5, but it was not accepted. NEW ZEALAND and the EU proposed specifying that the conference should identify standards and gaps, and develop modalities for developing necessary standards. This proposal was adopted with alternative wording in brackets. The entire draft decision was adopted provisionally and Chair Ekeberg said that the revised draft will include cost estimates.

**Sampling and detection:** Delegates considered a draft decision on sampling and detection. They remained divided on a proposal by ETHIOPIA to reference field trials, and a compromise proposal by EGYPT to reference cases in which LMOs are “intended for future placing on the market,” in a preambular paragraph. The EU requested bracketing a paragraph on information exchange on the establishment and implementation of national standards for acceptable levels of co-mingling. ETHIOPIA called for text requesting “parties and governments of those in possession of reference materials” to provide access for agencies that may need such materials for the purpose of detecting LMOs. On a paragraph on accreditation of laboratories involved in sampling and detection of LMOs, NEW ZEALAND stressed the “need for” the laboratories, and a number of countries supported BRAZIL’s suggestion to reference capacity building in this regard, but could not agree on exact wording. Discussions will continue on Thursday.

### WORKING GROUP II

**BIOSAFETY CLEARING HOUSE:** Delegates considered a draft decision the BCH. NEW ZEALAND, opposed by many, proposed the deletion of a paragraph requesting the Executive Secretary to improve electronic tools and undertake additional activities. This paragraph was bracketed.

Regarding urging the GEF to extend the UNEP-GEF BCH project, the EU, opposed by QATAR, ZIMBABWE, ECUADOR and MEXICO suggested adding “providing it receives a positive mid-term review.” The EU subsequently withdrew its proposal. JAPAN and NEW ZEALAND, opposed by many, maintained that the paragraph should be considered under the agenda item on the financial mechanism and resources. The Secretariat clarified that all the GEF related decisions would be reflected in the draft decision on the financial mechanism and resources but the paragraph would be maintained. Delegates then adopted the draft decision pending approval of budgetary implications.

**CAPACITY BUILDING:** Delegates considered a draft decision on capacity building. Discussion centered on funding, with JAPAN, NEW ZEALAND, the EU and NORWAY recommending setting priorities on funding for capacity-building activities, while developing countries such as QATAR, OMAN, BELIZE, the AFRICAN GROUP and CUBA preferred to leave the question of funding open. Extensive discussions ensued regarding the revised set of indicators developed by the Liaison Group for the Action Plan for Building Capacities.

NEW ZEALAND, supported by BRAZIL, the EU, CUBA, VENEZUELA and THAILAND, proposed developing a shorter list and consolidating decision text on the indicators.

#### **RISK ASSESSMENT AND RISK MANAGEMENT:**

Delegates considered a draft decision. Regarding preambular text on recalling that risk assessment should be carried out in a scientifically sound manner, extended debate centered on whether to make reference to Protocol provisions and an annex on risk assessment, and on including socioeconomic considerations and language on a precautionary approach. This text remained bracketed. Negotiations continued into the night.

#### **CONTACT GROUPS**

**BUDGET:** In the morning, the budget group considered a detailed version of the EC's proposal for a core budget funded in part through contributions from the cumulative reserve, including projected implications for parties' assessed contributions towards the Protocol's core budget. Among other things, delegates debated how much funding can be drawn from the reserve.

In the afternoon, the budget group considered a revised indicative list outlining cost implications of the current status of the decisions discussed in the two working groups. Delegates further discussed whether activities should be funded through the core budget or the voluntary trust fund, and the costs of hiring consultants compared to the costs of engaging permanent staff.

**LIABILITY AND REDRESS:** Co-Chair Lefebvre tabled a draft COP/MOP decision on international rules and procedures in the field of liability and redress providing for annexing the supplementary protocol and addressing the need to deal with certain standard procedural terms at the end of the legally binding instrument.

Several delegates expressed concern about the tabling of this draft COP/MOP decision noting that some of the issues addressed had not yet been formally discussed, while others welcomed it as the basis for further consideration. Co-Chair Lefebvre clarified that such a final COP/MOP decision could only be approved at an ExCOP/MOP or COP/MOP when the final instrument would be presented for adoption. He stated that the decision at COP/MOP 4 would likely be a procedural one setting out the process for finalizing an instrument on liability and redress.

Delegates then considered the section on complementary capacity-building measures. Most delegates preferred a more detailed provision on capacity-building measures with some amendments, while others preferred a more concise formulation. Regarding an institutional arrangement, many delegates saw the value in such an arrangement and discussed possible measures, while others opposed, citing funding concerns.

In the afternoon, delegates debated the written proposal of the like-minded group, raising a number of concerns, including that the binding provisions might infringe on states' sovereign right to determine national laws and policies. Regarding the proposed core elements for guidelines, some delegates expressed concern with the prescriptive language and some of the elements, while others replied that the list was meant to be flexible and the guidelines would be non-legally binding even if annexed to a supplementary protocol. On the enforcement of foreign judgments, some delegates expressed concern that special provisions in relation to LMOs might be required.

Delegates sought further clarification on the status of the compromise proposal, and how it relates to the substantive operative texts on the draft rules and procedures on liability and redress that had been revised in a first reading by the Friends of the Co-Chairs group and the contact group over the past week. Other delegates asked about the procedure for continuing the negotiations, with proposals including a second reading of the operative texts; bilateral discussions; and considering alternative avenues to overcome the current impasse. Many delegates acknowledged concessions made by the like-minded group and called for parties to commit to working on the compromise text or make counter proposals. Co-Chair Nieto then inquired whether there were delegates who did not wish to engage on the basis of the compromise proposed by the like-minded group with a view to reaching agreement on the text: two delegates signaled their objection. The meeting was then adjourned for a meeting of the Bureau.

In the evening, delegates reconvened in a closed session to consider two interlinked questions: the first whether there were any objections to working towards a legally binding instrument on an administrative approach, and the second whether there were any objections to working towards including one article on civil liability in such a legally binding approach. When two delegates objected to the first question, they were invited to bilateral consultations with the Co-Chairs. Many delegates objected to a third question regarding whether there was agreement to work exclusively towards a non-legally binding approach. The meeting was suspended for bilateral consultations. When the group reconvened no delegates objected to the first question, but one delegation objected to the second question noting that they could not agree to a provision on civil liability in a legally binding instrument. Delegates agreed to best address those concerns in bilateral consultations with the Co-Chairs. The meeting reconvened late in the evening and continued into the night.

#### **IN THE CORRIDORS**

Today was the day that the COP learned it lost its President and some would say the MOP lost its way.

Marina Silva, Brazil's environment minister resigned on Tuesday, leaving the question unsettled of who will open the COP next week. Her resignation was characterized by one delegate as the loss of "the mouthpiece for the lungs of the world."

Meanwhile, the COP/MOP worked on dual tracks. Whilst the working groups pushed on with their agendas, as many observers as could fit into the Liszt Room spent the afternoon watching the contact group negotiations on a liability and redress regime become increasingly unhinged. One delegate described it as "watching a slow motion train crash," an apt description of the dawning realization that a limited number of parties were not ready to proceed on the basis of the proposal of the like-minded group, consisting of around eighty members.

Following the adjournment of the closed evening session of the contact group, delegates were split on the portents of the schism: a disbelief that this might mark the end of a legally binding instrument on liability and redress, but deep uncertainty about the way forward. Many delegates expressed a sense of "collective disbelief" at how isolated negotiators could bring a long-standing process, born out of willingness to compromise, to a stand-still.