



# Earth Negotiations Bulletin

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A Reporting Service for Environment and Development Negotiations

Vol. 9 No. 77

Published by the International Institute for Sustainable Development

Thursday, 5 February 1998

## FOURTH SESSION OF THE AD-HOC OPEN-ENDED WORKING GROUP ON BIOSAFETY 5-13 FEBRUARY 1998

The Fourth Session of the *Ad-Hoc* Open-Ended Working Group on Biosafety (BSWG-4) under the United Nations Convention on Biological Diversity (CBD) will open at 10:00 am on 5 February 1998 in Montreal, Canada. BSWG-4 will continue consolidation of draft text for a protocol on biosafety for submission to the Fourth Meeting of the Conference of Parties, to be held in May 1998.

Under the structure developed at BSWG-3, delegates will work in two Sub-Working Groups and two Contact Groups to discuss, *inter alia*: principles and objectives; scope of and procedures relating to advance informed agreement; risk assessment and management; national standards; non-parties; non-discrimination; illegal traffic; socio-economic considerations; and liability and compensation. Delegates to BSWG-4 will have before them Secretariat compilations of government submissions of draft text on the preamble, articles, and annexes (UNEP/CBD/BSWG/4/2 and 3). Delegates will also have the Chairman's Note on Articles 3-10 and 12-14 (UNEP/CBD/BSWG/4/Inf.1), distilled from government submissions to assist BSWG-4's discussions.

### A BRIEF HISTORY OF THE BIOSAFETY ISSUE

Since the early 1970s, recombinant DNA technology -- the ability to transfer genetic material through biochemical means -- has enabled scientists to genetically modify plants, animals and microorganisms. Modern biotechnology can also introduce a greater diversity of genes into organisms than traditional methods of breeding and selection. Organisms genetically modified in this way are referred to as living modified organisms derived from modern biotechnology (LMOs). Although biotechnology has demonstrated its utility, there are concerns about potential risks to biodiversity and human health posed by LMOs. Many countries with biotechnology industries already have domestic legislation to ensure the safe transfer, handling, use and disposal of LMOs and their products; these precautionary practices are collectively known as "biosafety." However, there are no binding international agreements addressing situations where LMOs cross national borders.

**UNEP GUIDELINES:** The United Nations Environment Programme (UNEP) Panel of Experts on International Technical Guidelines for Biosafety met in Cairo, Egypt in December 1995 to adopt a set of international technical guidelines for biosafety. The

UNEP Guidelines are intended to provide a technical framework for risk management commensurate with risk assessment, without prejudice to the development of a biosafety protocol to the CBD.

An International Workshop to Follow-up the UNEP Guidelines was held in Buenos Aires in late 1996. The nineteenth meeting of the UNEP Governing Council, held in early 1997 in Nairobi, adopted Decision 19/16 on biosafety. The decision urges governments and subregional and regional organizations to promote the implementation of the Guidelines by designating focal points to apply the Guidelines, and urges governments to contribute relevant information to UNEP's International Register on Biosafety.

### BIOSAFETY UNDER THE CONVENTION ON BIOLOGICAL DIVERSITY

The CBD, negotiated under UNEP's auspices, was adopted on 22 May 1992, and entered into force on 29 December 1993. There are currently 171 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. 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. Delegates identified the level of support for proposed elements to be included in such a framework. Elements favored unanimously included, *inter alia*: all activities related to 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. Proposed elements with partial support included, *inter alia*: socio-economic considerations; liability and compensation; and financial issues.

**COP-2:** At the second meeting of the Conference of Parties (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

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organisms, a protocol on biosafety, specifically focusing on trans-boundary 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 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 whose effective functioning requires that Parties establish national measures and that takes into account the precautionary principle.

**BSWG-1:** At its first meeting, held in Aarhus, Denmark, from 22-26 July 1996, the BSWG began the elaboration of an international protocol on safety in biotechnology. Although the meeting produced few written results, it represented 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 its third meeting, the Conference of Parties (COP-3) provided guidance to the Global Environment Facility (GEF) regarding financial support for capacity-building in biosafety, and affirmed its support for implementation of the UNEP Guidelines by developing countries.

**BSWG-2:** At the second meeting of the BSWG, held from 12-16 May 1997 in Montreal, delegates 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 trans-boundary movement; handling, transportation, packaging and transit requirements; and monitoring and compliance. BSWG-2 convened a contact group to consider proposals on 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:** At the third session of the BSWG, held from 13-17 October 1997 in Montreal, 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 also 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. Delegates agreed, subject to approval at the fourth meeting of the Conference of Parties (COP-4) to the CBD, to convene two additional BSWG meetings and an extraordinary meeting of the COP to adopt the protocol in 1998.

## INTERSESSIONAL ACTIVITIES

### WORKSHOP ON THE REVIEW OF CBD OPERATIONS:

An informal meeting was held in London, UK from 5-7 January 1998 to discuss the review of CBD operations in preparation for consideration of this issue at COP-4 in May 1998. There were 35 participants representing Parties to the CBD, international organizations, NGOs and the private sector. Participants noted the need for increased cooperation and coordination among related secretariats. Regarding the work of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) to the CBD, participants stressed the need to

ensure structured scientific input into SBSTTA and the need for clear, action-based recommendations from SBSTTA to the COP. Participants also called for strengthening the involvement of civil society both in policy-making and implementation under the Convention. Suggestions for improving CBD functions and operations focused, in the short term, on the decision making process, and in the long term, on development of a ten-year Programme of Work possibly using a thematic approach at each COP. A summary of the meeting, prepared by the UK, is contained in UNEP/CBD/COP/4/Inf.2.

### WORKSHOP ON TRADITIONAL KNOWLEDGE AND

**BIOLOGICAL DIVERSITY:** In response to Decision III/14 of the COP, regarding implementation of Article 8(j) on the relationship between the traditional knowledge and the conservation and sustainable use of biodiversity, a Workshop on Traditional Knowledge and Biological Diversity was convened in Madrid, Spain, from 24-28 November 1997. Representatives from 62 governments and 148 indigenous and local community groups participated on relatively equal terms.

The report of the Workshop (UNEP/CBD/TKBD/1/L.1) contained a non-negotiated list of options for consideration by the COP on the structure and elements of a workplan on implementation of 8(j). Proposed elements in the report included, *inter alia*: participatory mechanisms for indigenous and local communities, equitable sharing of benefits, exchange of information and monitoring. The report also contained options for an open-ended intersessional working group on 8(j), as well as the mandate, structure, procedures and financing of such a body. Some participants expressed disappointment with the long list of unprioritized options destined for COP-4, and with the overly political nature of the dialogue, while others viewed the workshop as an important first step to integrating traditional knowledge into the CBD.

### COMMISSION ON GENETIC RESOURCES FOR FOOD

**AND AGRICULTURE:** The Fourth Extraordinary Session of the Commission on Genetic Resources for Food and Agriculture (CGRFA-EX4) was held at FAO Headquarters in Rome from 1-5 December 1997. Delegates continued negotiations on the revision of the International Undertaking (IU) on Plant Genetic Resources in harmony with the CBD. The work was divided between an *ad hoc* working group and an *ad hoc* contact group. The Working Group produced consolidated text on: objectives; relationship of the IU with other international agreements; conservation, exploration, collection, characterization, evaluation and documentation of plant genetic resources for food and agriculture (PGRFA); sustainable use of PGRFA; the Global Plan of Action; global information systems on PGRFA; international cooperation; the international network of PGRFA; and Farmers' Rights. Concurrently, the Contact Group continued discussions on issues related to access and benefit sharing. Unlike previous sessions, which were, for all intents and purposes, exploratory exercises, many delegates left this meeting with a clearer vision of the revised IU, particularly on access.

## THINGS TO LOOK FOR

**PLENARY:** Plenary is expected to begin this morning at 10:00 am. Veit Koester (Denmark), Chair of BSWG-4, will open the session and outline the programme of work and mandates for the Sub-Working Groups and the Contact Groups. A representative from UNEP will make an opening statement. SWG-1 and SWG-2 are expected to begin meeting in the afternoon.