



# Earth Negotiations Bulletin

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## HIGHLIGHTS FROM THE FOURTH SESSION OF THE AD HOC WORKING GROUP ON BIOSAFETY 5 FEBRUARY 1998

Delegates to the Fourth Meeting of the Open-ended *Ad-Hoc* Working Group on Biosafety (BSWG-4) met in Plenary to discuss organizational matters during the morning, and then in two Sub-working Groups (SWGs) and two Contact Groups (CGs) in the afternoon. SWG-1 clarified its work agenda and relationship to CG-1. SWG-2 began negotiations on aspects of transboundary movement, handling and transport of Living Modified Organisms.

### PLENARY

Chair Veit Koester (Denmark) opened BSWG-4. He outlined the goal of a consolidated negotiating text for presentation to the Fourth Conference of the Parties (COP-4), and reviewed the progress of the BSWG over the last two years. He affirmed the mutual desire and will of delegates to achieve the goals for the meeting and hoped that BSWG-4 would be successful.

Hamdallah Zedan, representing the Executive Director of the United Nations Environmental Programme (UNEP), recalled the enormity of the task facing BSWG at the outset and acknowledged the challenge of completing work in 1998. He stressed the need for a precautionary approach and an accommodating spirit in these deliberations. He highlighted the complementary relationship between the UNEP guidelines and the protocol on biosafety, and detailed a Global Environment Fund pilot program to provide assistance on biosafety to developing countries and countries with economies in transition at both national and regional levels.

Calestous Juma, Executive Secretary of the Convention on Biological Diversity (CBD), emphasized the importance of the BSWG's work in balancing benefit sharing from modern technology with human and environmental safety. He outlined three key issues facing BSWG-4: meeting the deadline for COP-4; addressing linkages with other activities under the CBD, including benefit-sharing, technology transfers, *in-situ* conservation and technical and scientific cooperation; and financial resources for this and future meetings.

The Chair introduced the Provisional Agenda (UNEP/CBD/BSWG/4/1) which was adopted without discussion. He listed two objectives for BSWG-4: to submit consolidated draft negotiating text to the COP-4 to allow for the requisite six month period prior to convening an extraordinary session of the COP to adopt a Protocol; and to provide such text for continued negotiations at BSWG-5. Koester presented Chairman's Notes (UNEP/CBD/BSWG/4/Inf.1 and Inf.1/Add.1 for SWG-1, and Inf.2 for SWG-2) as an initial attempt to synthesize similar options in the draft text.

**ORGANIZATION OF WORK:** The Chair affirmed continuation of the structure established at BSWG-3, including two open-ended SWGs and two open-ended CGs. The Co-chairs of SWG-1, which will cover Articles 3-14, are Sandra Wint (Jamaica) and Eric Schoonejans (France), and those of SWG-2, which will cover Articles 1, 1 *bis* and 15-27, are Hira Jhamtani (Indonesia) and John Herity (Canada). The Chair also informed the Plenary of changes in the BSWG Bureau, noting the replacement of David Gamble (New Zealand) with Darryl Dunn (New Zealand). Also, each region had previously designated four representatives to ensure regional representation in SWGs. Co-Chairs of CG-1 (Definitions and Annexes) are Piet van der Meer (Netherlands) and Gert Willemse (South Africa). Co-chairs of CG-2 (Institutional Matters and Final Clauses) are John Ashe (Antigua and Barbuda) and Katharina Kummer (Switzerland).

Given the close linkage between CG-1 and SWG-1, the Chair proposed that CG-1 become a sub-group of SWG-1 to enable it to meet in parallel with and report to SWG-1. Koester also noted the intention stated at BSWG-3 that CG-2 should eventually become a legal drafting group. He stressed the need for flexibility and productivity in all deliberations. Koester informed delegates that Plenary sessions would be held on Saturday morning to consider recommendations of the BSWG to COP-4, and on Monday afternoon to consider progress under each SWG.

ETHIOPIA, supported by the EU, noted that the Chair's consolidated "Inf" documents provided a good basis for discussion, but reserved the right to add to them as necessary. The Chair then introduced his *aide-memoire* dealing with recommendations by BSWG-4 to COP-4, and highlighted the importance of the decisions that COP-4 must make, including the timing and venue of the special session of the COP to adopt the biosafety protocol. He also noted the need for COP-4 to decide what should occur after adoption of the protocol.

### SUB-WORKING GROUP 1

Co-chair Sandra Wint (Jamaica) convened the first meeting of SWG-1 in the afternoon and outlined the procedure for work. She announced that NGOs may participate as observers, but without the right to intervene, negotiate or participate. She reiterated that CG-1 would act as a sub-group to SWG-1 and proposed that CG-1 meet as often as necessary, working in parallel with SWG-1. The Co-chair then requested that regional groups nominate two representatives to assist the Secretariat with drafting text if it became overburdened. Some delegations expressed concern over further subdividing due to size of delegations. One delegation suggested that the establishment of an extra drafting team was premature and decision on the matter was postponed. Co-chair Eric Schoonejans (France) proposed and participants adopted the following order for addressing articles under consideration: Articles 4 and 5, dealing with notification and

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response for AIA; Articles 6 and 7 on the decision procedure and review of decision under AIA; Article 8 on notification of transit; Article 3 on application of AIA; Articles 9, 10 and 11 on simplified procedure, subsequent imports and bilateral and regional agreements; and articles 12, 13 and 14 on risk assessment, risk management and minimum national standards. He cited the documents for discussion as UNEP/CBD/BSWG/4/3, UNEP/CBD/BSWG/4/Inf. 1, UNEP/CBD/BSWG/4/Inf. 1 Add. 1, and UNEP/CBD/BSWG/4/Inf. 5. The Co-chair then proposed that substantive negotiations would begin the following morning.

#### **CONTACT GROUP ON DEFINITIONS AND ANNEXES**

CG-1 met in the afternoon to begin discussion of definitions and annexes. The Co-chair clarified the group's mandate and its relationship to SWG-1. He emphasized that CG-1 was a technical group, which would not negotiate text. Its mandate was to produce simple, unambiguous, scientifically sound and internally consistent text on definitions and annexes, as requested by SWG-1. CG-1 accepted document UNEP/CBD/BSWG/4/6, contained in UNEP/CBD/BSWG/4/Inf.5, as the basis for its work.

The group then began discussions on Annex 1 dealing with "Information required in order to obtain Advance Informed Agreement" (AIA). Issues debated included whether some information requirements listed in Annex 1 were more appropriate for the Annex on risk assessment (RA) parameters. Delegates also discussed whether an RA should precede or follow an AIA procedure. There was tentative agreement that the informational requirements for an AIA should include an RA, whose exact nature remained to be determined. Delegates also considered whether information on insurance and liability was appropriate for inclusion in the AIA notification. Some delegates noted that liability issues were being addressed elsewhere in the protocol, while others emphasized the importance of information on liability in order to provide AIA.

#### **SUB-WORKING GROUP 2**

Co-Chair Herity opened the first session of SWG-2 on Articles 1, 1 *bis* and 15-27. He noted a Bureau decision on NGO participation granting them observer status with "no right to intervene or speak." Further, NGOs could be removed from discussions at the request of any Party. The Secretariat introduced relevant background documents for SWG-2: UNEP/CBD/BSWG/4/2; UNEP/CBD/BSWG/4/3; UNEP/CBD/BSWG/4/Inf.2; UNEP/CBD/BSWG/4/Inf.4; and UNEP/CBD/BSWG/4/Inf.5.

**UNINTENTIONAL TRANSBOUNDARY MOVEMENTS (Article 15):** One government suggested consolidated text on immediate notification of affected Parties regarding unintentional transboundary movements and immediate action by Parties of origin to minimize negative impacts of such movements. One regional economic integration unit, supported by a number of countries, favored providing notification to any affected Party or non-Party to include all relevant information as listed in Annex I (Information Requirements for AIA). Another delegate supported text including releases of aquatic LMOs and a provision for affected Parties to request assistance from Parties of origin to minimize adverse impacts. One participant suggested merging Articles 15 and 16 (Emergency Measures). One developed country supported elimination of the Article, noting relevant provisions in CBD Article 14 (Impact Assessment and Minimizing Adverse Impacts).

**EMERGENCY MEASURES (Article 16):** Several delegations spoke against provisions on emergency measures, noting *inter alia*, that CBD provisions covered the issue, and that such measures should be left to national legislation. Several African delegates favored retaining a separate provision to ensure notification of unintended transboundary movements, especially for countries without national measures. Other proposals included one to merge Articles 15 and 16, and to incorporate Article 16 into the provisions of Article 13 (Risk Management).

**HANDLING, TRANSPORT, PACKAGING AND LABELLING (Article 17):** Delegations differed as to whether the protocol should establish international standards on the handling, transport, packaging and labelling of LMOs, or whether each Party should establish its own appropriate measures. Some delegates cited the need for clear standards to preclude development of non-tariff barriers to trade. One delegate suggested that references to LMOs should always include the words "and products thereof."

**COMPETENT AUTHORITY (Article 18):** Many delegations noted the potential for further consolidation of draft text regarding the scope and role of competent authorities and focal points, but no consensus emerged on how to achieve it. One delegation highlighted the need for detailed provisions, noting that many developing countries lack strong institutional structures.

#### **CONTACT GROUP ON INSTITUTIONAL MATTERS AND FINAL CLAUSES**

The Contact Group on Institutional Matters and Final Clauses (CG-2) opened its first session on Thursday afternoon under the co-chairmanship of John Ashe (Antigua and Barbuda) and Katharina Kummer (Switzerland). Delegates used the Secretariat's Compilation of Government Submissions of Draft Text on Items Other than Articles 1, 1 *bis*, and 23-27 (UNEP/CBD/BSWG/4/3) as a basis for further consolidation of text on articles addressing Financial Mechanism and Resources and COPs.

**FINANCIAL MECHANISM AND RESOURCES (Article 28):** CG-2 retained two options, both of which would establish the opportunity for developed countries to provide financial and technological resources to developing countries. One option further specified that the financial mechanism and institutional structure defined under Article 21 (Financial Mechanism) of the CBD shall also serve the purposes of the protocol.

**CONFERENCE OF THE PARTIES (Article 29):** Regarding the relationship of the COP to the protocol, the group deferred further discussion on this issue, pending review of the Montreal and Kyoto Protocols which address similar issues.

**SIGNATURE (Article 37):** Delegates approved the proposed draft text.

**RATIFICATION, ACCEPTANCE, OR APPROVAL (Article 38) and ACCESSION (Article 39):** Delegates agreed to remove the proposed articles as they essentially repeat those contained in the CBD.

**ENTRY INTO FORCE (Article 40) and WITHDRAWAL (Article 42):** The Chair approved formation of a group headed by Canada to note all references to protocols in the CBD to assist further deliberations on these articles.

**RESERVATIONS (Article 41):** CG-2 retained two options on reservations: no reservations may be made to the protocol; and deletion of the article.

#### **IN THE CORRIDORS**

While some delegates felt that socioeconomic and liability issues were the most pressing, others expressed their preference to address these concerns in other fora, preferring a streamlined instrument for information sharing on transboundary movement of LMOs. Some participants wore buttons reading "no liability, no protocol," expressing their steadfast position on the issues of liability and compensation. Chair Koester met with NGOs regarding the Bureau decision on participation of NGOs, where the question was raised of whether "right" to speak referred to the privilege or the ability to speak. Some speculated on what precedent this decision might set for future BSWG and other CBD meetings.