



# Earth Negotiations Bulletin

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## HIGHLIGHTS FROM THE FOURTH SESSION OF THE AD HOC WORKING GROUP ON BIOSAFETY MONDAY, 9 FEBRUARY 1998

On the fourth day of BSWG-4, delegates met in two Sub-Working Groups during the morning and in Contact Groups throughout the day. Sub-Working Group I (SWG-I) discussed Decision by the Party of Import; Application of the Advanced Informed Agreement (AIA); and Simplified AIA Procedure. Sub-Working Group II (SWG-II) focused on Emergency Measures; Unintended Transboundary Movements; and Handling, Transport, Packaging and Labelling.

### SUB-WORKING GROUP I

SWG-I began with organizational matters. Co-Chair Schoonejans recommended evening sessions, given the number of articles remaining for discussion, but several delegates refused to participate without translation.

#### APPLICATION OF THE AIA PROCEDURE (Article 3):

Discussion focused on: application of AIA on LMOs for contained *versus* uncontained use; exemption of low-risk LMOs; scope of the procedure *versus* the Protocol; and unilateral declaration or bilateral, regional or multilateral agreement arrangements for LMO exemption from AIA. One delegation opposed any exemption of LMOs. Several delegations supported dividing the article into scope of application, application procedure, and non-application procedure.

**DECISION BY THE PARTY OF IMPORT (Article 6):** Delegates used document UNEP/CBD/BSWG/4/Inf.1, along with proposed text from delegations, as a basis for discussion. Several delegations supported variations of bracketed text on scientific evidence, risk assessment, risk assessment in accordance with Annex II, and socio-economic imperatives as the basis of decision. On options for the content of the decision, several delegations favored text including approval, prohibition, request for additional information, and whether and how the decision would apply to subsequent imports. One delegation requested language stating that time needed to gather additional information not be deducted from the allotted response period. One delegate, on behalf of a regional group, stressed that it would not accept text allowing for implicit approval for a transboundary movement. The Secretariat will prepare consolidated text synthesizing the considerations discussed.

**SIMPLIFIED PROCEDURE (Article 9):** Some delegations proposed deleting the article since the matter could be addressed in Articles 10 (Subsequent Imports) or 11 (Bilateral & Regional agree-

ments), or in an Annex. Some delegations supported text requesting Parties to notify the Secretariat if the Party applied simple notification or exempted certain LMOs from AIA, or allowed for unilateral declaration or bilateral, regional or multilateral agreement as the simplified procedure. One delegation suggested flexibility regarding a simplified procedure until the total content of the Protocol is known.

### CONTACT GROUP I

CG-I resumed its discussion of Annex I in the morning. Delegates exchanged views on whether the list of elements for an RA should be a "minimum" or a "maximum" list. The Co-Chair noted that since SWG-I had to decide among three options -- no Annex, a minimum list or a maximum list -- CG-I should provide both lists. It was decided that a small sub-group would develop the lists for further discussion.

The group then discussed the definition of LMO. The Co-Chair noted that CG-I would not discuss "and products thereof" since this was a scope issue to be taken up by SWG-I. In defining "organism," one delegate proposed starting with the UNEP Guidelines definition, which states that an organism is "any entity that is able to replicate its own genetic material, including viruses." CG-I discussed whether to specify "its own genetic material" or even "genetic material" or merely to stop after "able to replicate." There was tentative agreement on the last option. Delegates also considered whether to include the reference to viruses or to add the broader phrase "transfer genetic material," which includes viruses, but may also inadvertently include other elements. These options were bracketed for further consideration.

The group then considered five options for a definition of LMO in UNEP/CBD/BSWG/4/Inf.5. The options differed in their focus on process *versus* result of modification of a living organism. Some delegates stated that a focus on process risked omitting certain processes or ignoring the potential for development of new processes. Others supported a focus on process, especially for assessing the "biosafety level" of any LMO.

### SUB-WORKING GROUP II

Co-Chair Herity welcomed Amerjeet Ahuja as Co-Chair of SWG-II. Herity strongly encouraged delegates to reduce options in order to move the negotiating process forward.

**UNINTENTIONAL TRANSBOUNDARY MOVEMENTS (Article 15) and EMERGENCY MEASURES (Article 16):** Delegates used the Co-Chair's draft text (UNEP/CBD/BSWG/4/SWG.II/CRP.1) as the basis for their discussion. The text provided two

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options: no provision necessary; and a merger of Articles 15 and 16. Most delegates agreed to the merger. Delegates disagreed on whether “accident” or “unintentional transboundary movement of LMOs” best captured the type of event covered by this provision. One delegate stated that unintentional transboundary movements should be covered under Illegal Traffic (Article 25). Delegates also disagreed on whether known domestic releases of LMOs should be included in this article. Regarding reference to the Clearing House Mechanism, one delegation preferred no reference, while several developing countries stressed its importance.

On information that should be included in notification of transboundary movements/accidents, nearly all eleven elements were favored by one or more delegations. Several delegates suggested that specifics of notification be included in an annex, while others opposed such an approach. There was no consensus on remaining text covering, *inter alia*: actions required by the Party of origin; affected Party’s right to request emergency assistance from the Party of origin; affected Party’s right to request consultation among concerned Parties; and whether Parties must avoid actions with potential impacts on freshwater and marine ecosystems. One delegation opposed wording requiring the Party of origin to take immediate action, citing issues of sovereignty for the affected Party. Other delegates favored retaining this requirement, noting that the article also required consultation with the affected Party. Regarding medium- and long-term obligations, one delegation stated that the language would impose obligations on an affected Party in addition to the Party of origin.

**HANDLING, TRANSPORT, PACKAGING AND LABELLING (Article 17):** The Co-Chair opened discussion on Article 17 based upon consolidated text (UNEP/CBD/BSWG/4/SWG.II/CRP.2) containing two options developed in CG-II. Two developed countries supported the option, requiring that an exporting Party develop appropriate measures for handling, transport and packaging LMOs. One delegate warned that this could lead to proliferation of different systems.

The second option, listing Party obligations, received much support, although delegates differed on elements for inclusion. Two developing countries supported including the entire article. Regarding scope, several developing countries preferred coverage of LMOs “within the scope of the Protocol,” while two developed countries preferred LMOs “subject to AIA.” Given fears of trade discrimination, a few countries proposed deleting a provision that exporting countries use classification, packaging and labelling requirements as stringent as those used domestically for comparable products. A wide range of countries supported merging provisions on safe handling of LMOs, in order to avoid adverse impacts, and on ensuring that such handling is in accordance with international rules and standards. A number of developed countries supported deleting a provision calling for Parties to develop standards on packaging and transport under the Protocol, which several developing countries countered.

One delegate suggested combining the first option on exporting Party measures with elements of the second option. A developed country claimed that existing and developing arrangements under international law cover this issue, and therefore preferred no article. The Co-Chair will leave the issue open for comment until noon Tuesday.

#### **CONTACT GROUP II**

CG-II met twice in the afternoon to review definitions regarding illegal traffic, non-discrimination, and non-Parties, and to consolidate text on Monitoring and Compliance (Article 35). Several delegates stated that a clearer understanding of obligations under the Protocol, especially regarding AIA, must precede a definition for illegal traffic.

Delegates also agreed that definitions were unnecessary for non-discrimination and non-Parties, noting that either the term occurs only within its relevant article, or that such provisions are not found in other conventions.

Regarding transboundary movements, discussion centered on the words “area under the jurisdiction” and “territory” of the Party, with one delegation expressing concern that the words “area of jurisdiction” might create unwarranted responsibility for transboundary movement of LMOs through the Party’s Exclusive Economic Zone. Another delegate stated that this issue needed further clarification from a policy standpoint. The Co-Chair said she would seek guidance from the SWG-II Co-Chair on these issues.

**MONITORING AND COMPLIANCE (Article 35):** CG-II discussed Article 35 in an evening session. The draft text split the article into two: Monitoring and Reporting (Article 35), and Compliance (Article 35 *bis*). Some delegates noted that the article covered domestic concerns, precluding the need for inclusion in the Protocol. Others pointed out that most international conventions contain a provision for monitoring and reporting. Delegates then debated what “national monitoring systems” referred to, and tentatively agreed that the purpose is to ensure that a Party implements its obligations under the Protocol. Discussion also ensued about whether reporting should occur annually, regularly, or as determined by a meeting of the Parties to the Protocol, with agreement coalescing on the last option.

#### **CBD SECRETARIAT DE-BRIEFING ON THE FOURTH CONFERENCE OF THE PARTIES (COP-4)**

Calestous Juma, Executive Secretary of the CBD, presented an update on preparations for COP-4, scheduled for 4-15 May in Bratislava, Slovakia. Juma noted that a Ministerial Roundtable in the form of an interactive dialogue would start the meeting (4-5 May), focusing on sectoral integration of biodiversity, role of the private sector and biodiversity-friendly tourism. Work will proceed in two Working Groups (one on institutional and procedural issues and the other on substantive issues) and a Plenary. Agenda items include, *inter alia*: report of SBSTTA-3; inland water ecosystems; other work programmes (marine/coastal, agricultural and forests); the Clearing-house Mechanism; biosafety (procedural and organizational issues); Article 8(j) on traditional knowledge; national reports; financial resources and mechanism; implementing measures (incentives, public education, impact assessment and liability); and benefit-sharing.

#### **IN THE CORRIDORS**

The Secretariat’s reception may have been on participants’ minds as they referred to the “chicken/egg paradox” and “too many cooks stirring the pot” to describe the difficulties associated with defining terms before delegates reach agreement on substantive provisions.

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

**SUB-WORKING GROUP I:** SWG-I will meet at 10:00 am to continue work on Articles 7, 8 and 10-14.

**SUB-WORKING GROUP II:** SWG-II will meet at 10:00 am to discuss conference room papers on Articles 20, 21, 23 and 24.

**CONTACT GROUP I:** CG-I will meet at 10:00 am to discuss Annex II and the definition of LMO.

**CONTACT GROUP II:** CG-II will meet at 1:30 pm to continue work on definitions and Article 35.

**PRESENTATIONS:** In Room 1.15

1 pm: Biotechnology and Bioprospecting

2 pm: Biotechnology and Export Commodity Crops from Developing Countries: Case Study – Oil Palm.