



# Earth Negotiations Bulletin

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*A Reporting Service for Environment and Development Negotiations*

Vol. 9 No. 82

Published by the International Institute for Sustainable Development

Wednesday, 11 February 1998

## HIGHLIGHTS FROM THE FOURTH SESSION OF THE AD HOC WORKING GROUP ON BIOSAFETY TUESDAY, 10 FEBRUARY 1998

On the fifth day of BSWG-4, delegates met in two Sub-Working Groups (SWGs) in morning and afternoon sessions and in Contact Groups throughout the day. SWG-I discussed Articles 3 and 6-14, definitions and annexes. SWG-II discussed Articles 15-18, 20-24 and 26.

### SUB-WORKING GROUP I

SWG-I discussed Articles 7, 8 and 10-14 based on UNEP/CBD/BSWG/4/Inf.1 and Articles 3, 6 and 9 based on SWG-I Conference Room Papers 4, 5 and 6, respectively.

**APPLICATION OF AIA PROCEDURE (Article 3):** Delegates debated whether scope of the Protocol should be included in this article; and whether scope of the AIA procedure should be defined by a "positive" or "negative" list, i.e., whether to have a list of LMOs covered by or excluded by an AIA.

**DECISION PROCEDURE FOR AIA (Article 6):** Following comments on duplication in the draft text, the Co-Chair invited a small group to prepare a more concise version.

**REVIEW OF DECISIONS UNDER AIA (Article 7):** Delegates considered: situations where new information about LMOs may allow Parties of export to request Parties of import to reconsider; unilateral declaration to change a decision; and the Exporter's right to review an Importer's decision. Some delegations supported, and others opposed, the provision of finances for risk assessment costs to the receiving party.

**NOTIFICATION OF TRANSIT (Article 8):** Several delegations viewed the article as unnecessary. Some delegations preferred text that would require the Party of export to obtain consent from Party and non-Party states through which LMOs would be transported, as well as text that would establish responsibility for accidents occurring in transit.

**SIMPLIFIED PROCEDURE (Article 9):** One regional group opposed this article, noting that all LMOs should be subject to AIA. Another regional group proposed options for further consolidation.

**SUBSEQUENT IMPORTS (Article 10):** Several delegations supported deleting this article, which would result in mandatory risk assessment for all LMOs, unless otherwise specified by the Party of import. One delegation stressed the importance of continual AIA because the application of and environment for LMOs may change. Other delegates preferred addressing the issue in Article 6 or 9.

**BILATERAL AND REGIONAL AGREEMENTS (Article 11):** Delegates noted the importance of such agreements for implementing the Protocol. One regional group stressed the need for capacity building, regional information exchange, codes of practice, and monitoring of risks from LMOs. Some delegates supported exemption of AIA through such agreements so long as the Protocol's standards would be maintained.

**RISK ASSESSMENT (Article 12):** Delegates consolidated text on the aim, application, parameters and financial responsibility of risk assessment (RA). Most delegates supported an annex to detail parameters. Some delegations supported financing of minimum RA by the exporter, while others deemed it the recipient country's responsibility. One delegation supported requiring parties to determine RA procedure based on national legislation. One delegation requested retaining the no article option until the Protocol is finalized.

**RISK MANAGEMENT (Article 13):** Several delegations said risk management is a domestic concern and preferred no article. Some delegates stressed the article's importance because risk management measures vary by country. Others highlighted the need for global and regional risk management.

**MINIMUM NATIONAL STANDARDS (Article 14):** Some delegations opposed the article because of sovereignty issues. One delegation supported fulfillment of the requirements of the Protocol as a minimum.

**DEFINITIONS AND ANNEXES:** The Co-Chairs of CG-I presented definitions and Annexes to SWG-II. Regarding the definition of LMO, a number of delegates proposed deleting "deliberately" prior to "modified." One delegation recommended including the phrase "traits novel to the species in a receiving country" in defining the novelty element of LMOs. The Co-Chair noted that this would make definition of an LMO contingent upon where it was being sent. Regarding Annexes, the Co-Chair of CG-I noted that the group had prepared minimum and maximum lists of information required for an RA, but emphasized the need for guidance from SWG-I regarding the status of Annex II, its relationship to Annex I, and the level of detail desired.

### CONTACT GROUP I

CG-I resumed discussion of a definition of LMO. The Co-Chair noted that the current definition consists of two parts: the way in which an LMO is produced, and novelty of the resulting organism. Delegates first sought to clarify what constituted an LMO "resulting from modern biotechnology." Some delegates proposed "modified by *in vitro* gene technologies," while others objected to use of the term "gene," noting that other technologies might also be used to

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produce LMOs. Regarding novelty of the resulting organism, some delegates preferred a reference to the presence of "foreign" genetic material in an LMO, while others questioned whether this restricted the definition's scope. Delegates also differed on how to link two key phrases regarding novelty -- "is unlikely to occur in nature" and "confers one or more novel traits" -- since using "and" or "or" between them would determine whether a narrower or a broader category of organisms would be defined as LMOs.

### **SUB-WORKING GROUP II**

SWG-II reviewed Articles 15-18, 20-24 and 26, using SWG-II Conference Room Papers 1-8, and a Co-Chair's *aide memoire*. Co-Chair Herity invited Katharina Kummer, Co-Chair of CG-II, to present the CG's deliberations on legal definitions. CG-II recommended not including definitions for non-Party, as the term is obvious, and for non-discrimination, since it could be detailed under Article 24. The group requested substantive guidance on Article 25 (Illegal Traffic) prior to defining the term.

Delegates briefly reviewed text on **UNINTENTIONAL TRANS-BOUNDARY MOVEMENT (Articles 15)** and **EMERGENCY MEASURES (Article 16)**. SWG-II then considered text on **HANDLING, TRANSPORT, PACKAGING AND LABELLING (Article 17)**. One delegate requested that the subject of this article be LMOs "and their derivatives." One developing country requested language addressing action required in the event of an accident.

**COMPETENT AUTHORITY/FOCAL POINT (Article 18):** Two delegates supported general provisions on responsibilities, stating that such tasks should be detailed under national systems. One developing country supported specific guidelines for those without such systems. Two countries supported a single competent authority. One delegate suggested language requiring those with multiple authorities to detail their areas of coverage.

**CONFIDENTIAL INFORMATION (Article 20):** Some delegates questioned whether the text adequately addressed, *inter alia*: how confidential information would be treated under specific situations, and what information should not be considered confidential. One delegation suggested specifying an expiration date for confidential treatment. Richard Owens, World Intellectual Property Rights Organization, speaking at the invitation of Co-Chair Ahuja, said that limits on confidentiality might compromise protection afforded under general principles of international intellectual property law.

**CAPACITY BUILDING (Article 21):** One country and a regional group supported removing the article, noting existing coverage under the CBD and other international processes. The regional group reserved its right to make an additional statement later. All other delegates taking the floor supported retaining the article, although support for specific provisions varied widely. One delegate suggested categories on: general commitments; financial mechanisms; major elements of capacity building; and developed country commitments. Several developing countries stressed language on "new and additional financial resources." Two delegates requested reference to the GEF.

**PUBLIC AWARENESS/PUBLIC PARTICIPATION (Article 22):** Most delegations supported the article's inclusion, while there were differences on content. Several developing countries favored facilitation of public participation in risk assessment decisions; promotion of national, subregional and regional public awareness programs; and public involvement in approval processes for LMO releases. Some delegates stressed the need for cooperation with other Parties and IGOs.

**NON-PARTIES (Article 23):** Several delegates supported merging the article's Preamble into its text. One regional group proposed consolidation into three options, including: (1) removing the

article; (2) provisions on no trade of LMOs with non-Parties; trade equal with and non-favorable to non-Parties; and trade conducted under a regulatory framework as stringent as the Protocol's; and (3) consideration of trade restrictions with non-Parties after five years. Several countries noted the no trade option could not be merged.

**NON-DISCRIMINATION (Article 24):** A number of delegates strongly opposed inclusion of this article, citing, *inter alia*: sufficiency of existing international agreements; appropriateness of discrimination where a State concludes its biodiversity may be imperiled; need to reach agreement on Non-Parties (Article 23) before addressing this issue; and impracticability of enforcement. Several delegations favored moving reference to this issue to General Obligations (Article 1 *bis*).

**SOCIO-ECONOMIC CONSIDERATIONS (Article 26):** Delegates used the Co-Chair's *aide memoire* as a basis for discussion. Several developing countries stressed the importance of this provision and requested language addressing, *inter alia*, research on socio-economic considerations relating to the use, handling and transfer of LMOs. One of the delegations opposed to the provision stated that socio-economic concerns vary too widely from State to State to make implementation practical. Several others favored treatment of this issue in the Preamble.

### **CONTACT GROUP II**

CG-II reviewed recommendations to COP-4 by BSWG. Delegates discussed scheduling for the final BSWG meeting and agreed that BSWG make no recommendations regarding an ordinary or extraordinary COP session. CG-II proposed recommending a final meeting in December 1998, with an alternative date in early 1999. Delegates also considered BSWG's role in preparing for the first meeting of the Parties. In an evening session, delegates continued discussions on this item, and were expected to review text on Monitoring and Compliance (Article 35) and legal definitions.

### **IN THE CORRIDORS**

There was speculation as to the pace and urgency of negotiations as options were actually increasing in several Articles. One participant questioned whether refinement in the wording of options actually reflected progress in negotiations or just helped to further demarcate already known positions.

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

**PLENARY:** Plenary will meet at 3:00 pm in Assembly Hall 1 to review institutional and procedural articles (32, 33, 37, 38, 39, 40, 42 and 43).

**SUB-WORKING GROUP I:** SWG-I will meet at 10:00 am to continue work on Articles 4-6,12, and possibly Annex II. SWG-I will also meet in the evening.

**SUB-WORKING GROUP II:** SWG-II will meet at 10:00 am to discuss Articles 19, 25 and 27. SWG-II will meet again at 5:00 pm.

**CONTACT GROUP I:** CG-I will meet at 10:00 am to discuss definitions of LMO.

**CONTACT GROUP II:** CG-II will meet at 1:30 pm to discuss articles on COP, Subsidiary Bodies and the Secretariat.

**BRIEFING WORKSHOP:** UNEP/GEF Pilot Biosafety Enabling Activity Project at 1:30 pm in Assembly Hall 2.

**PRESENTATIONS:** In Room 1.15

1:00 pm: Biotechnology and Export Commodity Crops from Developing Countries: Case Study – Oil Palm.

2:00 pm: Biotechnology Solutions to Animal Health Problems in Developing Countries: Rinderpest and Rabies Vaccines.