



# Earth Negotiations Bulletin

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## HIGHLIGHTS FROM THE FOURTH SESSION OF THE AD HOC WORKING GROUP ON BIOSAFETY THURSDAY, 12 FEBRUARY 1998

On the seventh day of BSWG-4, delegates met in two Sub-Working Groups (SWGs) in morning and afternoon sessions and in Contact Groups (CGs) throughout the day. SWG-I discussed Articles 3-14, definitions and Annexes. SWG-II discussed Articles 1, 1 bis, 18-22, 24 and 26-27.

### SUB-WORKING GROUP I

SWG-I reviewed and approved for presentation to the Plenary, revised text on Articles 3-14, using Conference Room Papers. In the afternoon, Co-Chairs from CG-I and CG-II presented revised text on definitions and Annexes. SWG-I concluded its work following a brief general discussion on substantive and procedural matters.

Revised text on NOTIFICATION FOR ADVANCED INFORMED AGREEMENT (AIA) (Article 4); RESPONSE TO AIA NOTIFICATION (Article 5); REVIEW OF DECISIONS UNDER AIA (Article 7); NOTIFICATION OF TRANSIT (Article 8); BILATERAL AND REGIONAL AGREEMENTS (Article 11); RISK ASSESSMENT (Article 12); and MINIMUM NATIONAL STANDARDS (Article 14) was adopted with no comments or editorial changes and clarifications.

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

One delegate requested adding "unilateral declaration" to situations where the AIA procedure would not apply.

**DECISION PROCEDURE FOR AIA (Article 6):** One delegate requested addition of a reference to "technical experience" in the decision procedure for AIA. Some delegates proposed merging a stand-alone paragraph prohibiting transboundary transfer of an LMO without the authorization of the receiving Party, but this was opposed by another delegate, who noted that this would dilute the reference.

**SIMPLIFIED PROCEDURE (Article 9):** A delegate requested text that would add "for subsequent imports of the same LMO" to a provision for substitution of AIA by simplified procedures.

**SUBSEQUENT IMPORTS (Article 10):** One regional group requested a footnote stating that the concerns of this article could be reflected in Articles 6 (Procedure for AIA) or 9 (Simplified Procedure), but agreed to withdraw this in light of the "no provision" option.

**RISK MANAGEMENT (Article 13):** One delegate called for addition of language noting that the lack of scientific certainty regarding harm should not preclude preventive measures.

**DEFINITIONS:** The Co-Chair of CG-I presented a revised definition of an LMO. Delegates requested clarification on various points. The Co-Chair requested that government submissions on the issue of LMOs "and products thereof" be forwarded to the Secretariat, which would prepare a synthesis for consideration at BSWG-5.

The CG-II Co-Chair presented its work on legal definitions and asked for clarification on five issues to facilitate its work: whether the term State or Party should be used in defining transboundary movement; whether the Protocol would apply only to transboundary movements from one State/Party to another State/Party, or if it would also apply to extrajurisdictional areas; if transboundary movement included transit States; whether transboundary movements would refer to both intentional and unintentional movements; and who the "exporter" is. Several delegations commented on the State/Party question and preferred Party because: the Protocol will only apply to Parties; issues of trade with non-Parties could be covered in Article 23 (Non-Parties); and the term applies to entities such as regional groups. While one delegate noted that the term transboundary movement implies both intentional and unintentional movement, two separate proposals were made to insert first, intentional, and then, unintentional, before movement. The Co-Chair of CG-II agreed to present the questions in more detail to facilitate government submissions on them, prior to BSWG-5.

**ANNEXES:** The Co-Chair of CG-I presented revised drafts of Annexes I (Advanced Informed Agreement) and II (Risk Assessment). Delegates made minor modifications to Annex I. On Annex II, delegates discussed the minimum and maximum options. Several delegations preferred the "minimum" Annex II. One regional group noted the omission of "and products thereof" after LMO in the Annexes and requested that it be added. One delegate preferred deleting Annex II to allow for risk assessment (RA) to be developed at the national level, while considering information outlined in Annex I. The Annexes and definitions will be included in a list of documents prepared by CG-I and will remain on the table for discussion at BSWG-5.

The Co-Chair then invited final comments from SWG-I on substantive or procedural matters. Delegates thanked the Co-Chairs for their efforts during the past week. One delegate noted that general

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discussion on each article, with text consolidation by small groups, was a good procedure. One delegate suggested that including definitions in the body of the text would help to clarify their content. One developed country delegate summarized his country's position on the role and responsibilities of the Importer in the AIA notification procedure. He noted three considerations -- purpose, practicality and experience -- for why the Importer would be responsible for AIA notification, and highlighted the need for capacity building in this context. A representative of environmental groups thanked SWG-I for the opportunity to follow its discussions. A representative of an international organization noted the need to harmonize the RA procedures being developed or utilized in various international fora. With these final comments, SWG-I concluded its proceedings.

#### **CONTACT GROUP I**

Following presentation of their work to SWG-I, CG-I met briefly in the evening to incorporate comments received on the definition of LMO and Annexes I and II.

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

SWG-II completed work on Articles 1 and 1 *bis*, using UNEP/CBD/BSWG/4/Inf.2 and Inf.5; Articles 18, 20-22, 24, 26 and 27, using Conference Room Papers 4-8, 10-12, and 24; and on Article 19, using consolidated text from a drafting group.

**PRINCIPLES/OBJECTIVES (Article 1):** Delegates agreed to remove the word "Principles" from the title, since the article does not currently include any principles. No options were deleted and delegates requested inclusion of text regarding, *inter alia*: risks to human health and effects on socio-economic well-being. One delegation stated that this provision would help provide a benchmark against which to measure progress. Several delegations stressed the importance of shared responsibility and cooperation. One delegate stated that the objective of the Protocol should be to promote the safe transboundary movement of "all" LMOs.

**GENERAL OBLIGATIONS (Article 1 *bis*):** Several delegates noted a preference for brevity in the article and suggested deleting options addressed in other articles. Some delegates stated that it was premature to start deliberations on general obligations until discussion on other articles was further along.

**HANDLING, TRANSPORT, PACKAGING AND LABELING (Article 17):** The Co-Chair stated that this article had been approved for Plenary, but that bracketed text on information that would accompany transboundary movement of LMOs, which referenced an unspecified Annex, would be referred to CG-I.

**INFORMATION SHARING/BIOSAFETY CLEARING-HOUSE (Article 19):** Several delegations stated that further consolidation of the draft text was possible and identified four key concepts regarding an information exchange mechanism: its purpose; its establishment; its content; and reporting aspects. One delegation stated that the options differed in the kind of clearing-house that would be established. Another delegation requested bracketing the words "publicly available" regarding information contained in the proposed mechanism. One delegate added text stating that the first meeting of the Parties (MOP) would determine the function and scope of the mechanism, since the article's technical aspects preclude its completion before the Protocol's adoption. A drafting group consolidated text which was approved with some modification.

**CONFIDENTIAL INFORMATION (Article 20):** Delegates briefly discussed whether the text reflected consensus. The Co-Chair stated that all text should be viewed as bracketed.

**CAPACITY BUILDING (Article 21):** A drafting group removed the no provision option, which delegates accepted. Several delegations supported addition of text specifying that capacity building would be achieved through "financial," as well as technical assistance, from the private sector.

**PUBLIC AWARENESS/PUBLIC PARTICIPATION (Article 22):** One delegate proposed insertion of language on public involvement in the "process" of approving release of LMOs.

**SOCIO-ECONOMIC CONSIDERATIONS (Article 26):** After discussion in the morning session, two developing countries consolidated options that reflected their individual views.

**LIABILITY AND COMPENSATION (Article 27):** A small drafting group met to streamline one of the options, which was favored principally by one regional group. One delegate requested language on ensuring recourse in national legal systems for prompt and adequate compensation. One delegate proposed inserting language as to "whether" to establish procedures on liability and compensation in accordance with CBD Article 14(2) at the MOP.

Co-Chair Herity closed SWG-II by thanking both delegates and the Secretariat for their efforts over the course of the meeting.

#### **CONTACT GROUP II**

Delegates discussed Articles 31 (Secretariat) and 36 (Assessment and Review of Procedures), and legal definitions. In reference to proposed text on the Protocol's Secretariat, Calestous Juma, Executive Secretary of the CBD, spoke about some of the practicalities and responsibilities that might be expected of the Secretariat, especially in regard to an information exchange mechanism.

#### **IN THE CORRIDORS**

As the meeting drew to a close, participants' views on BSWG's progress varied nearly as much as the options in the consolidated text. Some participants expressed frustration with unrealistic expectations and apparent intransigence of some delegations. Others viewed the distance between governments on key issues as simply indicative of the negotiation phase and were hopeful that the gaps could be bridged. Given a flurry of inter-regional meetings, some participants speculated that the first steps at political bargaining had already begun. All agreed that a much clearer set of options on both substantive and procedural issues resulted from the meeting, and that BSWG-5 must negotiate in earnest as the clock is ticking.

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

**PLENARY:** Plenary will meet at 10:00 to review and adopt the work of the SWGs.

**SCBD BRIEFING ON *MODUS OPERANDI*:** After the Plenary, the Secretariat will host a briefing on the CBD's *modus operandi* to be considered at COP-4.