



HIGHLIGHTS OF BSWG-5 MONDAY, 17 AUGUST 1998

Delegates to the fifth session of the Open-ended *Ad Hoc* Working Group on Biosafety (BSWG-5) met in a brief morning Plenary, following which they assembled in two Sub-Working Groups, two Contact Groups and newly formed drafting groups to consolidate options in the draft biosafety protocol.

PLENARY

OPENING STATEMENTS: BSWG Chair Veit Koester (Denmark) opened the meeting, introduced the Bureau and noted COP-4 decisions accepting the BSWG-4 recommendations, in particular to convene an extraordinary meeting of the COP in February 1999 to adopt the protocol.

Executive Secretary Calestous Juma stressed that the urgency to finalize the protocol should not be at the expense of developing an effective instrument enjoying international support. Juma announced he would not renew his contract as Executive Secretary, citing personal considerations. He thanked UNEP, Montreal, Quebec, Canada and the Secretariat staff. Koester said he would miss Juma's able presence and stewardship.

On behalf of the UNEP Executive Director, Hamdallah Zedan emphasized the need for the timely conclusion of negotiations. Zedan said the Executive Secretary's presence would be missed. COLOMBIA extended an official invitation to host BSWG-6 and the extraordinary meeting in February 1999.

ORGANIZATIONAL ITEMS: Delegates appointed Alexander Golikov (the Russian Federation) as Rapporteur. Delegates also adopted the provisional agenda (UNEP/CBD/BSWG/5/1).

Chair Koester expressed hope that BSWG-5 would arrive at a single proposal for each article, although brackets may remain in the text. He said subjects of vital importance should be dealt with as a matter of priority. Koester said NGOs may not initiate direct interaction with delegates or pass their written materials during the session and any Party may ask the co-chairs to restrict access to a meeting. He urged all delegations to ensure as much transparency as possible. Noting "products thereof" implicates the broader issue of scope, as does the definition of and relevant categories of LMOs, Koester stressed progress cannot be made until these core issues are resolved.

He also noted a workshop sponsored by the UK and the European Commission during the intersessional period on liability and compensation, the results of which are available as a non-paper.

SUB-WORKING GROUP I

Eric Schoonejans (France) chaired the discussion on **Article 4** (Notification). Several developing country speakers preferred placing responsibility for notification on Parties or governments. Some developed countries suggested the AIA procedure should be triggered by the exporter. One delegate suggested the exporter provide information to the national competent authority and a clearing-house.

One developed country suggested the exporter be responsible for the accuracy of information. Another said the Party of export should make the exporter responsible. Another said the importer is best placed to provide accurate information to the importing authority, although information sharing with the exporter and possibly the exporting Party could be necessary. A developing country suggested distinguishing between who would initiate notification and who would be responsible for its contents. A developed country cautioned against establishing excessive bureaucratic requirements. The Co-Chair asked if delegations could delete the option calling for no provision on responsibility for accuracy. One speaker supported retention of that option pending further discussion on the obligations of exporting and importing countries. One delegate called for a drafting group to continue considering the text, which was agreed.

Sandra Wint (Jamaica) chaired discussion on **Article 5** (Response to Notification). A few delegates supported option zero, that no acknowledgment of receipt be required, but clarified that lack of receipt should not mean consent. Other delegates preferred option one, which requires acknowledgment of receipt of notification, in varied forms. Several delegations stressed that Article 5 be limited to acknowledgment of notification of receipt, and many supported modifying the title of the Article to reflect this. One delegation said it initially supported option zero, because any response other than the decision would be overly bureaucratic, but would consider option one if the procedure were simple.

Under option one, paragraph one, several delegations preferred acknowledgment of receipt within a specific timeframe, citing 30 days. Others said a reasonable timeframe was sufficient. Many delegations agreed with paragraph 3, that failure to acknowledge will not imply consent. One delegate added that only explicit consent was sufficient. Another proposed including language from Article 6, para-



graph 9, stating that if an importing Party fails to communicate its response within a particular time period, the transaction is no longer governed by AIA procedures under the protocol.

Some supported paragraph 4, which requires the importing Party to inform the notifier whether to proceed according to the importing Party's domestic regulatory framework or according to the procedures provided for in Article 6. Others requested its deletion.

Several delegations supported consolidating paragraphs 2 (acknowledgment shall state the date of receipt of the notification and whether it is in the correct form) and 5 (importing Party shall inform the notifier whether notification is complete).

On **Article 6** (Decision Procedure for AIA), delegates discussed whether paragraph 2, containing language almost identical to Article 5 paragraph 5, should remain in Article 6 or Article 5. The Co-Chairs convened a drafting group to propose consolidated text for Article 5.

SUB-WORKING GROUP II

Co-Chair John Herity (Canada) opened Sub-Working Group II (SWG-II) by reviewing progress at BSWG-4. On merged **Articles 15 and 16** (Unintentional Transboundary Movements and Emergency Measures) most delegates supported merging and streamlining the articles. Several delegates supported merging language on events warranting notification, including accidents and unintentional transboundary movements, using "accident" to cover such events throughout the remaining text. One delegate remarked that "unintentional" is vague, and suggested differentiating between accidents occurring during international transit and domestic releases resulting in transboundary movements.

Several delegates supported retaining only the first paragraph calling for prompt notification of unintentional movements, stating that remaining paragraphs: were overly prescriptive, especially regarding emergency situations; included activities usually performed as a matter of course; related to other articles under debate; and sanctioned extra-territorial actions in other states. Several delegates requested deleting language on agricultural production, welfare, human health, liability and compensation. Significant debate centered around the extent of information required in the event of an accident, including references to separate annexes listing necessary information. Concerns revolved around ability to respond promptly, as well as the breadth, relevance and actual possession of such information. One regional group proposed inserting "socioeconomic" in considerations for assessments of accidental releases, and supported terminology on human health. Another delegate objected.

Several delegates requested deletion of a paragraph on avoidance of activities resulting in accidental releases of aquatic LMOs. One delegate supported it stating that aquatic environments are often left unprotected. Another delegate proposed broadening this sentiment, as a general recommendation to take preventative measures. One delegate proposed deleting text requiring notification of the clearing-house (CH), whereas others supported it. One delegate suggested that focal points be notified in addition to competent national authorities. The Co-Chairs said they would produce a draft text for future consideration.

On **Article 17** (Handling, Transport, Packaging and Labeling), delegates considered three options: no article (option zero); one calling for adequate safety levels and aiming to develop standards (option one); and another detailing the identification/labeling, packaging, classification, handling and transportation of LMOs (option two). A few delegations supported option zero because of the potential technical barriers to trade. One delegate, noting the omission of "labeling" in

option one, requested its inclusion. Many delegations supported option two, but there was disagreement over whether the article would apply to all LMOs or only those subject to AIA. Delegates also debated the use of "identified" vs. "labeled," and the retention of text requiring classification be "no less stringent" than in the country of export.

Discussion on **Article 18** (Competent Authority/Focal Point) focused on whether Parties may designate more than one national focal point; if a Party shall inform the Secretariat of the focal point on the Protocol's date of entry into force or within three months of that date; whether Parties should inform the Secretariat of a change in focal point "immediately" or within a set timeframe; and whether a biosafety database or CH should disseminate this information.

Regarding **Article 19** (Information Sharing/Biosafety Clearing-House), delegates considered three options, which varied in specificity of information and modalities of the mechanism. Discussion focused on whether references to "publicly available" information should be retained; if a CH should be established or if the CBD CH Mechanism should be used; and whether it should be a CH or database. In the first option, one delegation requested deletion of text requiring that terms of reference and functioning of the CH be determined at the first meeting of the Parties. One delegation opposed the second option as it implies that the Secretariat serve as the CH. Another delegation requested deleting a bracketed reference to monitoring and implementation in the third option, stressing that this is not the task of the CH.

CONTACT GROUP I

Contact Group I (CG-I) on Definitions and Annexes, co-chaired by P.J. Van der Meer (the Netherlands) and Gert Willemse (South Africa), began working on the definition of LMOs. The following definition, which contains a selection of elements from the consolidated text (UNEP/CBD/BSWG/5/Inf.1), served as the basis for discussion: "LMO means any biological entity capable of replication or of transferring genetic material, that contains genetic material which has been modified by *in vitro* technologies and of which the resulting genotype is unlikely to occur in nature." Delegates were encouraged to focus on three elements of the definition: living organism, means of modification and end result.

CONTACT GROUP II

The Contact Group on Institutional Matters and Final Clauses (CG-II), co-chaired by John Ashe (Antigua and Barbuda) and Katharina Kummer (Switzerland) reviewed and forwarded to Plenary Articles including 29, 32, 33, 35, 37, 38, 39, 40, 42 and 43.

IN THE CORRIDORS

Many delegates indicated no surprise at the Executive Secretary's decision not to renew his contract, given prior rumors of his resignation, but some still expected more warning or consultation before the announcement. Some indicated they did not think this decision would affect the BSWG-5 negotiation process, but they expressed some concern about the continuity between this session and the final meeting in Colombia in February 1999.

THINGS TO LOOK FOR

SUB-WORKING GROUPS (SWG): SWG-I and II are expected to meet throughout the day. SWG-I will begin discussing risk assessment, risk management and minimum national standards. SWG-II will continue discussions on Article 19 and will proceed sequentially.

CONTACT GROUPS (CG): CG-I will continue formulating the definition of LMO. CG-II will meet at 1:00 pm to continue discussions on Article 30 and start on 28.