



## HIGHLIGHTS OF BSWG-5 TUESDAY, 18 AUGUST 1998

Delegates to BSWG-5 continued negotiating the biosafety protocol in two Sub-Working Groups (SWG), two Contact Groups (CG) and several drafting groups.

### SUB-WORKING GROUP I

SWG-I discussed **Article 6** (Decision Procedure for AIA) under the chairmanship of Eric Schoonejans (France). Speakers addressed links with Article 5 (Response to Notification). Delegates commented on responses if information in the notification is incomplete, the time-frame for response to notification and for decision, and the implications of a failure to respond or make a decision. Several delegates thought Article 5 should include provisions for cases where the importer desires more information. Proposed timeframes for making a decision ranged from 120 to 180 days to "a reasonable period of time." One delegate suggested that the time period not start until the importing country has the information it requires. Another expressed concern about the bureaucratic burden of acknowledging receipt of notification. One delegate said failure to provide a decision in a reasonable time period should constitute non-compliance with the protocol. Delegates formed a drafting group.

Sandra Wint (Jamaica) chaired discussion on **Article 12** (Risk Assessment). Delegates deleted option zero (no provision necessary) and began discussion on the components of option one: how risk assessment should be undertaken and its purpose; who undertakes the risk assessment; national institutional arrangements for the conduct of risk assessment; when it is required; how it should be carried out; responsibility for reliability of information; financial responsibility; international harmonization of risk assessment procedures; and treatment of microorganisms.

A drafting group produced questions to assist the discussion. While SWG-I agreed that science-based principles should be considered as part of the risk assessment, a number of delegates suggested that other principles also be considered, including case-by-case basis, transparency, the precautionary principle, socioeconomic, cultural, agronomic, human health and ethical. However, a few delegates said the risk assessment should be limited to scientific principles only. Most said the competent authority of the importing Party is responsible for the risk assessment, based on information supplied by the exporter, and the competent authority of the importing Party decides how and whether the risk assessment is done. One country said both information provided by the exporter and information related to the

biological characteristics of the receiving environment should factor into risk assessment. A few countries said the exporting and importing Parties should determine the procedures for carrying out the risk assessment.

While many did not think financial responsibility should be addressed, others said it should be the exporter's responsibility. Delegates supported establishment of an annex for principles and procedures for risk assessment. However one delegation said procedures should not be in an annex because all sectors of LMOs could not be covered. Many did not see the need to include minimum national standards in Article 12, provided they were elaborated in Article 14. Most did not support addressing microorganisms, but a few did. Co-Chair Wint requested that a drafting group revise Article 12 by Wednesday afternoon.

On **Article 13** (Risk Management), delegates debated whether the protocol should contain provisions concerning risk management. Several delegates supported such provisions, with one stating that the internal provisions of neighboring States may not be adequate to protect his country. Others preferred dropping the article, stating it is a domestic matter. One suggested specifying that Parties must guarantee domestic adoption of a risk management strategy. Co-Chair Wint charged a drafting group with reconciling these positions.

Some speakers on **Article 14** (Minimum National Standards) preferred deleting the article while others supported retention. Several of those who supported the text agreed it could be moved elsewhere in the protocol, particularly Article 1 *bis* (General Obligations), but one delegate insisted on retaining the Article.

Delegates considered questions regarding definitions addressing transboundary movement, export and import, as presented in a February *aide-memoire* by the CG Co-Chairs. Some believed the protocol should apply to transboundary movement outside the area of jurisdiction of any country, but others questioned how it could be enforced outside a Party's jurisdiction. Most said the obligations are addressed to States/Parties; legal persons would be obligated through domestic legislation. The SWG-I Co-Chairs distributed an *aide-memoire* noting they had asked a "friends of the chair" group to consider whether a person or Party triggers the notification process and whether it is the Party of export or import.

### SUB-WORKING GROUP II

In continuing discussions on **Article 19** (Information Sharing/Biosafety Clearing-house), the Secretariat clarified "clearing-house" (CH) as a decentralized transactional system with responsibility for



information residing with the information providers. Several developed countries supported using the CBD CH, noting that it is already operative and would be cost effective. Several delegations supported "publicly available" information with appropriate protection of confidential business information. One delegation emphasized the importance of this qualification as it clarifies that governments are not responsible for generating information. Some developed countries, preferring a simple electronic information exchange mechanism, supported the database option. Many developing countries supported a separate CH to avoid overburdening the CBD CH. The Secretariat clarified that using the CBD CH, a network of networks, would not be burdensome, but establishing a new database would be. One developing country recalled obstacles to accessing information on line. Several delegations preferred determining the CH modalities at the first Meeting of the Parties. One delegation suggested using the CBD CH as a preliminary mechanism, and establishing a new mechanism when necessary. Noting divergent views on the concept of a CH or database, Co-Chair John Herity (Canada) designated a working group to outline a common concept.

On **Article 20** (Confidential Information) several developing countries supported a zero option (no article), claiming its redundancy given international agreements and wide acceptance in trade-related matters. Several other developing countries and most developed countries favored including a provision on confidential information to safeguard information and reassure private sector involvement. Several delegates requested deleting references to human health, citing their coverage by other agreements. Some delegates requested language detailing withdrawal of information if doubts exist concerning confidentiality.

On **Article 21** (Capacity Building) most delegates supported such an article, while differing on the level of detail. Several developed countries supported option one regarding general capacity building measures, and noted the relevance of CBD provisions. Most developing countries preferred the more detailed option two. One regional group noted the centrality of capacity building for an effective protocol. Several delegates stressed maximizing the use of existing resources and institutions. Others emphasized regional cooperation in capacity building. Another delegate noted that language on benefit sharing would place an unacceptable requirement on the private sector, and cautioned that the wording on the Secretariat was overly prescriptive. Several delegates supported inserting language on countries in transition.

Regarding **Article 22** (Public Awareness/Public Participation), some delegates supported deleting the reference in the title to public participation as it is not addressed. Most delegations supported the article and, at a minimum, language requiring Parties to take appropriate measures to encourage public understanding of safe use, handling and management of LMOs. Delegations also supported respect for confidential information and international cooperation for and promotion of the development of educational and public awareness programmes.

Delegates considered six options for **Article 23** (Non-Parties). Some delegations preferred no article, citing, *inter alia*, complications during the protocol's preliminary stages, the importance of not affecting trade with non-Parties and the possible disincentive to signing the protocol. Other delegates preferred including no trade with non-Parties under general obligations. One delegation underscored ensuring that non-Parties could not have more favorable trade relations than Parties. Many countries preferred an option encouraging Parties to apply protocol objectives in relations with non-Parties. A few delegations opposed options for no trade with non-Parties and for possibly restricting trade with non-Parties after five years. However, some supported the option for restricting trade in the future with the addition

of language permitting trade with non-Parties in full compliance. A few delegations supported another option allowing for bilateral, regional and multilateral agreements as well as trade with non-Parties in compliance with the protocol. While one country supported an option allowing non-Parties in compliance with the objectives of the proposal to be treated equal to Parties, several others said it was too vague.

On **Article 24** (Non-Discrimination), several developing countries supported no provision, stressing the environmental, not trade, nature of discussions and that such issues be considered by the World Trade Organization (WTO). Most developed countries supported including a provision, noting that international transport of LMOs relates centrally to trade issues. One developing country claimed that a provision would provide a defense against claims of non-trade barriers using scientific principles. Some developed countries noted the provision's relevance for those Parties not WTO members. Another cautioned against transplanting language from the General Agreement on Tariffs and Trade, which could have unexpected repercussions. Several delegations noted linkages with Article 34 (Relationship with Other International Agreements) and called for a small group to discuss trade-related issues. Others objected to such a group, fearing it would be dominated by trade experts.

On **Article 25** (Illegal Traffic) many delegations stressed the need to define "illegal traffic." Several developing countries supported the article, stating it should include references to informing the Secretariat and CH, developing national legislation, cooperation among Parties, and the right to dispose of illegal goods. Several developed countries favored deleting the article, noting a provision on Party obligations in Article 1 *bis* (General Obligations) and reliance on domestic legislation. One country said the article would not be necessary in the event of an importer-based AIA system.

#### CONTACT GROUP I

CG-I on Definitions and Annexes continued to formulate and later negotiate (based on the Bureau's decision to extend its mandate) a definition on LMOs. Delegates decided to split their working definition into the definitions "living organism" and "LMO." By the end of the day CG-I reached a working framework of the definition, with several brackets, that is broken down into the above definitions plus an additional category of "modern biotechnology."

#### CONTACT GROUP II

CG-II signed off on Articles 30 (Subsidiary Bodies and Mechanisms) and 31 (Secretariat).

#### IN THE CORRIDORS

Delegates have expressed surprise that UNEP has not moved swiftly to ensure continuity by appointing an Officer in Charge of the CBD Secretariat. The CBD Bureau will meet 1 September, the day after Juma becomes *ex-situ*.

### THINGS TO LOOK FOR

**PLENARY:** An afternoon Plenary is expected to discuss LMOs and "products thereof," guided by CG-I's discussion on the definition of LMOs and the text CG-II completed Monday.

**SUB-WORKING GROUPS:** SWG-I will meet with CG-I at 10:00 am to discuss the annexes and Articles 7, 8 and 10. SWG-II is expected to discuss Articles 26 and 27 beginning at 10:00 am.

**CONTACT GROUPS:** CG-I will meet in the morning with SWG-I. CG-II is expected to meet at 10:00 am.

**GUEST LECTURE:** Peter Raven (US National Academy of Sciences) will speak at 6:30 pm on the topic of "Biodiversity, Biotechnology and Economic Development."