



## HIGHLIGHTS FROM THE SIXTH SESSION OF THE OPEN-ENDED AD HOC WORKING GROUP ON BIOSAFETY (BSWG-6) 14 FEBRUARY 1999

Delegates to the Sixth Session of the Open-ended *Ad Hoc* Working Group on Biosafety (BSWG-6) met in opening plenary in the afternoon and heard statements on, *inter alia*, organizational matters and regional positions. In the evening, Sub-Working Group-I (SWG-I), Sub-Working Group II (SWG-II) and a drafting group on liability and redress began substantive discussion. Two Contact Groups (CG-I and CG-II) met to discuss organizational matters.

### PLENARY

Chair Veit Koester (Denmark) expressed his condolences for the earthquake victims in Colombia and called for a minute of silence. Chair Koester recalled the composition of the BSWG Bureau: Elsa Kelly (Argentina) (replacing Diego Malpede); Lynn Holowesko (Bahamas); Behren Gebre Egziabher Tewolde (Ethiopia); Ervin Balazs (Hungary); R. H. Khwaja (India) (replacing A. K. Ahuja); Mohamed Mahmoud Ould el Gaouth (Mauritania); Darryl Dunn (New Zealand); Alexander Golikov (Russian Federation); and I.A.U.N. Gunatillake (Sri Lanka). He said that, despite frustration at the past five meetings, the prevailing spirit of cooperation was encouraging.

Colombian Minister of the Environment Juan Mayr cautioned that countries richest in biodiversity would be most vulnerable to the adverse effects of living modified organisms (LMOs). He urged delegates to ensure that the protocol would allow transboundary movements of LMOs to take place under safe conditions.

On behalf of UNEP, Sipi Jaakola transmitted the best wishes of UNEP Executive Director Klaus Töpfer for a successful meeting and announced that Dr. Töpfer would arrive Monday. Hamdallah Zedan, acting Executive Secretary of the Convention on Biological Diversity (CBD), commented on the protocol alongside broader trends, such as globalization, regionalization and the information era.

Chair Koester highlighted the decisions of the Extended Bureau Meeting, held from 21-22 October 1998, to pursue discussion of several articles as a cluster and to form a legal drafting group to facilitate the drafting of the protocol's text. He identified the key concepts to be resolved including, "products thereof"; contained use of LMOs; socio-economic considerations; precautionary principle; liability and redress; and trade with non-parties.

He said the working-structure from previous meetings would be retained for BSWG-6. SWG-I, co-chaired by Eric Schoonejans (France) and Sandra Wint (Jamaica), would discuss Articles 4-16 and 37; SWG-II, co-chaired by John Herity (Canada) and R. H. Khwaja (India), would discuss Articles 1, 2 and 17-27 and 34; CG-I, co-chaired by Piet van der Meer (Netherlands) and Osama El-Tayeb (Egypt) would discuss Article 3 and the Annexes; and CG-II, co-chaired by Ambassador John Ashe (Antigua and Barbuda) and Katarina Kummer (Switzerland) would discuss the Preamble, Articles 28-33, 35, 36, 38-42. The new Legal Drafting Group would be chaired by Ambassador Lynn Holowesko (Bahamas).

Chair Koester reminded delegates that the meeting's objective was to reach consensus on the text of the biosafety protocol. He said 30 articles, the Annexes and the Preamble remained to be negotiated. He encouraged delegations who submitted proposals for further annexes to withdraw them, as it would be impossible to negotiate further annexes given the time constraints. He recommended negotiating issues in only one group and discussing articles in clusters.

He outlined the elements of a mechanism, Friends of the Chair, consisting of individuals nominated by the G-77/CHINA, JUSS-CANZ, the EU and CEE, to assist the process. In setting deadlines, he said SWG-I was to finish work on "commodities and LMOs destined for deliberate release into the environment" and "products thereof" and SWG-II on "socio-economic issues" and "precautionary principle" by Monday at 6:00 pm. All groups were to finish work by midnight Wednesday to enable identification of outstanding issues by Thursday and completion of work by Friday. GRULAC, the Asian Group and WEOG regional groups nominated members to the Legal Drafting Group. The Africa Group and the CEE will nominate members on Monday.

NORWAY withdrew its proposal for an annex on contained use of LMOs. GUYANA, for the G-77/CHINA, stressed the principle of common but differentiated responsibilities and highlighted the need for resolution on, *inter alia*, socio-economic considerations, capacity building and financial resources and mechanisms. GERMANY, for the EU, stressed the need for a protocol that protects biodiversity while preventing unnecessary barriers to trade. ETHIOPIA, on behalf of the Africa Group, expressed concern that an unsafe or ineffective conclusion may be taken due to time constraints. An NGO representative said civil society's concerns must be taken into account. She said the precautionary principle is pivotal, supported inclusion of liability in the protocol, stressed consideration of socio-economic impacts in

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decision making, warned against subordination to WTO rules and opposed exclusion of transgenic crops from the protocol. On behalf of industry, the Global Industry Coalition supported a practical protocol and highlighted the benefits of biotechnology.

**SWG-I:** Co-Chair Sandra Wint (Jamaica) proposed that SWG-I mandate the Secretariat to prepare an edited text removing all footnotes and deleting Articles 10 (Notification of Transit), 12 (Subsequent Imports) and 16 (Minimum National Standards), on the understanding that their substance was covered in other parts of the text. This proposal was accepted. She invited delegates to propose ways of removing duplication and inconsistency in the negotiating text, without entering into substantive negotiation. Several delegates pointed to the difficulty in separating out substantive and editorial points. The Co-Chairs agreed to produce a document identifying areas where editorial improvements could be made.

Co-Chair Eric Schoonejans (France) introduced the topic of “products thereof” and circulated an informal note on discussions held at BSWG-5, which included the following proposed text: “processed products from LMOs containing dead modified organisms and/or non-living components of LMOs such as DNA or gene products are addressed in the protocol to the extent that there is a provision in the protocol that relevant information (risk assessment on environment and health issues) on LMOs used for processing is made available through the Clearing-house Mechanism (CHM).” One delegate stated that the proposal could be a basis for negotiation, but several opposed it. Another suggested that the protocol could define categories of LMOs, for example, those LMOs containing DNA and those that do not, which would then be subject to different provisions. Co-Chair Schoonejans convened an informal group to discuss how to deal with “products thereof” and requested the group to report back to SWG-I on Monday morning with a summary of options.

**SWG-II:** Co-Chair John Herity (Canada) opened SWG-II by stating that discussion on Article 19 (Competent National Authority/National Focal Point) was complete as all brackets and text within them had been removed. SWG-II then began discussions, but reached no conclusions, on the precautionary principle, socio-economic considerations and capacity-building.

On the precautionary principle, delegates expressed a wide range of views on its inclusion in the protocol. Co-Chair Herity reminded delegates that references to the precautionary principle remained in brackets in, *inter alia*, the Preamble, Article 1 (Objectives), Article 8 (Decision Procedure for AIA), Article 9 (Review of Decisions) and Article 14 (Risk Assessment). Many delegates underscored the importance of referring to the precautionary principle in Articles 8, 9 and 14, and in Article 1. Some stressed, in particular, Article 14 on risk assessment, while others said that inclusion in Articles 8, 9 and 14 is the minimum needed to limit risks from biotechnology. While some delegates said the protocol's objectives should be in accordance with the precautionary principle, others noted that the principle is a means of achieving the objectives and opposed its inclusion in the article on objectives. Some said it should be addressed in the Preamble. One delegate indicated that the precautionary principle, not defined in international law, is difficult to implement without an agreed-upon definition. Several delegates said the draft protocol is in itself an expression of the precautionary principle. One delegate suggested that a scientific approach should be the priority, and when not available, the precautionary approach could be applied, cautioning that subjectively interpreting the principle could result in unintentional restrictions and harmful economic effects.

In considering Article 27 (Socio-economic Considerations), many developing countries preferred inclusion of the Article. Some suggested deleting language on financial and technical support for affected developing countries from parties substituting an imported

commodity with an LMO. Some developed country delegations characterized the issue as: difficult to quantify; beyond the BSWG mandate; differing country to country; and more appropriate for domestic action. Among those who did not prefer a separate operative article, some suggested including it in the Preamble. Others suggested addressing it in sections on capacity-building, financial assistance or liability and redress. Co-Chair Herity, expressing concern over the lack of clarity in “socio-economic,” said he would consider establishing a drafting group to reword the Article.

On Article 22 (Capacity-Building), Co-Chair Herity advised delegates to consider the connection between Article 22 and Article 29 (Financial Mechanism and Resources). Delegates generally supported the Article, differing on specific elements. Some developing countries stressed the inadequacy of addressing capacity-building without reference to financial resources. Most developing countries supported retaining a series of paragraphs to address access to financial resources, technology and know-how; cooperation to enhance technological and institutional capacities; and assistance in areas of risk-assessment and management techniques. Some noted redundancies in these paragraphs, and one regional group recommended streamlining such provisions using existing text. Some developed countries advocated reducing the Article's scope to issues around transboundary movements and not more generally on biotechnology and biosafety, which extend beyond the protocol's mandate. Delegates differed over language to facilitate private sector involvement, with some noting its domestic nature and others stressing its importance in biotechnology. Delegates concluded their initial discussions on the Article and will next consider means to progress.

**CONTACT GROUPS:** CG-I discussed organizational matters in a brief meeting. Co-Chair Piet van der Meer (Netherlands) introduced Co-Chair El Tayeb (Egypt), nominated by the Africa Group to replace Co-Chair Gert Willemsse (South Africa). Delegates agreed to a preliminary work programme on definitions and annexes and will meet for the next three days with a view to completing work by 6:00 pm on Wednesday, 17 February. CG-II met briefly to consider organizational matters and will reconvene on Monday.

**DRAFTING GROUP ON LIABILITY AND REDRESS:** The drafting group, chaired by Kate Cook (UK), heard a number of opinions on condensing or merging existing texts and identifying useful elements from existing international agreements. One participant proposed including an article on liability and producing a recommendation for a COP decision to further develop that article. The decision could establish a group to address the issue in detail and within a specified timeframe. Stressing that enabling language must have parameters, one participant noted that the matter would be an issue for discussion under the protocol and must be addressed by the protocol's meeting of the parties. The group will reconvene on Monday.

## THINGS TO LOOK FOR

**SWG-I:** SWG-I is expected to meet at 10:00 am to hear from the Co-Chairs of the informal groups on “products thereof” and “commodities.”

**SWG-II:** SWG-II is expected to meet at 10:00 am to continue discussions on the precautionary principle, socio-economic considerations and capacity-building.

**LIABILITY DRAFTING GROUP:** This group will meet at 1:30 pm in Room 308.

**LEGAL DRAFTING GROUP:** This group will meet at 3:00 pm in Room 308.