



Earth Negotiations Bulletin

A Reporting Service for Environment and Development Negotiations

Vol. 9 No. 113

Published by the International Institute for Sustainable Development

Thursday, 18 February 1999

BSWG-6 HIGHLIGHTS WEDNESDAY, 17 FEBRUARY 1999

Delegates to the sixth session of the Open-ended *Ad Hoc* Working Group on Biosafety (BSWG-6) met in Sub-Working Groups I and II throughout the day and into the evening, as well as in contact groups and informal consultations. The Friends of the Chair met in the evening to assess progress. At a stock-taking Plenary, which ended at 12:15 am, delegates heard reports from the Co-Chairs of the Sub-Working and Contact Groups, and the Chair announced that all outstanding issues would be addressed by the Friends of the Chair.

SWG-I

SWG-I discussed a revised text on Article 14 (Risk Assessment). One delegate proposed that risk assessments be developed by relevant international organizations, but agreed to a proposed use of "recognized" risk assessment techniques, instead of "appropriate" techniques. Delegates agreed to include language reflecting that the assessment be based on information provided in accordance with Article 6 (Notification) and other available scientific evidence, but remained divided over whether responsibility lies exclusively with the importer or whether the importer may ask the exporter to carry out the risk assessment. While some supported inclusion of a provision on financial responsibility for risk assessment, others felt it inappropriate for the protocol to dictate where financial responsibility lies. The Co-Chairs agreed to produce a new text for further consideration.

The Co-Chair of the informal group on human health presented three options. Many supported the third option, that "taking into account risks to human health" should follow all references in the protocol to "adverse effects on the conservation and sustainable use of biological diversity," but several opposed the language stating that the main focus of the protocol is on biodiversity. Others supported the first option stating that provisions on human health would be referred to the WHO/FAO Codex Commission and other relevant international instruments. Delegates supported a proposal to merge these two options. Co-Chair Schoonejans asked the informal group to develop revised options to submit to the BSWG Chair. One delegation reiterated its view that human health was outside the scope of the protocol.

On timeframes, SWG-I agreed to 90 days for acknowledgement of receipt (Article 7.1), but did not agree whether a decision should be communicated to the notifier within 180 or 270 days, or within a reasonable amount of time (Article 8.3).

On Article 7 (Acknowledgement of Receipt of Notification), several delegations supported a paragraph providing for trans-boundary movements to proceed according to the domestic importer's

regulatory framework, while one delegation questioned the paragraph's relevance. Alternative language was proposed, allowing domestic regulatory frameworks to be invoked prior to notification, but no consensus was reached.

On Article 37 (Assessment and Review of this Protocol), SWG-I agreed that the protocol will be evaluated within five years of entry into force, and every five years thereafter. On Article 6 (Notification), delegates agreed to retain text on competent national authority, but disagreed on whether to retain reference to the Biosafety Clearing-House (CH). Delegates disagreed over retaining language on notifying transit parties and one delegate proposed that parties may require notification in writing through their competent national authority of the intent to transit a LMO through their territory. Delegates agreed to include a paragraph on accuracy of information, but did not reach consensus on the exact language.

On Article 8 (Decision Procedure for AIA), several delegations opposed provisions allowing importing parties to inform the notifier that a transboundary movement may proceed without written consent, while others supported the provisions. Co-Chair Schoonejans invited delegations to consult on a compromise. A paragraph on facilitating decision-making by an importing party was moved to Article 22 (Capacity-Building).

Delegates agreed to title Article 9 "Review of Decisions under AIA." Delegates did not agree whether "a party of export" or a "notifier" should request the importer to review a decision, or whether this paragraph should even be included. Delegates agreed to retain language that risk assessments for subsequent imports may be taken at the importer's discretion. Delegates could not reach consensus on the need to include Article 11 (Simplified Procedure) in the protocol, but agreed to delete all internal brackets pending a decision.

SWG-I discussed Article 13 (Multilateral, Bilateral and Regional Agreements), but made no progress. Some delegations proposed its deletion. On Article 4 (Scope of the Protocol), delegates agreed to delete a reference to requirements for transport operations.

On Article 5 (Application of the AIA Procedure), delegates supported a proposal to specify that the AIA procedure in Articles 6, 7, 8 and 9 shall apply to the first transboundary movement of an LMO.

SWG-II

Most developing countries favored retaining Article 26 (Illegal Traffic), citing a need to harmonize measures taken on illegal traffic. Several developed countries opposed its retention, as parties could develop domestic regimes to tackle illegal traffic. In particular, they opposed a provision requiring the party of origin, in the case of illegal



traffic, to dispose of the LMOs at its expense, as CG-II had recommended deleting the definition of illegal traffic. One developing country introduced language defining illegal traffic as "transboundary movement of LMOs carried out in contravention of the relevant provisions of the protocol." Several others supported this formulation. Regarding the requirement to transmit information to the Biosafety CH, one group of developed countries proposed that the information be limited to cases of illegal traffic "originating from and entering into" the party instead of "within the party." Some developed countries stressed that concern about law enforcement and confidentiality demanded only that "appropriate" information be transmitted.

On Article 17 (Unintentional Transboundary Movements and Emergency Measures), Co-Chair Herity introduced a Co-Chair's proposal, noting that a paragraph on confidential information had been deleted and included in Article 21 (Confidential Information). One delegation proposed changing the title of the Article to "Measures to be Taken in Emergency," and deleting a paragraph on measures to minimize unintentional transboundary movements of LMOs. Many developing countries objected. On the consultation process, delegations differed on the need for a request from a potentially affected party and the entity to be consulted. Delegations also differed on the terms "unforeseen" and "unintentional" and on the need for "significant" before "adverse effects." Delegations agreed on the information to be included in the notifications of unintentional transboundary movements.

On Article 23 (Public Awareness and Participation), delegates considered a new Co-Chairs' text. Most delegations said that the new text did not reflect participation. Delegates differed on, *inter alia*, whether "complete" or "appropriate" information should be provided to the public; whether confidential information should be protected; and whether the information should relate to the "release, safe transfer and handling and use of LMOs" or the results of the decision making process.

On Article 20 (Information Sharing/Biosafety Clearing-House), delegates disagreed on, *inter alia*: relationship between a biosafety CH and the CBD CH; reference to confidential information and "products thereof;" and linkage to Article 14 (Risk Assessment) and AIA procedures. Many countries noted that an independent biosafety CH is not cost effective and that two CHs would burden countries. Others cautioned that integration of two mechanisms may overburden the CBD CH and pointed out different focuses of the two CHs. The Secretariat indicated that, technically, the CBD CH could cope with new demands of information derived from this protocol. Modalities for the operation of the Biosafety CH will be decided by the first Meeting of Parties to the protocol.

On Article 21 (Confidential Information), discussions revolved around a Co-Chairs' text. Some developed countries preferred that information on description of LMOs and risk assessment "should not generally be" rather than "in no case may be" considered confidential. One group of developed countries, referring to an internal directive, supported "in no case may be" and said that it would be willing to consult to determine the reason for the disagreement. Several developing countries reiterated their request for deletion of the Article.

Co-Chair Herity introduced Article 1 (Objectives) for discussion, noting that references to human health, "products thereof," precautionary principle and socio-economic imperatives are pending discussions in other groups. Many developing countries wanted such references retained, while some developed countries objected. Several countries stated that the objectives of the protocol should be in the context of transboundary movements of LMOs. One delegate emphasized the need for consistency with CBD Article 8 (g) with respect to human health.

Delegates consolidated Article 2 (General Obligations). Several suggestions were made but not agreed to, including: deleting a paragraph regarding a trade ban without AIA; and deleting a reference calling for accordance with obligations under international law.

CONTACT GROUPS

CG-I, co-chaired by Piet van der Meer (Netherlands) and Osama El-Tayeb (Egypt), discussed the definition of contained use and the Annexes. CG-II concluded discussions on contained use, pending resolution of discussions elsewhere on pharmaceuticals and the scope of AIA. On Annex I (Information Required in Notification for AIA), delegates agreed to text providing for a previous and existing risk assessment report consistent with Annex II (Risk Assessment). On Annex II, delegates discussed: technical and scientific information characteristics, detection and identification of the LMO; intended use; and receiving environment. Information regarding safety considerations for human health and socio-economic considerations pends resolution of discussions by other sub-groups.

CG-II, co-chaired by John Ashe (Antigua and Barbuda), discussed text on Articles 22 (Capacity-Building) and 29 (Financial Mechanism and Resources). On Article 22, delegates primarily disagreed over whether capacity-building in biotechnology should relate "directly" to biosafety. Developing countries questioned who would be responsible for determining what is "direct." Several developed countries argued that, without including "directly," biotechnology even remotely related to biosafety could be covered. Delegates then agreed on "biotechnology as required for biosafety." On Article 29, delegates debated the mechanics of providing guidance to the financial mechanism. CG-II agreed that the protocol's Meeting of the Parties would provide guidance to the CBD Conference of the Parties for consideration and forwarding to the financial mechanism. Delegates also dropped brackets around a provision taking CBD Article 20 (Financial Resources) into account.

PLENARY: BSWG-6 met in Plenary at 10:00 pm to hear reports from the Co-Chairs of SWG-I, SWG-II, CG-I and CG-II and provisionally adopt: definitions of LMO, modern biotechnology, living organism, exporter, importer and Regional Economic Integration Organization; Article 19 (Competent National Authority/National Focal Point); Article 29 (Financial Mechanism and Resources); Article 36 (Compliance); and Article 37 (Assessment and Review of this Protocol). All pending issues were transferred to the Friends of the Chair. Chair Koester promised to produce a revised text of the protocol containing compromise solutions by 10:00 am, Thursday. CG-I, the Legal Drafting Group and small contact groups convened by the chair will continue work Thursday and Friday.

IN THE CORRIDORS

Some delegates commented that the Chair apparently has more "friends" than he realized, because the "Friends of the Chair" meetings reportedly drew an unexpected number of delegates dissatisfied with the regional representation. Others complained that a lack of negotiating time did not justify "short cuts" in the process, such as allowing some texts to proceed from a contact group directly to the Friends and then to the Plenary. Many reluctantly admitted that the Friends of the Chair might be the only remaining forum for concluding a protocol, as it will finally bring the deal-makers to the table to resolve their differences on inter-linked issues as a package.

THINGS TO LOOK FOR

REVISED TEXT: A revised text will be available at 10:00 am.

FRIENDS OF THE CHAIR: Friends of the Chair will meet at 1:00 pm.

CG-I: CG-I will meet at 10:15 to review Annexes I and II.