

## COP/MOP 4 HIGHLIGHTS: TUESDAY, 13 MAY 2008

COP/MOP 4 delegates met in working groups (WG) and contact group sessions throughout the day. WG I continued discussing socioeconomic considerations and addressed notification requirements. WG II considered: risk assessment and risk management, subsidiary bodies, monitoring and reporting, financial mechanism and resources, assessment and review, and public awareness and participation. The budget group met in the morning and afternoon and the contact group on liability and redress met throughout the day.

### WORKING GROUP I

**SOCIOECONOMIC CONSIDERATIONS:** Delegates addressed socioeconomic considerations (UNEP/CBD/BS/COP-MOP/4/15). Many delegates called for increased capacity building and welcomed information sharing and research on integration of socioeconomic considerations. SOUTH AFRICA called for guidance on assessing socioeconomic impacts.

Regarding integration of socioeconomic considerations, JAPAN pointed to the need for a scientific basis; the PHILIPPINES said it should be left to national discretion; and the THIRD WORLD NETWORK (TWN) recommended integration into national LMO laws. IRAN called for the recognition of farmers' rights, and BOLIVIA stressed the need to take into account impacts on human health, indigenous peoples and traditional knowledge.

MALAYSIA and others maintained that it would be premature to establish an *ad hoc* technical expert group (AHTEG) to identify issues relating to socioeconomic considerations in national LMO decision making. A specific reference in the draft decision to socioeconomic impacts on indigenous and local communities was opposed by JAPAN, but supported by INDONESIA and MEXICO.

The PUBLIC RESEARCH AND REGULATION INITIATIVE (PRRI) stressed that socioeconomic considerations should also include positive impacts of LMOs. The GLOBAL INDUSTRY COALITION (GIC) reminded delegates that Article 26 (socioeconomic considerations) limits impacts to be taken into account to those on conservation and sustainable use of biodiversity. A Chair's text will be prepared.

**NOTIFICATION REQUIREMENTS:** Delegates addressed the review of options for implementation of notification requirements (UNEP/CBD/BS/COP-MOP/4/17). Delegates agreed that documented experiences are not sufficient to develop modalities for implementing notification requirements, but were divided on the way forward. CUBA, JAPAN, THAILAND,

BRAZIL, CHINA, the EU and PERU supported deferring the issue to a future COP/MOP meeting. Mauritius, for the AFRICAN GROUP, and MALAYSIA supported establishing a subsidiary body to also address notification requirements. MEXICO, supported by NORWAY, suggested an AHTEG to consider notification requirements along with risk assessment and management. The PHILIPPINES called for clarifying responsibilities regarding prior risk assessments by exporting countries. PRRI asked for differentiated requirements for shipments intended for field trials, contending that these bear lower risks, while TWN requested differentiated requirements to account for the risk of LMO release in the course of field trials. A Chair's text will be prepared.

### WORKING GROUP II

**SUBSIDIARY BODIES:** Delegates addressed options for the establishment of subsidiary bodies under the Protocol (UNEP/CBD/BS/COP-MOP/4/12). EL SALVADOR, the AFRICAN GROUP, CUBA, MALAYSIA, ZIMBABWE, THAILAND, and TUNISIA supported the creation of a permanent subsidiary body on scientific, technical and technological advice (SBSTTA) with meetings scheduled in conjunction with meetings of the CBD's SBSTTA. CHINA, the EU, INDIA, ECUADOR, JAPAN, NORWAY, QATAR, MEXICO and VENEZUELA preferred establishing AHTEGs for advice on specific issues, maintaining that these would be less costly. A Chair's text will be prepared.

**RISK ASSESSMENT AND RISK MANAGEMENT:** Delegates commented on UNEP/CBD/BS/COP-MOP/4/10. Many supported organizing additional regional workshops and training, while others suggested improving guidance and information on risk assessment and risk management. The AFRICAN GROUP, the EU, NEW ZEALAND, NORWAY and the PHILIPPINES supported establishing an AHTEG, rather than a subsidiary body.

Many delegates called for cooperation with other UN agencies, and the consideration of existing expertise in other international bodies such as the International Plant Protection Convention (IPPC) and the Codex Alimentarius Commission. IPPC emphasized the need to increase awareness of its standards and demonstrate their relevance at the national and international level. CODEX ALIMENTARIUS encouraged the use of its standards to ensure protection of human health. PRRI suggested using current practices in agriculture as a baseline for risk assessment for lower risk technologies. A Chair's text will be prepared.

**MONITORING AND REPORTING:** On monitoring and reporting, (UNEP/CBD/BS/COP-MOP/4/3 and INF/11), many countries highlighted the low rate of national reporting, and called for strengthening reporting capacities and improving the reporting format. The AFRICAN GROUP requested funding for developing countries to prepare their national reports. The EU and NORWAY supported recommendations of the Compliance Committee to facilitate access to GEF funding to meet protocol obligations including reporting requirements. MALAYSIA favored addressing non-compliance through the provision of technical and financial assistance.

**ASSESSMENT AND REVIEW:** Delegates discussed elements for a decision outlined in UNEP/CBD/BS/COP-MOP/4/14. CUBA, MEXICO and INDIA supported requesting an AHTEG to assess the effectiveness of the Protocol, opposed by the EU, NEW ZEALAND and COLOMBIA, noting that parties' national reports could be used as basis of assessment provided that parties submit their reports. A Chair's text will be prepared.

#### **PUBLIC AWARENESS AND PARTICIPATION:**

Delegates discussed elements of a draft decision outlined in UNEP/CBD/BS/COP-MOP/4/16 involving an outreach strategy and programme of work. COLOMBIA, CUBA, KIRIBATI, VENEZUELA, IRAN and QATAR requested increased funding for public awareness and participation. ZIMBABWE and PRRI highlighted the importance of providing sound scientific information on positive aspects of LMOs. The EU called for evaluating the programme of work before COP/MOP 5. A Chair's text will be prepared.

**FINANCIAL MECHANISM:** On financial mechanism and resources (UNEP/CBD/BS/COP-MOP/4/5) the EU, supported by NORWAY, emphasized that strategic programming for the fifth GEF replenishment needs to address implementation of legal and administrative systems, enhancing decision making based on risk assessment, and the implementation of the liability and redress regime. NEW ZEALAND noted that COP/MOP 4 is the last opportunity to provide input into the fifth GEF replenishment negotiations. A Chair's text will be prepared.

#### **CONTACT GROUPS**

**BUDGET:** Budget Group Chair Sem Shikongo (Namibia) invited delegates to comment on an indicative list of budget implications of decisions discussed in the working groups. Delegates discussed the difficulty of estimating budget implications at this time and decided to present a preliminary list with the option of preparing a revised list for presentation in plenary on Thursday.

Delegates considered the Protocol's budget and voluntary trust funds based on two different scenarios presented by the Secretariat. Option 1 provides for a 17.9% nominal increase in the programme budget; while option 2 is based on a 0% nominal increase. Several delegates expressed their concern that option 2 would impede the implementation of important activities under the Protocol, while others confirmed their commitment to providing the Secretariat with a realistic budget. A third option was suggested which includes a substantial contribution drawn from the cumulative reserve and a corresponding increase in the programme budget. A detailed proposal of the third option will be discussed in the budget group on Wednesday afternoon.

**LIABILITY AND REDRESS:** The contact group reconvened in the morning to consider the compromise prepared by a like-minded group supporting a legally binding regime to be adopted at COP/MOP 4 (the like-minded group). This compromise proposal entails three points: guidelines on liability and redress setting out minimum core elements that can be integrated in domestic law and a reference to the guidelines in the legally binding regime; a legally binding provision on enforcement of

judgments on damage from transboundary movement of LMOs that meet the minimum standards in the guidelines and the provisions on enforcement of foreign judgments under domestic law; and a review process, with the possibility of making other elements on civil liability legally binding on the basis of experience gained. Some delegates expressed concern with referencing non-legally binding guidelines in a legally binding regime and stressed the need for flexibility in the guidelines. A contentious discussion ensued regarding enforcement of foreign judgments, described as the core of the proposal, with some delegates pointing to complexities in developing regulations on enforcing judgments, and others mentioning that it is usually concurrent with harmonization of substantive law.

Co-Chair Lefebvre then invited delegates to consider the like-minded group's proposal together with a legally binding instrument focusing on the administrative approach a "compromise in the making" on the basis of which the contact group would continue its negotiations. He explained that finalizing a legally binding instrument at COP/MOP 4 would be impossible, due to the requirement to circulate a draft instrument six months prior to its presentation for adoption and the convening of a legal drafting committee. He suggested that COP/MOP 4 focus on reaching political agreement on all the issues and to convene a drafting committee before the end of 2008 followed by an ExCOP to adopt the legally binding instrument. Some parties noted that drafting would have to be completed before they could decide whether they support the instrument. Delegates agreed to continue negotiating on the basis of this understanding.

In the afternoon delegates considered the supplementary compensation scheme. Regarding residual state liability, the majority of delegations supported deletion of the section, but some insisted on its retention and it was agreed to retain two operational texts pending the outcome on other issues. Regarding a reference to private sector initiatives, delegates were divided on whether to refer to the compact by six major agricultural biotechnology providers, to private sector initiatives more generally, or not to include any reference. On supplementary collective compensation arrangements, delegates debated whether to have no arrangement, a compulsory arrangement, or a voluntary arrangement, with the majority of delegates preferring the latter and debating possible modalities at length.

In the evening delegates discussed settlement of claims. They agreed to delete the section on inter-state procedures, and discussed possible wording for an enabling clause on private international law in the part on civil procedures, a special tribunal, and standing/right to bring claims. Discussions continued into the night.

#### **IN THE CORRIDORS**

Tuesday was marked by talks about the possibility of an ExCOP for the adoption of the liability and redress regime, interpreted by many as a "clear sign" that we are on the way towards adopting "a legally binding regime of some kind." For the time being this was referred to as "a compromise in the making" – a euphemism which led several delegates to worry that many – maybe too many – key issues are still unresolved. As one delegate put it "the enemy of a compromise in the making is the devil who, as is generally known, is in the detail."

Ironically, the specter of an ExCOP first appeared in the budget group, where it was cited as an example for the difficulty to estimate budget implications of decisions still under negotiation. While some saw this as a procedural dilemma, several others said that the real conundrum is to cover a projected 17.9% increase in expenditure with a 0% increase in the Protocol's budget.