



## HIGHLIGHTS OF BSWG-5 WEDNESDAY, 26 AUGUST 1998

Negotiations continued in a variety of groups throughout the day and into the evening as delegates attempted to heed the Bureau's instruction that they remove as many brackets and footnotes as possible.

### SUB-WORKING GROUP I

On **Article 3A** (Scope of Protocol) SWG-I deleted two options: one for no provision and the other that the scope of the AIA is the same as the scope of the protocol. The remaining option says the protocol [shall, without prejudice to paragraph 2, apply] [applies] to the transboundary movement [, handling and use] of LMOs resulting from modern biotechnology that may have an adverse effect on the conservation and sustainable use of biological diversity, taking into account risks to human health. Delegates' requests to delete text or add or delete brackets were countered by requests to keep the first paragraph intact, particularly regarding handling and use, risks to human health and applicability to paragraph 2, which lists areas of non-application and remains bracketed.

On **Article 3B** (Application of AIA Procedure) delegates said the article's two paragraphs presented contradictory approaches to identifying which LMOs are subject to the AIA procedure. Speakers suggested consolidating the elements in paragraph 1, which sets external boundaries for LMOs subject to the AIA procedure, and paragraph 2, which lists LMOs that are exempt from the procedure. Delegates differed on whether "all," "first" or "first intentional" transboundary movements should undergo an AIA under paragraph 1. Under paragraph 2, while no country opposed the concept of exemptions, they differed on what would be exempt and bracketed the paragraph. Delegates noted the links between Article 3B and Articles 9 (Simplified Procedure) and 11 (Multilateral, Bilateral and Regional Agreements), particularly in the reference to LMOs exempted from the AIA procedure (paragraph 2(a)), and suggested that the text be moved. Several delegates agreed that the reference to exemption of LMOs subject to any other international agreement (paragraph 2(b)) was too broad.

Many proposed deleting **Article 9** (Simplified Procedure) and including its elements under Article 3B, 6 (Decision Procedure for AIA) or 11 (Multilateral, Bilateral and Regional Agreements); others preferred retaining the article until delegates agreed where to move it.

**Article 11** (Multilateral, Bilateral and Regional Agreements) was bracketed. After a discussion on whether to reference "Parties" and "non-Parties" with regard to agreements, both remained in brackets. A drafting group will consolidate and standardize text on Articles 3A, 3B, 9 and 11.

On **Article 36** (Assessment and Review of Protocol) many could accommodate the MOP's evaluation three or five years after entry into force; brackets were inserted around "and at least every five years thereafter." Support varied for including or deleting the phrases "an evaluation of the effectiveness of this Protocol" and "an assessment of the procedures and annexes;" SWG-I linked both with "including" and deleted their brackets. The Article was submitted to CG-II.

SWG-I reviewed the Tuesday evening drafting groups' results on **Articles 12** (Risk Assessment) and **13** (Risk Management). On Article 12, delegates transferred the paragraph regarding risk assessment for subsequent imports elsewhere in the protocol. SWG-I discussed removing bracketed references to adverse effects "due to genetic modification" of LMOs and information provided by the [importer] [exporter]. On Article 13 delegates added "global" to text regarding phasing out LMOs with "global" adverse effects, but the entire paragraph remained bracketed. One delegate said the paragraphs on phase out belonged in an annex. Others supported moving them to Article 1 *bis* (General Obligations). Delegates differed over whether the paragraph calling for Parties of import and export to collaborate if the Party of import lacks financial and technical capacity belonged in Article 13 or 21 (Capacity-building). Co-Chair Wint suggested that the drafting group review the text's objective and redraft it.

On **Article 14**, one delegate noted SWG-I's agreement to transfer the text to Article 1 *bis*, but also noted that recommendations for that article were becoming very specific. Another said the article should not be deleted until Article 1 *bis* was resolved.

During an evening meeting, CG-I presented amended working definitions on LMO, living organism and modern biotechnology. Within the modern biotechnology definition brackets were removed from nucleic acid techniques; CG-I agreed these techniques include



recombinant nucleic acid techniques and *in vitro* direct injection of nucleic acid into cells and organelles. Cell fusion techniques, previously addressed in a footnote, was moved to the definition, but remains bracketed and will be resolved at BSWG-6. CG-I presented their work on Annex I.

SWG-I also reviewed Articles 4, 5, 6 and 7 during their evening meeting.

### **SUB-WORKING GROUP II**

On CRP.1 on **Article 17** (Handling, Transport, Packaging [and Labeling]) a few developed countries suggested having no provision as the subject areas were covered elsewhere. Some suggested excluding labeling from the article's purview as customs procedures are mere paper exercises and labeling of LMOs would not ensure safety. Most delegates differed on the scope of the article, with a few supporting provisions on handling, transport, packaging and labeling only for LMOs subject to AIA procedures and others for all LMOs. Most countries supported deleting reference to trade: developing countries said it was inappropriate to deal with trade in a safety-related protocol and developed countries said the reference was irrelevant in that context. Most developing countries supported retaining the reference to human health. Delegates differed on the provision to have the COP consider the need for and modalities of developing standards. Some supported creating standards under the protocol and others taking into account international guidelines and institutions. Co-Chair Herity expressed displeasure with delegates' backward trend in negotiating the article. The article will be considered by Plenary on Friday.

In discussing CRP.8 on **Article 15/16** (Unintentional Transboundary Movements and Emergency Measures) several delegates requested removing brackets from language stating that Parties shall take appropriate measures to prevent unintentional transboundary movements. Others supported retaining brackets or moving the paragraph to Article 13 (Risk Management). Most delegates supported deleting language on protecting confidentiality of information citing coverage under Article 20 (Confidential Information) or its irrelevance to the protocol. Countries inserted "point of contact" for receiving emergency notifications to distinguish these actors from focal points/competent authorities who may not always be available or have the appropriate expertise. One delegate called for terminology consistent with CBD text on minimizing "imminent or grave damage or danger."

Delegates also discussed revised text on Parties taking action after learning of an unintentional movement. One delegate expressed concern that language on national jurisdictions would not cover all relevant Parties involved and proposed using "Parties concerned." One country suggested simplifying text from "is likely" and "leads to or presents significant likelihood" to "may." Several delegates objected, noting that this would lower the standard regarding unintentional movements below those set in Article 14 (Minimum National Standards), Principle 18 of the Rio Declaration and other pollution-related agreements. The article will be forwarded to Friday's Plenary.

In considering the Co-Chairs' draft text on **Article 1 bis** (General Obligations), some developed countries supported deleting provisions related to the involvement of interested organizations, creation of national strategies, AIA and transport, handling, use, transfer and release of LMOs, stating these were covered elsewhere in the protocol. Some developing countries supported retaining the provisions on AIA and handling/transfer of LMOs. A few delegates supported substituting the provision permitting Parties to "impose more stringent

requirements" with a provision "not restricting the right of Parties to take action that is more protective of the environment." Most developed countries supported deleting reference to "measures to prevent and punish conduct in contravention of the protocol," as it was a matter of domestic legislation. A few developing countries suggested referencing the precautionary principle and retaining references to human health and "products thereof." Delegates also considered including elements from Articles 4 (Notification), 13 (Risk Management) and all of 14 (Minimum National Standards), at the request of SWG-I. Most speakers did not support their inclusion as the suggested articles were too specific.

In consolidating CRP.5 on **Article 20** (Confidential Information) developed country speakers agreed to remove some brackets. Several developing countries stressed that, for a workable and transparent protocol, the whole article should be deleted. One underscored that the issue was sufficiently covered by other international agreements and regimes. Another stated it was irrelevant to biosafety, claiming the protocol was not a trade protocol.

An informal group met on **Article 27** (Liability and Redress) to exchange views on available options, and continued discussions into the night.

### **CONTACT GROUP I**

CG-I reviewed Annex I (Information Required in Notifications) and the definition of modern biotechnology during the morning. Among the CG-I additions to Annex I were calls for information on the taxonomic status, point of collection or acquisition and characteristics of donor organism(s) and the result of any related notification to other Governments. Discussion on the definition of modern technology included whether it covered the fusion of cells of organisms that do not exchange genetic material naturally or by traditional breeding techniques. During the afternoon, CG-I discussed which Annex II (Risk-Assessment Factors) proposal would form the basis for discussion and the objectives of risk assessment. Delegates worked into the night.

### **CONTACT GROUP II**

CG-II discussed a revised text on Article 28 (Financial Mechanism and Resources).

### **IN THE CORRIDORS**

Former U.S. President Jimmy Carter's *New York Times* article created quite a stir among delegates. Many were unhappy with the disparaging characterization of the BSWG as an "ad hoc team" negotiating the protocol "with no supporting data." Given its deliberate placement and timing, some wondered what the larger fall-out of this pro-biotrade position would be in national capitals. One participant felt the portrayal would not help one non-Party's position relative to the CBD both domestically and internationally. Another was heard to say that Jimmy may have just wanted to grow his peanuts to the size of tennis balls.

## **THINGS TO LOOK FOR**

**SUB-WORKING GROUPS:** SWG-I is expected to meet at 10:00 am. SWG-II is expected to meet at 10:00 am to discuss Articles 23, 24, 34, 21, 1, 25 and 26.

**CONTACT GROUPS:** Check the schedule for CG meeting times.