



## SECOND MEETING OF THE INTERGOVERNMENTAL COMMITTEE FOR THE CARTAGENA PROTOCOL ON BIOSAFETY: 1-5 OCTOBER 2001

The second meeting of the Intergovernmental Committee for the Cartagena Protocol on Biosafety (ICCP) to the Convention on Biological Diversity (CBD) was held at UNEP headquarters in Nairobi, Kenya, from 1-5 October 2001. Approximately 350 participants from 117 countries and 47 intergovernmental, non-governmental and industry organizations attended.

Delegates met in Plenary and two working groups to discuss agenda items from ICCP-1 as well as a number of new issues. Working Group I (WG-I) addressed: information sharing; handling, transport, packaging and identification; monitoring and reporting; and consideration of other issues necessary for the Protocol's implementation. Working Group II (WG-II) addressed: capacity building; the roster of experts; guidance to the financial mechanism; decision-making procedures; liability and redress; and compliance. The Plenary addressed: the Secretariat, Rules of Procedure; the agenda of the first Conference of the Parties (COP) serving as the Meeting of the Parties (MOP-1); cooperation with the International Plant Protection Convention (IPPC) under other matters; and preparatory work for MOP-1.

Delegates expressed their satisfaction with progress made during the meeting, while noting its predominant focus on process over substance. ICCP-2 highlighted continued concerns regarding capacity building and information sharing as essential elements for the Protocol's ratification and implementation at the national level. Discussions on the documentation of living modified organisms for food, feed or processing (LMO-FFPs), liability and redress, and compliance underscored tensions dating back to the negotiation of the Protocol, while focusing on the exact nature of future processes to address them.

ICCP-2 developed recommendations on its agenda items, which will be forwarded to MOP-1 for consideration. In the event that the 50th instrument of ratification is not deposited by 8 January 2002,

delegates proposed that a third ICCP meeting be convened to maintain momentum on preparations for the Protocol's effective implementation at the time of its entry into force.

### A BRIEF HISTORY OF THE PROCESS

The CBD, negotiated under UNEP's auspices, was adopted on 22 May 1992, and entered into force on 29 December 1993. There are currently 181 Parties to the Convention. Article 19.3 of the CBD provides for Parties to consider the need for and modalities of a protocol setting out procedures in the field of the safe transfer, handling and use of living modified organisms (LMOs) that may have an adverse effect on biodiversity and its components.

The Cartagena Protocol on Biosafety addresses the safe transfer, handling and use of LMOs that may have an adverse effect on biodiversity, taking into account human health, with a specific focus on transboundary movements. The Protocol establishes an advance informed agreement (AIA) procedure for imports of LMOs for intentional introduction into the environment. It also incorporates the precautionary principle and mechanisms for risk assessment and risk management. The Protocol further establishes a Biosafety Clearing-House (BCH) to facilitate information exchange, and contains provisions on capacity building and financial resources with special atten-

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tion to developing countries and those without domestic regulatory systems. Currently, the Protocol has 103 signatories with six States having ratified or acceded to the Protocol (Bulgaria, Fiji, Norway, St. Kitts and Nevis, Trinidad and Tobago, and Lesotho [which ratified the Protocol during ICCP-2]).

**COP-1:** The first Conference of the Parties to the CBD (28 November - 9 December 1994; Nassau, the Bahamas) established an Open-ended *Ad Hoc* Group of Experts on Biosafety, which met in Madrid from 24-28 July 1995. Most experts favored the development of an international framework on biosafety under the CBD, and the meeting developed lists of elements receiving unanimous and partial support.

**COP-2:** At COP-2 (6-17 November 1995; Jakarta, Indonesia), delegates considered the need for and modalities of a protocol. Amidst debate over the Protocol's scope, the COP adopted compromise language (Decision II/5) calling for "a negotiation process to develop in the field of the safe transfer, handling and use of living modified organisms, a protocol on biosafety, specifically focusing on trans-boundary movement of any LMO that may have an adverse effect on biological diversity." COP-2 established an Open-ended *Ad Hoc* Working Group on Biosafety (BSWG) to elaborate the Protocol based on elements from the Madrid report.

**BIOSAFETY WORKING GROUP:** The BSWG met six times between 1996 and 1999, under the chairmanship of Veit Koester (Denmark). Delegates used the first two meetings to define issues and terms and to articulate positions. By the third meeting, in October 1997, delegates had produced a consolidated draft text to serve as the basis for negotiation, established two sub-working groups to address the core articles of the Protocol and also formed a contact group on institutional matters and final clauses. The fourth and fifth meetings focused on reducing and refining options for each article of the draft Protocol. Among the topics that proved to be the most difficult to resolve were non-discrimination, socio-economic considerations, liability and compensation, the precautionary approach/principle and inclusion of products of LMOs or commodities. The final meeting of the BSWG (14-22 February 1999; Cartagena, Colombia) was intended to finalize negotiations on the Protocol for submission to the first Extraordinary Meeting of the Conference of the Parties (ExCOP) immediately following BSWG-6. Despite intense negotiations, delegates were not able to finalize the Protocol, disagreeing primarily over its scope, trade-related issues and treatment of commodities (LMO-FFPs).

**EXCOP:** The first ExCOP (22-23 February 1999; Cartagena, Colombia) immediately followed BSWG-6, under the guidance of ExCOP President Juan Mayr, Minister of Environment of Colombia. It sought to develop a compromise package over two days of non-stop negotiations. Unable to do so, the ExCOP adopted a decision to suspend the meeting, which would be resumed based on further consultations. Outstanding issues included: inclusion of commodities within the Protocol's scope; the Protocol's relation to other agreements, most especially those related to trade; the application of the AIA procedure, particularly with regard to the precautionary principle; and requirements for documentation and identification.

**INFORMAL CONSULTATIONS:** Three sets of informal consultations under ExCOP President Mayr's chairmanship were held to facilitate discussions on key outstanding issues. At the first informal consultation (1 July 1999; Montreal, Canada), President Mayr met with spokespersons from the major negotiating groups: the Central and Eastern European countries (CEE), the Compromise Group (Japan, Mexico, Norway, South Korea and Switzerland), the European Union, the Like-Minded Group (the majority of developing countries) and the Miami Group (Argentina, Australia, Canada, Chile, the United States and Uruguay). The groups expressed their political will to finalize negotiations and agreed to hold another set of informal consultations prior to resuming the ExCOP.

The second set of informal consultations (15-19 September 1999; Vienna, Austria) included two days for consultations within negotiating groups, one day for informal exchanges among groups, and two more days for formal discussions among groups. During these final two days, negotiating groups addressed: commodities; the Protocol's relationship with other international agreements; the Protocol's scope; and application of the AIA procedure. Negotiating groups agreed on a basic set of concepts for commodities and relations with other international agreements, while acknowledging that central differences on those and other issues remained.

The third set of informal consultations (20-23 January 2000; Montreal, Canada) was held immediately prior to the resumed ExCOP. The first two days of the meeting were devoted to consultations within negotiating groups, and during the second two days delegates continued discussions based on the results of the Vienna Informals. These discussions fed directly into negotiations under the resumed ExCOP.

**RESUMED EXCOP:** The ExCOP resumed a year later (24-28 January 2000; Montreal, Canada), and following nine days of intensive negotiations, including the informal consultations, delegates adopted the Cartagena Protocol on Biosafety in the early morning hours of 29 January 2000. Key areas of debate included the Protocol's scope, the Protocol's relationship with other international agreements, the precautionary principle, an alternative AIA procedure and documentation for shipments of LMO-FFPs.

The ExCOP also established the ICCP, under the chairmanship of Amb. Philémon Yang (Cameroon), and advisement of an ICCP Bureau, to undertake preparations for MOP-1. The ExCOP also requested the CBD Executive Secretary to start preparatory work on the development of a BCH, and established a regionally balanced roster of experts to be nominated by governments to provide advice and support upon request.

**COP-5:** At COP-5 (15-26 May 2000; Nairobi, Kenya), a high-level segment on the Protocol was held, which included a Ministerial Roundtable on capacity building to facilitate implementation. During a special ceremony, 67 countries and the European Community signed the Protocol. COP-5 also considered and adopted a work plan for the ICCP's first two meetings.

**ICCP-1:** The first meeting of the Intergovernmental Committee (11-15 December 2000; Montpellier, France) discussed: information sharing and the BCH; capacity building; the roster of experts; decision-making procedures; handling, transport, packaging and identification; and compliance. The meeting reflected a congenial



“Montpellier Spirit” as a positive force in building confidence and political momentum, while also highlighting the significant issues of developing countries’ capacity to implement the Protocol and means to make the BCH operational and accessible. ICCP-1 concluded with recommendations for intersessional activities and synthesis reports for each substantive item to be further considered by ICCP-2.

**MEETING OF TECHNICAL EXPERTS ON HANDLING, PACKAGING, TRANSPORT AND IDENTIFICATION:** This experts’ meeting (13-15 June 2001; Paris, France) considered the needs and modalities for developing measures for documentation accompanying LMOs, including those destined for contained use and for intentional introduction into the environment. Experts also reviewed national and international practices, rules and standards relevant to handling, transport, packaging and identification, and recommended three options for such practices under the Protocol: use of existing documentation practices supplied by the originator of the shipment; use of existing international documentation systems; and development of a new documentation mechanism tailored on existing systems. The meeting’s recommendations were considered at ICCP-2.

**OPEN-ENDED MEETING OF EXPERTS ON CAPACITY BUILDING:** This experts’ meeting (11-13 July 2001; Havana, Cuba) reviewed ongoing capacity-building initiatives for the Protocol’s implementation and information received by the CBD Secretariat regarding a questionnaire on capacity building. Experts also discussed requirements for priority capacity-building issues as well as approaches, options and strategies to address such issues. The meeting developed a draft “Action Plan for Building Capacities for the Effective Implementation of the Protocol,” for consideration by ICCP-2. A one-day workshop, co-hosted by UNEP and the Global Environment Facility (GEF), was held immediately following the expert meeting to address financing the development and implementation of national biosafety frameworks.

**OPEN-ENDED MEETING OF EXPERTS ON COMPLIANCE:** This experts’ meeting (26-28 September 2001; Nairobi, Kenya) addressed potential elements, options, draft procedures and mechanisms, as well as a synthesis of governments’ views regarding a compliance regime under the Protocol. The meeting’s recommendations were forwarded to ICCP-2 for further consideration.

**LIAISON GROUP OF TECHNICAL EXPERTS ON THE BIOSAFETY CLEARING-HOUSE:** The liaison group met twice (19-20 March 2001; Montreal, Canada; and 27-28 September 2001; Nairobi, Kenya) to continue its work on providing expertise to facilitate the implementation of the BCH’s pilot phase.

**REGIONAL MEETINGS:** Regional meetings were convened for Africa (26-28 February 2001; Nairobi, Kenya) and Latin America and the Caribbean (4-7 September 2001; Lima, Peru), to address topics of capacity building, the BCH and the CBD’s Clearing-House Mechanism.

## ICCP-2 REPORT

ICCP Chair Amb. Philémon Yang (Cameroon) welcomed participants and noted significant progress made in developing key elements of the BCH’s pilot phase, capacity building and a compliance regime. He highlighted areas requiring further development, including liability and redress, monitoring and reporting and the financial mechanism, and stressed that clearly defined elements would provide incentive for ratification.

Noah Katana Ngala, Minister of Environment of the Republic of Kenya, emphasized the Protocol’s importance in an age of biotechnology that raises concerns for biosafety in managing organisms and minimizing possible risks to human health and the environment. He discussed efforts to produce national guidelines and harmonize regional efforts and called for continued cooperation in capacity building and bringing the Protocol into force.

Jorge Illueca, Assistant Deputy Director of UNEP, on behalf of UNEP Executive Director Klaus Töpfer, highlighted intersessional activities held in Cuba in July 2001, focusing on capacity building and support for developing national biosafety frameworks. He noted the need for national regulatory and institutional frameworks, as well as timely financial and technical support to enable them.

Hamdallah Zedan, CBD Executive Secretary, expressed his appreciation to UNEP and Kenya for hosting ICCP-2, to Denmark, Italy, Japan, the Netherlands, New Zealand, Norway, the Republic of Korea, Sweden and Switzerland for supporting developing country participation, as well as to Canada, Cuba, France, Peru, the United Kingdom and the US for supporting intersessional activities. He expressed hope that ICCP-1’s “Montpellier Spirit” would continue and that ratification processes would be accelerated.

Regional statements were made by Belgium, on behalf of the European Community and its Member States (EU); Mexico, on behalf of the Group of Latin American and Caribbean Countries (GRULAC); Ethiopia, on behalf of the African Group; and India, on behalf of the Asian Group. Delegates underscored, *inter alia*, their commitment to ratify the Protocol in due time to ensure its entry into force by April 2002. The Global Industry Coalition noted the benefits of appropriate application of biotechnology. Citing a recent example of genetic pollution of a Mexican center of origin for maize, an NGO representative called for a liability regime and a precise definition of LMO-FFPs.

Chair Yang then introduced the agenda of the meeting (UNEP/CBD/ICCP/2/1), and noted the revised organization of work (UNEP/CBD/ICCP/2/1/Add.2), which was adopted without comment. The Plenary agreed that François Pythoud (Switzerland) and Mohammad Reza Salamat (Islamic Republic of Iran) would continue chairing Working Groups I and II (WG-I and WG-II), respectively. Antonietta Gutiérrez Rosati (Peru) would continue serving as the meeting’s Rapporteur.

The CBD Secretariat introduced the report on intersessional work (UNEP/CBD/ICCP/2/2). The Plenary then briefly addressed agenda items forwarded from ICCP-1 (information sharing; capacity building; handling, transport, packaging and identification; and compliance) and new items on ICCP-2’s agenda (liability and redress; monitoring and



reporting; Secretariat; guidance to the financial mechanism; rules of procedure; and consideration of other issues necessary for the Protocol's implementation).

The working groups met from 2-4 October. WG-I addressed: information sharing; handling, transport, packaging and identification; monitoring and reporting; and consideration of other issues necessary for the Protocol's implementation. During discussions on handling, transport, packaging and identification, WG-I formed a contact group on Article 18.2(a), which met over the course of 3-4 October. WG-II addressed: capacity building; the roster of experts; guidance to the financial mechanism; decision-making procedures; liability and redress; and compliance. WG-II also formed a contact group on capacity building, the roster of experts and guidance to the financial mechanism, which met over the course of 2-4 October. Additionally, Chair Yang convened a group to discuss the Secretariat and budget, and directed Veit Koester (Denmark) to conduct informal consultations on the MOP's Rules of Procedure. A brief Plenary was also convened on the afternoon of Wednesday, 3 October, to review the working groups' progress.

For each substantive item, the working groups developed a recommendation, in some cases with annexes forwarding reports from intersessional meetings, to be attached to the final report of ICCP-2 for further consideration by MOP-1. A final Plenary met on Friday, 5 October, to adopt the working groups' reports, consider preparations for either ICCP-3 or MOP-1 and address additional matters.

The following summary reviews the agenda items according to their order of discussion in the working groups and Plenary. It outlines the general deliberations on each item and provides brief summaries of adopted recommendations to be considered by MOP-1.

### WORKING GROUP I

**INFORMATION SHARING:** This agenda item under Article 20 of the Protocol addressed the development and implementation of the pilot phase of the BCH. During the opening Plenary on Monday, 1 October, WG-I Chair Pythoud presented two background documents: a progress report (UNEP/CBD/ICCP/2/9), and a technical review (UNEP/CBD/ICCP/2/9/Add.1). He also drew delegates' attention to the two meetings of the Liaison Group of Technical Experts on the BCH prior to ICCP-2 and their outcome.

During discussions in WG-I on Tuesday, 2 October, many delegates expressed general satisfaction with progress made during the technical review of the BCH's pilot phase. Developing countries stressed the need for capacity building, including supply of hardware and software, financing, training and public awareness. The US urged developing countries to use the BCH tool-kit to assess capacities and prioritize needs. India requested a CD-ROM version of the BCH to be distributed to Parties. Reflecting recent regional meetings on the pilot phase, there was strong support for needs assessments and regional and sub-regional information-sharing activities from GRULAC countries. Latvia, on behalf of the CEE, praised the regional website for biosafety information sharing.

The EU, Japan and the Republic of Korea highlighted progress made and future steps to be taken in areas of interoperability, common formatting, mechanisms for comparison of information among countries, review and rules of procedure for access and the roster of experts.

Swaziland indicated that the BCH could be used as a legitimate source of information for decision making for the CBD's COP and Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA). Regarding languages, China, Egypt and Mali requested inclusion of all UN languages and attention to the working method. The World Health Organization described its joint efforts with the FAO in conducting experts' consultations on food safety assessment.

A Chair's text summarizing discussions was distributed on Wednesday, 3 October, and delegates offered comments and suggestions for a draft recommendation. Following questions on the nature of the proposed annex on technical issues associated with the BCH, Chair Pythoud noted that the annex contained recommendations from the Liaison Group meetings and did not duplicate those offered by ICCP-1. There were also requests for clarification on the meaning of national focal points' responsibility for "validation" of information registered on the BCH, and the group agreed to Canada's proposal to replace this term with "approval." Argentina, on behalf of GRULAC, stressed including reference to the need for special financing for all developing countries. The EU, with Norway, proposed new language: recognizing that the guiding principles for the pilot phase's development should be user-friendliness, searchability, and maximum accessibility; recognizing the need to continue development of common formats for restoring information; and requesting the Secretariat to pursue existing cooperation with international, regional and sub-regional organizations, regarding decision procedures and use of a unique identification system.

On Thursday, 4 October, WG-I reviewed a draft recommendation (UNEP/CBD/ICCP/2/WG-I/L.3). Noting that the contact group on Article 18.2(a) had proposed that language on OECD databases would be better placed in this text, delegates agreed to a new paragraph inviting international organizations to: make available to the Secretariat harmonized unique identification systems in relation to LMO databases; and facilitate inclusion of relevant information on LMOs, including information from countries that are not members of such organizations, in their own databases or in the BCH's pilot phase. India opposed language stating that provision of BCH pilot phase CD-ROMs should be subject to the availability of necessary financial resources, and asked that this be noted. With these additions, WG-I agreed on the recommendation and on Friday, 5 October, the final Plenary adopted the recommendation without comment.

**Recommendation:** The recommendation (UNEP/CBD/ICCP/2/L.5) notes the success of the BCH pilot phase, recognizes that it is an ongoing activity and recalls that it should be, *inter alia*, user-friendly, searchable, understandable and open to all governments. It:

- proposes that development be undertaken in accordance with the second note from the Bureau on technical issues associated with the implementation of the pilot phase, as contained in the annex;
- urges governments to nominate a national focal point responsible for approving information registered on the BCH;
- recommends that governments use the tool-kit in undertaking national assessments of capacity-building needs;
- urges the provision of financial assistance to developing countries, countries with economies in transition and countries that are centers of origin or diversity to enable them to access and use the BCH;



- requests distribution of CD-ROM versions subject to available financial resources;
- requests that the BCH facilitate access to the roster of experts; and
- recommends an independent and transparent review of the pilot phase prior to CBD COP-6.

The annex on technical issues includes instructions and guidance related to:

- development of the central portal, management center, central database and related links;
- linkage to national, regional and international databases or nodes;
- common formats for registering information on the BCH;
- development of the tool-kit;
- cooperation with other international organizations;
- alternatives to an Internet-based information-sharing system;
- access to the roster of experts;
- identifying and addressing capacity needs;
- languages; and
- monitoring and review.

**HANDLING, TRANSPORT, PACKAGING AND IDENTIFICATION:** On Monday, 1 October, the Plenary heard general discussion on handling, transport, packaging and identification (Article 18), based on the background note (UNEP/CBD/ICCP/2/12). France and Canada introduced the report on the Meeting of Technical Experts on Handling, Transport, Packaging and Identification of LMOs (UNEP/CBD/ICCP/2/12/Corr.1; 13-15 June 2001; Paris, France). The meeting addressed options to help countries fulfill obligations for documentation utilizing existing systems or elaborating a new one.

On Tuesday, 2 October, during WG-I discussion on Article 18.2(a), on identification of LMO-FFPs and its requirements, many called for clarification of a standardized method of identification for LMO-FFPs and stressed thorough and exact labeling. India called for a standardized position on labeling both dominant and recessive genes. Canada noted that obligations and requirements to governments and the private sector should be examined. Indonesia, Malaysia and Norway said that Article 18.2(a) should not be treated differently than Articles 18.2(b) on contained use, and Article 18.2(c) on intentional introduction into the environment, while the US differentiated Article 18.2(a). The Republic of Korea noted that LMO-FFPs need special handling for storage and processing to prevent release into the environment. Norway stressed that the notion of “may contain” is not enough and that there is need for a unique identification system. Iran proposed, and many supported, that a contact group be established to prepare recommendations.

On Wednesday, 3 October, a contact group on Article 18.2(a), chaired by Eric Schoonejans (France), was formed to identify elements that need to be addressed in a timely manner and the modalities for a process for discussion by MOP-1. The group identified two elements to be addressed in a timely manner: “may contain” and “unique identification.” A regional group noted that the two sentences in Article 18.2(a) containing these elements could not be disassociated with each other. On the modalities, many supported requesting the Secretariat to prepare a synthesis report of views and information provided by governments. Others supported a technical experts’ meeting, and debated: whether it should be open-ended; if it should address LMO-FFPs in relation to their contained use and intentional release; and

availability of financial resources. Many agreed that it should be regionally balanced, transparent, and include a wide range of relevant expertise.

In the evening, the contact group discussed elements for a draft recommendation. Delegates agreed on language on submission of views and information by countries and relevant organizations, and the preparation of a synthesis report by the Secretariat. Regarding the technical experts’ meeting, delegates debated whether the group should consider only the element “may contain” or both “may contain” and “unique identification.” Delegates agreed on convening the meeting back-to-back with the experts’ meeting on Article 18.2(b) and (c).

On Thursday, 4 October, the contact group met briefly in the morning and discussed the revised elements for a draft recommendation on the modalities for a process for discussion on Article 18.2(a). Regarding a recommendation on convening a meeting of technical experts, delegates debated items for consideration in that meeting. Two countries, preferring that elements on “may contain” be resolved prior to work on “unique identification,” made reservations on a provision stating that the experts’ meeting would address both. The contact group Chair decided to pass the draft recommendation on to WG-I with those reservations.

During WG-I discussion, Chair Pythoud introduced a merged draft recommendation for Articles 18.2(a), (b), and (c) (UNEP/CBD/ICCP/2/CRP.2). With regard to Article 18.2(a), based on informal consultations, the contact group Chair proposed: adding a new paragraph on financial support to developing countries for the implementation of Article 18.2(a); integrating the recommendation on the OECD’s identification system with recommendations on BCH; and inclusion of several textual changes to the items for consideration by the technical experts’ meeting.

Delegates agreed on the second proposal. Some opposed the first proposal on financial support, noting it may be covered under the recommendation on capacity building. The Secretariat advised that such a request should be directed to either the financial mechanism or other Parties. With regard to items for consideration from the technical experts’ meeting, many delegates underscored that both elements of Article 18.2(a) should be considered. Delegates could not agree on the amended text, and Chair Pythoud requested the contact group Chair to continue informal consultations.

Later in the day, the contact group Chair reported back to WG-I with results of informal consultations, noting the addition of a new element to the work of the experts’ group meeting, on using information provided in the Secretariat’s synthesis report of governments’ views on implementation of Article 18.2(a). Delegates could not agree on the new amendment, and at Chair Pythoud’s recommendation, agreed to use the original text discussed in the morning’s contact group meeting as a draft recommendation, on which two countries made reservations. Delegates also agreed to add a chapeau to the draft recommendation requesting the Protocol’s financial mechanism to consider provision of financial resources to developing countries for the implementation of Article 18.2(a).

Regarding Article 18.2(b) and (c), WG-I discussed documentation options on Tuesday, 2 October. Most supported use of existing documentation systems while developing a new international system to meet the provision’s requirements. The EU noted that an eventual new



system could identify and bridge gaps in current systems. Jamaica and Norway emphasized the importance of unique scientific identification in all cases to ensure accurate claims. Japan stated that documentation should be simple, uniform and contain all necessary information to make decisions. Many expressed preference for the option of using an accompanying document provided by the originator and/or required by existing international documentation systems.

On Thursday, 4 October, WG-I debated what model the Executive Secretary should prepare for consideration by the technical experts' meeting. Delegates agreed to replace "model documentation" with "model template" and to keep two options for documentation: tailored on existing systems; or integrated in existing international documentation. Delegates also agreed to add a chapeau requesting the Protocol's financial mechanism to consider provision of financial support to developing countries for the implementation of Article 18.2(b) and (c).

On Friday, 5 October, during the final Plenary, Australia and the US expressed their willingness to make efforts to withdraw their reservations on the draft recommendation. Chair Yang preferred to proceed without further consultation and the draft recommendation on Article 18.2(a), (b), and (c) was adopted in its present form.

**Recommendation:** On Article 18.2(a), the recommendation (UNEP/CBD/ICCP/2/L.9) requests the Executive Secretary to convene a meeting of technical experts to consider the modalities of the implementation of the requirements contained in the first sentence of Article 18.2(a) ("may contain") prior to the Protocol's entry into force, and the identification of issues to be addressed beyond entry into force, in preparation for the decision referred to in Article 18.2(a). The meeting should report its recommendations to MOP-I.

The recommendation also requests countries and international organizations to provide views and relevant information to the Executive Secretary on implementation of Article 18.2(a), and requests the Executive Secretary to prepare a synthesis report.

On Article 18.2(b) and (c), the recommendation invites several international organizations to provide advice on their ability to assist Parties to meet the requirements of Article 18. It requests the Executive Secretary to convene a meeting of technical experts to consider documentation accompanying LMOs destined for contained use and intended for intentional introduction into the environment, and linkages to Article 18.3. It further requests the Executive Secretary to develop a model template that could be used as a stand-alone template tailored on existing systems, or be integrated into existing international documentation, to be considered as a basis for discussion by the technical experts' meeting.

**MONITORING AND REPORTING:** On Monday, 1 October, during the opening Plenary, Chair Yang introduced document UNEP/CBD/ICCP/2/4, related to Article 33. Ethiopia, on behalf of the G-77/China, stressed that the issue is essential to the Protocol's implementation and closely linked to capacity building. The EU recommended that the first national report be submitted as soon as possible after the Protocol's entry into force. Norway said that the first national report should be made available no later than MOP-2 and its format should integrate the outcome of MOP-1. Australia agreed to the reporting periodicity proposed in the document and said that the reporting format should be simple and comprehensive.

On Tuesday, 2 October, in WG-1, Lesotho, on behalf of the African Group, stressed that the reporting format's simplicity should not compromise quality. Argentina called for funding to developing countries for reporting and India requested training. Australia and the US noted that the reporting format needs to be improved. The EU encouraged governments to provide written comments on the format. China noted that reports should not be used to compare implementation work of Parties.

On Wednesday, 3 October, Jamaica and Latvia, on behalf of the CEE, requested adding reference to countries with economies in transition and SIDS respectively. The EU suggested roles for the compliance committee and roster of experts, but Australia and Canada disagreed. The EU proposed that reporting intervals and format should be kept under review and Canada suggested that it be every four years, with an interim report in the second year following the Protocol's entry into force.

On Thursday, 4 October, WG-I Chair presented draft recommendation UNEP/CBD/ICCP/2/WG-I/L.2, which was accepted without amendment. On Friday, 5 October, the Plenary adopted the recommendation.

**Recommendation:** The final text (UNEP/CBD/ICCP/2/L.3) supports the general format contained in UNEP/CBD/ICCP/2/4, and invites governments to provide written comments on the draft format for its further development. It recommends that MOP-1 establish guidelines for the reports under Article 33, and that Parties submit their reports every four years in one of the official UN languages in both hard copy and electronic format. It further recommends that reports be submitted 12 months prior to the MOP and that the intervals and formats be kept under review.

**CONSIDERATION OF OTHER ISSUES:** Under this agenda item, delegates addressed other issues necessary for the Protocol's effective implementation. During the opening Plenary on Monday, 1 October, Chair Yang introduced document UNEP/CBD/ICCP/2/7, which, *inter alia*, provides draft elements of a recommendation on the establishment of a medium-term programme of work.

During initial discussions on the recommended elements, the EU highlighted issues of identification systems, risk management and assessment, mutual support with other bodies to ensure cooperation, non-Parties, basic institutional structures, regional partners and networks, public awareness and participation, and socio-economic considerations. Ethiopia, on behalf of the G-77/China, requested that States act in harmony with the Protocol before its entry into force, as shipments containing LMOs are sent to developing countries. Japan, with New Zealand, stressed the need to clarify distinctions between LMOs for contained use and for introduction into the environment, to ensure compliance and avoid future trade disputes. Delegates also highlighted: the nature and extent of responsibilities of exporting Parties as to notification; guidance on monitoring and reporting; and cooperation between activities of the Protocol and work of the Interim Committee on Phytosanitary Measures (ICPM) of the IPPC.

In a brief discussion on Tuesday, 2 October, Canada and Japan suggested providing specific guidance, including examples, for implementation and classification. Australia noted the need to meet national standards and supported an opportunity for the ICPP to review and provide input into the CBD strategic plan. A Chair's text



was drafted and reviewed by WG-I on Thursday, 4 October. Regarding language inviting governments to submit comments on issues requiring guidance and clarification during the Protocol's ratification and implementation, Canada proposed alternate text on "possible mechanisms to consider issues, exchange views and, as appropriate, provide guidance." The US suggested deleting the list of possible issues requiring guidance and clarification, which included: categorization of LMOs; risk assessment and risk management; establishment of harmonized rules for unique identification systems; and transboundary movements between Parties and non-Parties. Jamaica said the issues could be listed "*inter alia*." Australia preferred deleting the entire paragraph as it might allow for the renegotiation of the Protocol's definitions and text. Chair Pythoud asked that a small informal group seek resolution.

On criteria for views on items to be included in a medium-term programme for the MOP, Australia preferred that such views be submitted three months prior MOP-1 rather than by 15 January 2002. The US called for clarification of a provision on guidance for socio-economic impacts of LMOs, and, with others, suggested bringing this reference and another on promoting public awareness and participation in line with Protocol language. Disagreement arose over both references, with Australia and Brazil calling for their deletion and many others supporting their inclusion.

In the afternoon, following informal discussions, delegates considered a revised version of the text in the form of a draft recommendation (UNEP/CBD/ICCP/1/WG.I/CRP.1). No agreement had been reached on the list of issues requiring guidance and clarification. Australia and the US held their position, preferring deletion of the list, while many others supported its retention. Following debate over various formulations to qualify its inclusion, Chair Pythoud proposed, and the US accepted while Australia still opposed, language stating that the issues were "referred to in the meeting as examples of what might be addressed by such mechanisms." After additional debate yielding no agreement, the list was left bracketed and the remainder of the recommendation was agreed.

On Friday, 5 October, during the final Plenary, Australia, Canada, Japan and the US all expressed their willingness to work toward finding a solution that would allow the brackets to be removed from the list. Chair Yang preferred to adopt the recommendation with the brackets included.

**Recommendation:** The recommendation (UNEP/CBD/ICCP/2/L.7) invites governments to submit comments to the Executive Secretary by 15 January 2002, on mechanisms to promote consideration of issues, exchange views and, as appropriate, provide guidance on issues requiring clarification, arising during ratification and implementation of the Protocol, for inclusion in a synthesis report. The issues that might be addressed – categorization of LMOs, risk assessment and management, establishment of harmonized rules for unique identification systems, and transboundary movements with non-Parties – remain bracketed. The recommendation also requests that countries' views be provided to the Executive Secretary three months prior to MOP-1 on a medium-term programme of work, that will, address, *inter alia*:

- issues stipulated by the Protocol for consideration by MOP-1;
- issues that need to be addressed by specific times after the Protocol's entry into force, including documentation require-

ments for LMO-FFPs, rules and procedures for liability and redress and evaluation of the Protocol's effectiveness; and

- other issues for consideration, including cooperation with other relevant organizations, facilitation of public awareness and education on risks of LMOs and research on their socio-economic impacts.

Additionally, the recommendation also: urges the submission and designation of national focal points and competent national authorities; invites submission of instruments of ratification; and invites input to the development of the CBD's strategic plan, especially on draft elements relating to the Protocol.

## WORKING GROUP II

**CAPACITY BUILDING:** Regarding Article 22 of the Protocol, on Monday, 1 October, Plenary heard reviews of: the Open-ended Expert Meeting on Capacity Building (11-13 July 2001; Havana, Cuba); the International Workshop on Financial Support for National Biosafety Frameworks (14 July 2001; Havana, Cuba); and regional workshops. The Consultative Group on International Agricultural Research (CGIAR) and the Edmonds Institute highlighted research efforts to address biosafety. Norway, followed by many, highlighted the need for assistance in the ratification process.

On Tuesday, 2 October, the Secretariat introduced UNEP/CBD/ICCP/2/10. The document includes the report of the Open-ended Expert Meeting on Capacity Building, with its Draft Action Plan for Building Capacities, an Implementation Tool-kit and a suggested Sequence of Actions.

WG-II debated on the basis of the Draft Action Plan. The EU, supported by many, stressed the need for coordination among all relevant entities, as well as for identifying synergies among different initiatives. Namibia, on behalf of the African Group, and others, suggested flexibility according to each country's needs. Countries also stressed: GEF support for regional initiatives and training workshops; effective border control systems; national and regional needs; and a reference to the financial mechanism in the Draft Action Plan. Delegates specifically highlighted capacity building for, *inter alia*, the BCH, monitoring and compliance, scientific infrastructure, emergency situations and ratification.

Discussion took place in a contact group from 2-4 October. The contact group Chair, Martha Kandawa-Schulz (Namibia), reported back to WG-II on Thursday, 4 October, presenting a draft recommendation, which was approved with minor edits. On Friday, 5 October, the final Plenary adopted the recommendation without comment.

**Recommendation:** The final text (UNEP/CBD/ICCP/2/L.11) includes a recommendation, an Action Plan for Building Capacities for the Effective Implementation of the Protocol and a possible Sequence of Actions. The recommendation:

- welcomes the capacity-building initiatives undertaken by UNEP, the GEF and others;
- endorses the annexed Action Plan and invites all relevant entities to begin implementation;
- recommends that the MOP request the GEF to take into account the Action Plan in providing assistance; and
- requests the Executive Secretary to develop a coordination mechanism for its implementation for promoting partnerships and



maximizing complementarities and synergies between capacity-building initiatives, and to prepare a report on progress made in its implementation, based on submissions by countries, for the MOP's consideration.

The Action Plan includes sections on: its objective; key elements requiring concrete action; processes/steps; implementation; and monitoring and coordination to avoid duplication and identify gaps. Its objective is to facilitate and support the development of capacities for the Protocol's ratification and effective implementation at all levels, identifying country needs, priorities, implementation mechanisms and funding sources. The key elements include:

- institutional capacity building;
- human resources development and training;
- risk assessment and other scientific and technical expertise;
- risk management;
- awareness, participation and education;
- information exchange, including full participation in the BCH;
- scientific, technical and institutional collaboration at all levels;
- technology transfer; and
- identification.

The processes/steps include:

- identification of capacity needs;
- prioritization of the key elements by each country prior to MOP-1;
- sequencing of actions, including timelines for the operation of capacity building prior to MOP-1;
- identification of the coverage and gaps in capacity-building initiatives from different donors;
- enhancing the effectiveness and adequacy of financial resources provided by donors to developing countries;
- enhancing synergies and coordination of initiatives; and
- development of indicators for evaluating capacity-building measures.

Under implementation, activities at national, sub-regional and regional, and international levels are outlined. These activities include, *inter alia*:

- development of national regulatory frameworks;
- development of institutional, administrative, financial and technical capacities;
- participation of all stakeholders;
- mechanisms for monitoring and compliance;
- regional collaborative arrangements, centers of excellence and training, and development of regional websites;
- effective functioning of the BCH; and
- development and effective use of the roster of experts.

A report will be prepared by the Executive Secretary and submitted to MOP-1 on those activities' implementation, on the basis of submissions.

The possible Sequence of Actions suggests activities at the national, regional and sub-regional, and international levels, recognizing that Parties should decide the sequence necessary to ratify and implement the Protocol according to their national needs.

**ROSTER OF EXPERTS:** Discussion on the roster with relation to capacity building took place on Tuesday, 2 October, on the basis of the Draft Interim Guidelines annexed in UNEP/CBD/ICCP/2/10/Add.1. While many delegates supported them, Australia and the US

said further discussion is needed. Brazil and others called for a separate fund for experts' activities. The EU proposed requesting funding from the GEF in addition to voluntary contributions by countries.

Discussion then took place in WG-II's contact group from 2-4 October. Contact group Chair Kandawa-Schulz (Namibia) reported back to WG-II on Thursday, 4 October, presenting a draft recommendation, which was approved with minor edits, and adopted without comments at the final Plenary, on Friday, 5 October.

**Recommendation:** The final text (UNEP/CBD/ICCP/2/L.12) includes: a recommendation; Interim Guidelines; a nomination form; and an indicative list of areas of advice and support.

It recommends:

- the MOP adopt the Interim Guidelines;
- countries use them pending their adoption;
- countries submit their nominations of experts;
- the Executive Secretary implement the functions specified in the Interim Guidelines and prepare a report on the status of implementation for MOP's consideration;
- a voluntary fund be established, the pilot phase of which is to be developed by the Executive Secretary;
- the Protocol's financial mechanism assess its potential role; and
- the Executive Secretary seek submissions on financial support and provide a compilation report to COP-6.

The Interim Guidelines contain sections on:

- the roster's mandate;
- its administration by the Secretariat;
- access through the BCH and yearly publications;
- membership, including conditions, mechanism and maximum number of nominations, balanced regional and gender representation, required information on experts, and involvement of independent institutions;
- scope of expertise;
- choice of experts for assignments;
- obligations of individuals on the roster, including, *inter alia*, acting in a personal capacity, confidentiality and transparency and submitting a report;
- payment of roster members;
- liability;
- reparation of regular reports by the Secretariat; and
- periodic review.

The nomination form and the indicative list of areas of advice and support were adopted, as suggested in the background document.

**GUIDANCE TO THE FINANCIAL MECHANISM:** During the Plenary, on Monday, 1 October, Chair Yang opened discussions on guidance to the financial mechanism, as related to Protocol Articles 22 (Capacity Building) and 28 (Financial Mechanism and Resources). He also introduced document UNEP/CBD/ICCP/2/5, which reviews the relationship among the Protocol, CBD and the financial mechanism. Ethiopia, on behalf of the G-77/China, supported arrangements for the CBD's financial mechanism to serve the Protocol, and advised that its support be sensitive to differences in capacities, needs and conditions among developing countries. The EU called for avoiding duplication of activities and supported coordination of funding activities with





other mechanisms. Mexico, on behalf of GRULAC, called for financial support to meet the needs and priorities listed in an action plan adopted by their recent regional workshop.

In WG-II, on Tuesday, 2 October, delegates held a brief discussion on the recommendations contained in the background document. The EU supported the proposed recommendations and requested that the Executive Secretary compile a list of related capacity-building activities to avoid duplication of efforts. WG-II also discussed timetables for countries' submissions and reference to the Action Plan for Building Capacities. The task of drafting a recommendation was referred to the contact group also addressing capacity building and the roster of experts, which met over the course of 2-4 October.

On Thursday, 4 October, the contact group on capacity building, the roster of experts, and guidance to the financial mechanism presented results to WG-II, where the US reiterated a proposal for a synthesis report on funding priorities by the Executive Secretary based on Parties' submissions, to help the MOP provide clearer guidance to the financial mechanism. Upon a number of developing countries' objections that it might delay capacity-building efforts, the proposal was rescinded and the recommendation accepted. The closing Plenary on Friday, 5 October, adopted the recommendation without discussion.

**Recommendation:** The recommendation (UNEP/CBD/ICCP/2/L.10), *inter alia*, recommends that MOP-1 consider: guidance, including full participation in the BCH and drawing upon the elements for action contained in the Action Plan for Building Capacities; and the eligibility criteria for Parties to the Protocol or CBD Parties that have provided clear political commitment to become Parties to the Protocol. It also stresses the need for mutual information, coordination and monitoring to avoid duplication and to identify gaps and possible synergies, and considers that the Protocol's guidance can only be adopted by the CBD COP.

**DECISION-MAKING PROCEDURES:** On Tuesday, 2 October, the Secretariat introduced document UNEP/CBD/ICCP/2/11, on facilitation of decision making by Parties of import under paragraph 7 of Article 10 of the Protocol. The document synthesizes the views communicated to the Secretariat and includes an annex on draft procedures and mechanisms. Many delegates supported the document. Comments included: a regular review process; assistance should be demand-driven; access to the roster only for developing countries and countries with economies in transition; and many specific remarks on the annex. On Wednesday, 3 October, Chair Salamat introduced a new draft recommendation, including an annex with sections on guidelines and procedures to facilitate decision making by Parties of import. On 3-4 October, discussion focused on: the inclusion of the BCH and other mechanisms, apart from the roster of experts; language on advice or facilitation by the Party of export in case of lack of communication by the Party of import; communication of requests for assistance by the Party of import to the Party of export or the notifier; inclusion of centers of origin and genetic diversity among those receiving assistance; identification of other mechanisms to further facilitate capacity building; and a suggestion to facilitate decision making from Parties of import of LMO-FFPs. The recommendation and its annex were agreed by WG-II on Thursday, 4 October, and the final Plenary on Friday, 5 October, adopted them with some minor edits.

**Recommendation:** The final document (UNEP/CBD/ICCP/2/L.8) contains a recommendation to the MOP and an annex on procedures and mechanisms to facilitate decision making. The recommendation invites the MOP to: adopt procedures and mechanisms to facilitate decision making by Parties of import as contained in the annex; continue to identify and build upon the mechanisms that will further facilitate capacity building; and review the procedures and mechanisms in line with Article 35 of the Protocol (Assessment and Review).

The annex includes sections on guidelines and procedures. Under guidelines, the procedures and mechanisms are designed to: facilitate decision making by Parties of import, especially those encountering difficulties; and be demand-driven by Parties of import. Parties shall cooperate to ensure that Parties of import have access to the BCH or to the information it houses. The BCH and the roster of experts are recognized as the main mechanisms to provide support, while other mechanisms should be kept under consideration. The modalities for the roster's use are to be adopted by the MOP.

Under procedures, the annex states that: Parties of import may seek relevant assistance from the roster of experts and other mechanisms at any time after having received notification; in case of lack of communication by the Party of import, the Party of export may facilitate the Party of import to obtain assistance; and the procedures on facilitating decision making are separate from the Protocol's procedures on compliance and dispute settlement.

**LIABILITY AND REDRESS:** On Monday, 1 October 2001, during the opening Plenary, the Secretariat reported on the Workshop on Liability and Redress in the context of the CBD (UNEP/CBD/WS-L&R/3; 18-20 June 2001; Paris, France), which noted, *inter alia*, that processes under CBD Article 14.2 and Protocol Article 27 should be kept separate. Delegates drew attention to language in Article 27 calling for focus on the process of a liability regime, and discussed, *inter alia*, the possible synergies between the processes under the Protocol and the Convention.

On Tuesday, 2 October, WG-II began consideration of the issue following the Secretariat's introduction of document UNEP/CBD/ICCP/2/3. Chair Salamat urged delegates to focus on the process for elaborating a liability regime, but Cameroon, on behalf of the African Group, and Colombia called for a preliminary discussion on possible elements of a liability regime. On process, the EU suggested a three-step approach, including: information gathering and analysis; establishment of a small legal and technical experts' group at MOP-1; and establishment of an open-ended working group to elaborate rules and procedures at MOP-2. Australia focused on information gathering, especially regarding the scope, nature and purpose of liability under the Protocol. Many delegates preferred the two-step approach in the background document, namely information gathering and establishment of an open-ended working group. Colombia, supported by many, suggested holding workshops following information gathering and the EU expressed flexibility regarding their three-step proposal. Canada, the EU and an industry representative called for exploration of synergies with CBD discussions on liability. Canada and the EU also expressed commitment to the four-year timeframe to finalize the liability and redress regime, whereas Australia and Japan noted that the limit is only indicative. The group also debated whether or not to discuss Terms of Reference (ToR) for the open-ended experts' group.



On Wednesday, 3 October, Chair Salamat introduced a draft recommendation including an annex with a recommendation for a draft decision on liability and redress by MOP-1. Delegates agreed to text recommending continued information gathering with minor additions. On two paragraphs regarding provision of information and preparation of a synthesis report, the US and Brazil proposed, and many opposed, further specification of "damage." A suggestion by the EU to add specific time limits to the proposed tasks was accepted.

On Thursday, 4 October, delegates continued discussing the draft recommendation. On the scope and organization of workshops, delegates agreed to invite CBD Parties to organize workshops on liability and redress as soon as possible and before MOP-1. With some amendments and additions, delegates agreed that such workshops should: consider case-studies; analyze information gathered by the Executive Secretary and recommend the kind of further information needed; and consider other relevant issues. Regarding the proposed open-ended experts' group, delegates agreed, with some amendments, on text inviting views on its ToR and recommending their definition by MOP-1. Regarding preambular paragraphs of the annexed draft recommendation, delegates agreed that the Protocol's process should be distinct from that of the CBD and also distinct from the Protocol's compliance procedures and mechanisms. On operational text regarding the establishment of the experts' group, delegates debated whether to specify the group's mandate. After some discussions, delegates agreed to Australia's proposal that the experts' group should carry out the process pursuant to Article 27.

In the afternoon, Chair Salamat introduced a new draft recommendation. Following discussion on specific timelines regarding submission of information and views, delegates adopted the draft recommendation, indicating that dates could be extended or altered by the Executive Secretary if MOP-1 does not occur in April 2002. During the closing Plenary on Friday, 5 October, Australia noted inconsistencies between the dates referred to in the recommendations for liability and redress and those with regard to compliance. Cameroon, on behalf of the African Group, expressed the need for interim measures to address harm caused before the entry into force of the liability regime and the need for this regime to be retroactive as of the Protocol's entry into force. Such concerns were recorded in ICCP-2's report, and the recommendation was adopted.

**Recommendation:** The recommendation (UNEP/CBD/ICCP/2/L.6) states that Parties, governments and relevant international organizations should provide the Executive Secretary with information on measures and agreements in the field of liability and redress with regard to transboundary movement of LMOs by no later than three months prior to MOP-1. It further requests the Executive Secretary to prepare a synthesis report of the information provided and to submit this report to MOP-1. Parties to the CBD are invited to organize workshops prior MOP-1, with a view to: consider case studies; analyze information and recommend the kind of further information needed; and consider any issues that may be relevant to the process. It is further recommended that, if established by MOP-1, the ToR of an open-ended *ad hoc* experts' group on liability and redress should be defined by MOP-1. It invites Parties and governments to submit views on the ToR no later than three months prior to MOP-1.

The text also includes an annexed recommendation for a draft decision by MOP-1, emphasizing that the process with respect to liability and redress is distinct from that of the CBD, and recognizing that it is also distinct and different from the compliance procedures and mechanisms under the Protocol. It recommends that MOP-1 establish an open-ended experts' group to carry out the process pursuant to Article 27.

**COMPLIANCE:** During the Plenary on Monday, 1 October, WG-II Chair Salamat introduced document UNEP/CBD/ICCP/2/13 and reviewed the results of the Open-Ended Meeting of Experts on Compliance (26-28 September 2001; Nairobi, Kenya). He recommended that ICCP-2 endorse the meeting's report (UNEP/CBD/ICCP/2/13/Add.1) and further consider the issue. Cameroon and Indonesia supported further discussions at ICCP-2, whereas Australia and the US said that further negotiations would require national consultations.

In the ensuing discussions in WG-II, on Wednesday, 3 October, Chair Salamat proposed working on the Draft Procedures and Mechanisms on Compliance presented in the annex of document UNEP/CBD/ICCP/2/13/Add.1. Some delegates expressed readiness to work on the text, whereas others expressed concerns with the draft's legal status and again noted difficulties in proceeding with substantive negotiations at ICCP-2. Countries also differed over whether and what types of information could be provided to the Secretariat prior to the next meeting. Chair Salamat then proposed that ICCP-2 forward the work of the Experts' Meeting to MOP-1, allowing for its full consideration, and invite governments to submit views on bracketed text. Most delegates expressed support, and the US and Australia reservations, to the proposal.

On Thursday, 4 October, WG-II considered a Chair's draft recommendation, forwarding the text of the Experts' Meeting to MOP-1. To accommodate the case that MOP-1 does not occur in April 2002, delegates agreed that specific timelines may be extended by the Executive Secretary. With this change and some minor edits, the draft recommendation was accepted. During the closing Plenary on Friday, 5 October, the draft recommendation was adopted without comment.

**Recommendation:** The recommendation (UNEP/CBD/ICCP/2/L.4) forwards the draft procedures and mechanisms on compliance, contained in the report of the Open-ended Meeting of Experts on Compliance, for its full consideration at MOP-1. It also invites Parties to the CBD and other States to submit views or understandings with respect to the text in square brackets of this report to the Executive Secretary no later than three months prior to MOP-1, which will be compiled and made available for MOP-1.

The draft procedures and mechanisms on compliance include bracketed text on several substantial issues. It states that the objective of the compliance procedures and mechanisms shall be to promote compliance and to address cases of non-compliance, and to provide advice or assistance, where appropriate. Disagreement remains on the question of "common but differentiated responsibilities" between developed and developing countries. It recommends the establishment of a regionally balanced Compliance Committee consisting of 15 legal and technical experts in the field of biodiversity. However, disagreement remains, *inter alia*, on the issue of balance between LMO importers and exporters in the Committee. The functions of the Committee are to:



- identify causes of non-compliance;
- consider information on matters relating to compliance and non-compliance;
- provide advice and/or assistance to Parties;
- review issues of non-compliance;
- take measures or make recommendations to the MOP; and
- carry out other functions as may be assigned by the MOP.

The Committee shall receive submissions and information on matters relating to compliance, but text is bracketed regarding who can submit information to the Committee. To promote compliance and address cases of non-compliance, the Committee may: provide advice to Parties; make recommendations to the MOP regarding provision of measures to promote compliance; request or assist Parties to develop compliance action plans; and invite Parties to submit progress reports on compliance. The MOP may, upon the recommendations of the Committee, decide on measures to promote the compliance of a Party, but disagreements remain on the nature of those measures.

### PLENARY

**SECRETARIAT:** During the Plenary, on Monday, 1 October, Chair Yang introduced document UNEP/CBD/ICCP/2/14 regarding Article 31 (Secretariat), which includes a proposed biosafety programme budget and contains annexes on requirements for additional voluntary contributions for approved activities and for facilitating Parties' participation. The Bahamas, on behalf of Alliance of Small Island States (AOSIS), and the EU suggested separation and clarification of tasks, responsibilities, budget and staffing with regard to Protocol and CBD activities. Japan opposed the proposed budget and highlighted the need for clarification on budgetary items and staffing levels; and, with India, said that costs for the MOP should come from voluntary funds rather than the core budget. Ethiopia, on behalf of the G-77/China, appealed to industrialized countries to support core budgetary items to enable developing countries to effectively implement the Protocol. Chair Yang then indicated that he would undertake informal consultations on the issue.

In Plenary, on Wednesday, 3 October, Chair Yang noted that a contact group, chaired by Conrad Hunte (Antigua and Barbuda), had been formed to address the Secretariat and budget. The group met from 3-5 October, and produced a draft recommendation, which was introduced by Chair Yang during the closing Plenary on Friday, 5 October. Australia, Brazil and Japan expressed concern regarding a provision on CBD Parties bearing the costs of the biosafety work programme, noting Protocol Article 31.3, which states that such costs shall be borne by Parties to the Protocol. Their reservations were recorded in the meeting's report and the recommendation was adopted.

**Recommendation:** The recommendation (UNEP/CBD/ICCP/2/CRP.1), *inter alia*, recognizes that CBD Secretariat shall serve as the Protocol's Secretariat, and that Parties to the Protocol may not have the financial capacity to provide for its funding following the Protocol's entry into force. Regarding budgetary matters, it recommends for inclusion into the CBD's trust funds, *inter alia*: a core programme budget of US\$2,441,597 for 2003 and US\$1,701,934 for 2004; an additional US\$325,000 for MOP-1's organization in the event it is not convened with COP-6; US\$949,200 for additional voluntary contribu-

tions in support of approved activities; and US\$2,203,500 for facilitating Parties' participation. The recommendation requests a staffing level of 10 posts and includes bracketed text stating that the total cost of the work programme will be borne on an interim basis by CBD Parties for 2003-2004 or until the Protocol is ratified by an agreed number of developed and developing country Parties when they shall bear the costs on a *pro rata* basis. It also includes annexes on the resource requirements for approved activities and facilitation of Parties' participation from 2003-2004.

**RULES OF PROCEDURE:** During the Plenary, on Monday, 1 October, Chair Yang introduced document UNEP/CBD/ICCP/2/6, which reviews the relation of the Protocol's rules of procedure (Article 29.5) to those of the CBD (Article 23.3). During a brief discussion, the EU, supported by Algeria and Canada, said that the COP's rules of procedure should apply to the Protocol's MOP, as appropriate. Delegates requested that more detailed discussions take place. Chair Yang indicated that informal consultations on the issue would be conducted under the direction of Veit Koester (Denmark).

During the closing Plenary on Friday, 5 October, Chair Yang presented a draft recommendation resulting from the consultations. Algeria, on behalf of the African Group, called for the CBD COP's to remove brackets on Rule 40 of the Rules of Procedure, regarding decision making on financial matters. Regarding a provision stating that COP amendments to the rules of procedure shall not apply to the MOP unless otherwise decided, New Zealand noted conflicts with Protocol Article 29.5, which states that the COP's rules of procedure shall apply *mutatis mutandis* to the MOP. Argentina requested clarification of the term "amendment" within the same paragraph. These views were recorded in the meeting's report, and the recommendation was adopted.

**Recommendation:** The recommendation (UNEP/CBD/ICCP/2/L.2) recognizes that the COP's rules of procedure will be applied to the MOP *mutatis mutandis*. It states that amendments to the COP's rules of procedure shall not apply to the MOP unless otherwise decided. The recommendation also includes a note regarding the need for agreement on Rule 40 of the Rules of Procedure.

**DRAFT PROVISIONAL AGENDA FOR MOP-1:** During the closing Plenary on Friday, 5 October, Chair Yang introduced a draft recommendation, which was adopted without amendment.

**Recommendation:** The recommendation (UNEP/CBD/ICCP/2/8) includes ten substantive items for discussion at MOP-1: decision procedure; information sharing and the BCH; capacity building; handling, transport, packaging and identification; compliance; liability and redress; monitoring and reporting; Secretariat; guidance to the financial mechanism; and consideration of other issues necessary for the Protocol's effective implementation. It also calls for adoption of the MOP's Rules of Procedure and medium-term programme of work.

**OTHER MATTERS:** During the closing Plenary on Friday, 5 October, Chair Yang introduced a draft Chair's recommendation on cooperation between the Protocol and the IPPC regarding risk analysis and procedures for phytosanitary risks that may arise from LMOs. After some discussion on the text's origin and a minor amendment to the preamble, the recommendation was adopted.



**Recommendation:** The recommendation (UNEP/CBD/ICCP/2/L.2) notes the report and work of the Open-ended Working Group of the ICPM on Specifications for an International Standard for Phytosanitary Measures on LMOs (12-14 September 2001; Rome, Italy), specifically with regard to coordination with relevant activities under the Protocol and formulation of a basis or model for developing approaches to managing risks associated with LMOs. It also, *inter alia*: welcomes the ICPM's recommendations to include expertise on the Protocol's provisions and implementation; urges the ICPM to ensure that its standards are in harmony with the Protocol's objectives and relevant requirements; and requests the CBD Executive Secretary to maintain close cooperation with the ICPM.

**PREPARATORY WORK FOR MOP-1:** During the closing Plenary on Friday, 5 October, Chair Yang presented a draft recommendation on the need for further preparatory work by the ICCP before MOP-1. The recommendation, based on a unanimous Bureau decision, calls for a third session of the ICCP in the event that MOP-1 does not occur in April 2002. Chair Yang noted that to date only six Parties have ratified the Protocol and that it is therefore uncertain whether MOP-1 will be held as scheduled.

Argentina, supported by Brazil, questioned the ICCP's legal authority to decide on its future work. With advice from the Secretariat, Chair Yang said that there is no legal problem and also clarified that the recommendation will be submitted to the COP-5 Bureau meeting taking place next week in Nairobi. Many delegations, including Burkina Faso, the EU, Hungary, on behalf of the CEE, and the UK, supported the recommendation. After some discussion, the recommendation was adopted with minor amendments.

**Recommendation:** The recommendation (UNEP/CBD/ICCP/2/CRP.2) mandates the ICCP Bureau, in consultation with the COP-5 Bureau, to explore convening a third ICCP meeting, possibly in conjunction with CBD COP-6, if the 50th instrument of ratification to the Protocol is not deposited by 8 January 2002.

### CLOSING PLENARY

On Friday, 5 October, Chair Yang convened the closing Plenary. Chair Pythoud introduced the report of WG-I, UNEP/CBD/ICCP/2/L.13 and L.13/Corr.1 and its recommendations, noting that they contain bracketed text. The US requested that his reservations be reflected along with Australia's regarding a paragraph in WG-I's report on the recommendation for handling, transport, packaging, and identification. Brazil requested her support be added to Argentina's statement in the report on a paragraph noting the need for financial assistance in implementing Articles 18.2(a), (b) and (c). The WG-I report and its recommendations were adopted.

Chair Salamat introduced the report of WG-II (UNEP/CBD/ICCP/2/L.14) and its recommendations. He noted some editorial changes and inclusion of a footnote on compliance, stating that dates may be extended or altered by the Executive Secretary if MOP-1 does not occur in April 2002. After discussion clarifying that experts' meeting reports annexed to the recommendations were not considered as negotiated or adopted texts, the report and recommendations of WG-II were adopted. Rapporteur Rosati presented ICCP-2's draft report (UNEP/CBD/ICCP/2/L.1), which was adopted with several editorial modifications.

Chair Yang highlighted upcoming consultations between the ICCP and COP Bureaus, and expressed his gratitude to the Netherlands for their offer to host ICCP-3 or MOP-1 in conjunction with CBD COP-6. Chair Yang thanked the participants, working group and contact group Chairs, the ICCP Bureau, the CBD Secretariat, UNEP, UNON conference services, translators and the government and people of Kenya.

Ethiopia, on behalf of the G-77/China, Belgium, on behalf of the EU, India, on behalf of the Asian Group, Mexico, on behalf of GRULAC, Jamaica, on behalf of AOSIS, Hungary, on behalf of the CEE, and Cameroon, on behalf of the African Group, also expressed their thanks and best wishes. Australia requested that the Bureau, in its consideration of ICCP-3's agenda, focus on priority issues within the ICCP's mandate, particularly requirements in the first sentence of Article 18.2(a) on "may contain," the BCH, capacity building and budgetary matters. Kenya thanked participants for choosing Nairobi as the meeting's site. Morocco noted ties between climate change and biodiversity and its role as host of the upcoming COP-7 of the UN Framework Convention on Climate Change.

A statement on behalf of a number of NGOs, *inter alia*: congratulated the six countries that have ratified the Protocol; called for a ban on LMOs in centers of origin and diversity; and supported interim measures and a fund on liability and redress. CBD Executive Secretary Hamdallah Zedan stressed that countries ratifying the Protocol need to represent the diversity of the global community, including developing and developed and importing and exporting countries. Delegates also applauded the government of Lesotho for having ratified the Protocol during the course of the meeting.

Chair Yang officially adjourned the meeting at 2:30 pm.

### A BRIEF ANALYSIS OF ICCP-2

ICCP-2 did not entail the fanfare or grandiose designs of past biosafety meetings, but instead represented a necessary and important step in the process of operationalizing the Protocol. It was a working meeting in the true sense of the word, which handled a heavy workload with relative efficiency and dispatch. While some delegates were critical that ICCP-2 sidestepped the substantive issues under key agenda items such as liability, compliance and identification, others were quick to note that it did take an important step in designing processes and modalities to address such issues. The progress made during intersessional meetings on a variety of topics succeeded in boosting the meeting's discussions, and prompted calls for more experts' meetings on almost every agenda item. In this sense, ICCP-2, as with ICCP-1, was again an exercise in delineating priority areas for work and designing future actions to be taken.

Building an effective Protocol and all of its necessary components, at national and international levels, was the fundamental task before the ICCP and will become the focus for future MOPs. The negotiations leading up to the Protocol's adoption in January 2000 provided a blueprint for an international agreement, which the Intergovernmental Committee has been mandated to make a reality. This process entails the development of key foundational elements, such as national capacities and information sharing through the BCH, with numerous additional components related to decision-making and identification that must be put in place before many countries are able to ratify the



Protocol. This brief analysis will focus on the process of developing the Protocol's future architecture in terms of its foundation, operational building blocks and subsequent additions. It will also assess ICCP-2's progress and look forward to next steps and the eventual possibility of the MOP.

### **FOUNDATION**

ICCP-1 and 2 were important exercises for identifying the fundamental parts without which the Protocol cannot operate. First and foremost is the issue of national capacity. As several regional groups repeatedly emphasized, in order to implement the Protocol, capacity-building needs must first be met in many developing countries. Aside from national legislative and regulatory frameworks, many highlighted the necessity of legal, technical and scientific expertise; infrastructure; human resources and training; and communication structures. It quickly became clear that ratification requires a minimum level of capacity to implement the Protocol's obligations, which mere good intentions and political will cannot easily address. Some developing countries expressed reluctance to ratify the Protocol, lest they lack the capacity to comply with the Protocol's obligations, which are reflected in the current number of six ratifications — a slow pace to meet the 50 ratifications necessary for the Protocol's entry into force. Even with significant energy spent on the Action Plan for Building Capacities and UNEP/GEF activities in this area, participants acknowledged that capacity is not built overnight, and others stressed that agreeing on an Action Plan does not equal capacity building on the ground.

Information sharing is also an essential component for the Protocol, as Parties must have the means to communicate their decisions regarding imports, information on national legislation, risk assessments and other matters. Delegates generally applauded progress on the BCH as a coordinating mechanism, while acknowledging that it does not address national level needs. Those taking advantage of BCH demonstrations observed that it was not a simple point-and-shoot web-based application, but would require guidance and training on its use. Indeed, if the BCH pilot phase is to ultimately prove successful following the impressive speed at which it has been developed, all aspiring Parties must have access to hardware, software, and the Internet, as well as the technical training and know-how to use the system.

### **OPERATIONAL BUILDING BLOCKS**

If capacity building and information sharing are prerequisites for implementing the Protocol, then components such as identification and documentation, decision making and the roster of experts form the heart of the Protocol's operative mechanism. Discussions on handling, transport, packing and identification once again raised the contentious issue of how to label shipments of LMO-FFPs, revisiting last-minute debates from the negotiation of the Protocol. Disagreement persisted over the terms of reference for an experts' group, and the issue of a general system of identifying shipments that "may contain" LMO-FFPs taking precedence over a more specialized system involving "unique identification" of genetic material contained in LMO-FFPs. A proposed "step-wise" process envisions that a general system be fully in place before a specialized system is addressed, and the prospect of undertaking what is required to achieve the first step in

a timely manner had some delegates and industry representatives anxious over its feasibility. Countries representing centers of origin and diversity felt that a system of unique identifiers was essential if the system was to function effectively and that its development should be initiated in harmony with a general system. The issue of capacity to confirm labels of "may contain" or use of unique identifiers for specific LMOs through testing procedures was also raised, as examples of genetic contamination in Mexican maize and Starlink corn were bandied about in the breezeways and lunchtime sessions. Ultimately, the ambiguous language in the mandate for the proposed technical experts' meeting to address Article 18.2(a) might add more confusion to the process.

Decision-making procedures and use of the roster of experts to facilitate such processes are also crucial components for countries to process requests to import LMOs and evaluate their potential risks. ICCP-2's discussions on these issues were relatively constructive, highlighting the need to ensure the unobstructed right of the Party of import to make its own decisions. Participants, however, did raise questions about the liability and financing of experts, especially in the case where one developing country is exporting LMOs to another.

### **SUPRASTRUCTURAL ELEMENTS**

The final tier is comprised of the important additional elements necessary to ensure the Protocol's effective functioning, namely the carrots and sticks of compliance, liability and redress, and monitoring and reporting. Discussions on these issues evoked shades of past debates within the Protocol negotiations, and raised issues on their relation to similar discussions under the CBD. With bracketed references to punitive measures in the report of the Meeting of Experts' on Compliance, one might have expected some fireworks at ICCP-2. However, since many required time to consult on the expert group's results with their capitals, such potentially contentious issues were neatly sidestepped by forwarding the issue to MOP-1.

Past controversies over liability and redress were also partially averted as discussions shifted from substance to process. Delegates differed in their desire to engage in various information-gathering processes versus pushing ahead with a working group on liability. While most recognized the need for more information and further consultations at the regional and global level, some participants feared that protraction of this stage could serve as an effective avoidance strategy to delay work on a liability regime. Additionally, a few delegates also highlighted the importance of the relatively facile discussions on monitoring and reporting with regard to compliance and liability as part of an overall structure designed to ensure the Protocol's proper implementation.

A mixed bag of other issues for consideration that were deemed to be necessary for the Protocol's implementation proved to be very touchy for some delegations. Australia and the US opposed inclusion of references to socio-economic impacts of LMOs, public awareness and participation, risk assessment and management and transboundary movements between Parties and non-Parties, reasoning that their inclusion could open the door for renegotiation of Protocol language and definitions. The division persisted through the final Plenary, and resulted in the only set of substantive brackets left unresolved this week.



## ICCP-2 AND BEYOND

The announcement that MOP-1 might not be held in conjunction with CBD COP-6 and the proposal of a potential ICCP-3 raised more questions than it answered. Recognizing the pace of ratifications, most thought it a realistic option, while wondering how more substantive work could proceed, particularly intersessional activities dependent on decision by MOP-1. Given this delay, some were forced to rethink their recommendations, especially with regard to the timing of activities, having worked under the assumption that MOP-1 would be convened in a relatively short period of time. However, while formal statements reflected optimism and expressed urgency about ratification, in the breezeways delegates were much more realistic about the prospects for the Protocol's early entry into force. Others questioned impacts on confidence in the process and the potential for a decreased sense of urgency for ratification. Noting the Intergovernmental Committee's focus on procedural matters, some participants wondered how much more it could undertake, while others saw this delay as an opportunity to further address issues of capacity building and information sharing. A few participants expressed growing frustration with having once again to address the "modalities for processes to discuss..." instead of the issues themselves. Ultimately, as MOP-1/ICCP-3 approaches, delegates need to find the balance between developing the processes and substance of the Protocol's provisions at the intergovernmental level, while establishing the necessary frameworks and infrastructure at the national level.

## THINGS TO LOOK FOR BEFORE COP-6

### WORKSHOP ON INCENTIVE MEASURES UNDER THE

**CBD:** This workshop will be held from 10-12 October 2001, in Montreal, Canada. For more information, contact: CBD Secretariat, Montreal, Canada; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; Internet: <http://www.biodiv.org>

**INTERNATIONAL CONFERENCE ON BIOTECHNOLOGY AND SUSTAINABLE DEVELOPMENT:** This conference will be held from 15-17 October 2001, in Alexandria, Egypt. For more information, contact: Ismail Serageldin, Programme Committee Chair, International Center for Agricultural Research in the Dry Areas (Cairo Office); tel: +20-2-572-4358; e-mail: icarda-cairo@cgiar.org; Internet: <http://www.egyptbiotech2001.com>

**GERMAN NATIONAL SESSION OF THE GLOBAL BIODIVERSITY FORUM:** This meeting will be held from 19-21 October 2001, in Bonn, Germany, prior to the meeting of the CBD's Working Group on Access and Benefit-sharing. For more information, contact: Andreas Gettkant, GTZ, Germany; tel: +49-6196-791280; fax: +49-6196-797144; e-mail: andreas.gettkant@gtz.de; Internet: <http://www.gbf.ch>

**FIRST SESSION OF THE AD HOC OPEN-ENDED WORKING GROUP ON ACCESS AND BENEFIT-SHARING:** This meeting will be held from 22-26 October 2001, in Bonn, Germany. For more information, contact: CBD Secretariat, Montreal, Canada; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; Internet: <http://www.biodiv.org>

## SEVENTH MEETING OF THE CBD'S SUBSIDIARY BODY

**FOR SCIENTIFIC, TECHNICAL AND TECHNOLOGICAL ADVICE:** CBD SBSTTA-7 will meet from 12-16 November 2001, in Montreal, Canada. For more information, contact: CBD Secretariat, Montreal, Canada; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; Internet: <http://www.biodiv.org>

**WORKSHOP ON RISK MONITORING AND PUBLIC PERCEPTION OF BIOTECHNOLOGY:** This workshop will be held from 12-16 November 2001, in Caracas, Venezuela. For more information, contact: Efrain Salazar Yamarte, Centro Nacional de Investigaciones Agropecuarias, Venezuela; tel: +58-43-471066; fax: +58-43-471066; e-mail: efra63@hotmail.com; Internet: <http://www.icgeb.trieste.it/TRAINING/CRS01/crsps01.htm>

**OPEN-ENDED INTERSESSIONAL MEETING ON THE STRATEGIC PLAN, NATIONAL REPORTS AND THE IMPLEMENTATION OF THE CBD:** This meeting will take place from 19-21 November 2001, in Montreal, Canada. For more information, contact: CBD Secretariat, Montreal, Canada; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; Internet: <http://www.biodiv.org>

**AD HOC WORKING GROUP ON THE INTERLINKAGES BETWEEN BIOLOGICAL DIVERSITY AND CLIMATE CHANGE:** This meeting will take place from 26-30 November 2001, in Helsinki, Finland. For more information, contact: CBD Secretariat, Montreal, Canada; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; Internet: <http://www.biodiv.org>

**REGIONAL CONFERENCE ON PUBLIC PERCEPTIONS OF BIOTECHNOLOGY IN AFRICA:** This meeting will take place from 28-29 January 2002, in Nairobi, Kenya. For more information, contact: Anna Ogalo or Harrison Maganga, African Centre for Technology Studies, Nairobi, Kenya; tel: +254-2-524700/6; fax: +254-2-524701; e-mail: acts@cgiar.org or a.ogalo@cgiar.org; Internet: <http://www.acts.or.ke>

**MEETING OF THE AD HOC INTERSESSIONAL WORKING GROUP ON CBD ARTICLE 8(j):** This meeting is scheduled to take place from 4-8 February 2002, in Montreal, Canada. For more information, contact: CBD Secretariat, Montreal, Canada; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; Internet: <http://www.biodiv.org>

**SIXTH CONFERENCE OF THE PARTIES TO THE CONVENTION ON BIODIVERSITY & CARTAGENA PROTOCOL MOP-1 or ICCP-3:** CBD COP-6 will take place in The Hague, the Netherlands, from 8-26 April 2002. This gathering is also expected to serve as the first Meeting of the Parties (MOP-1) or the third ICCP of the Cartagena Protocol. For more information, contact: CBD Secretariat, Montreal, Canada; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; Internet: <http://www.biodiv.org>