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HIGHLIGHTS FROM THE FOURTH SESSION OF THE AD HOC WORKING GROUP ON BIOSAFETY WEDNESDAY, 11 FEBRUARY 1998

On the sixth day of BSWG-4, Plenary met in a brief afternoon session. Delegates met in two Sub-Working Groups (SWGs) in morning and afternoon sessions and SWG-I met for an additional evening session. SWG-I discussed Articles 3-14. SWG-II discussed Articles 15/16, 21, 25 and 27. Contact Groups met throughout the day.

PLENARY

In an afternoon Plenary, delegates reviewed and adopted recommendations to COP-4 (UNEP/CBD/BSWG/4/L.3). Delegates recommended two options for the dates of a final BSWG meeting followed by a COP meeting: December 1998, or no later than February 1999. Delegates also recommended, *inter alia*, that: BSWG should handle preparations for the first meeting of the Parties; COP should establish a deadline of 1 June 1998 for receipt of government proposals regarding the Protocol; and COP should ensure availability of funds for future BSWG meetings. Delegates reviewed and adopted the Draft Report of BSWG-4 (UNEP/CBD/BSWG/4/L.1/Add.1).

Chair Koester then invited the "two sides of the NGO community" to make brief statements directed to Governments. **THIRD WORLD NETWORK**, speaking on behalf of 18 organizations, highlighted the importance of a provision on liability; suggested creation of a multilateral compensation fund; and expressed hope that the Protocol would not confer rights on non-Parties without attendant responsibilities. **EUROPABIO**, speaking on behalf of industry groups, stated that: biotechnology enhances biodiversity and increases the standard of living; industry supports the principles of information sharing, cooperative engagement and capacity building; and provisions on liability and socio-economic considerations belong in other fora.

SUB-WORKING GROUP I

SWG-I continued preparation of consolidated text for Articles 3-14, using *aide memoires*, room documents, and Conference Room Papers, and finalized most of them for presentation to the Plenary on Friday. Delegates also considered Annexes I and II on Advanced Informed Agreement (AIA) and Risk Assessment (RA), and definitions provided by CG-I.

APPLICATION OF THE AIA (Article 3): Delegates agreed to create a new article on the scope of the Protocol. Several delegations supported deleting a paragraph on exemption from AIA, noting that it is addressed in Articles 9 (Simplified Procedure) and 11 (Bilateral and Regional Agreements).

NOTIFICATION PROCEDURE FOR AIA (Article 4): Minor amendments were made.

RESPONSE TO AIA NOTIFICATION (Article 5): One delegation suggested deleting language on the need for additional information and implicit/explicit agreement, stating that Article 6 adequately addressed these issues. Other delegates opposed the deletion, preferring to ensure coverage of importers' concerns surrounding implicit agreement.

DECISION PROCEDURE FOR AIA (Article 6): Delegates noted repetitive text in some places and proposed further consolidation on: importing party conditions; description of legislative/administrative basis of decision; and implicit/explicit agreement.

REVIEW OF DECISIONS UNDER AIA (Article 7): Delegates pointed out that this article covered two main issues: the conditions under which the Party of Import could review its decision; and the conditions under which a Party of Export could request review of a decision. A small group produced consolidated text to reflect this more concisely.

NOTIFICATION OF TRANSIT (Article 8) and SUBSEQUENT IMPORTS (Article 10): Delegates proposed some minor text changes and proposals for consolidation, but noted that the bracketed options in these draft documents reflected all positions.

SIMPLIFIED PROCEDURE (Article 9): In reviewing revised text, one regional group questioned the role of the Secretariat in receiving and disseminating information and requested a reference to the biosafety database, which could be placed under Article 19 (Information Sharing/Biosafety Clearing-House).

BILATERAL AND REGIONAL AGREEMENTS (Article 11): Regarding the title, some delegates preferred addition of "multilateral" and others preferred "international cooperation and agreements." One delegate identified three objectives of bilateral and regional agreements: to cooperate in implementing the Protocol; to identify LMOs that may be exempt from AIA; and to integrate non-Parties into the application of the Protocol's AIA procedure. Some delegates supported placing this article under Article 1 *bis* (General Obligations) while others emphasized the need for a separate article.

RISK ASSESSMENT (Article 12): One regional group added text requiring that RAs be based on the precautionary principle and socio-economic grounds. Several delegations requested moving to Article 13 (Risk Management) text that would allow States to refuse activity with possibly risky LMOs. Delegations replaced text on RA procedure with a referral to Annex II. One delegation recalled the individual basis approach upon which the Protocol was initially based, and requested text stating that RA be undertaken on a case-by-case basis.

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RISK MANAGEMENT (Article 13): One delegate, supported by others, reiterated an earlier call for inclusion of a provision on “global risk management.” Delegates modified various clauses in bracketed text.

MINIMUM NATIONAL STANDARDS (Article 14): One delegate noted that this could be dealt with under Article 1 *bis* (General Obligations), while others preferred a separate article. One delegate reiterated support for a bracketed option calling for an Annex on measures necessary for contained use of LMOs.

ANNEXES: The Co-Chair of CG-I presented Annex I (AIA) and “minimum and maximum” options for Annex II. He noted the divergent content of the Annexes, especially relating to socio-economic factors, human health and contained uses. The Co-Chair then requested guidance from SWG-I on: linkages between Annexes I and II; if RA would be required for AIA in all situations; and the acceptable degree of duplication between Annex I and II. Regarding Annex I, delegates noted that information on intended use and date of export/import would be difficult to provide; and asked for clarification regarding who would declare information in the AIA as factually correct. On Annex II, some delegates requested that even the “minimum” guidelines be shorter and more general, while others preferred to retain the “maximum” option.

DEFINITIONS: The Co-Chair of CG-I presented draft definitions of organism and LMO to SWG-I. Some delegates requested that the two definitions be merged. It was decided to retain a separate definition of organism, as well as add it to LMO. Regarding “organism,” the Co-Chair clarified that an entity “able to replicate” would include sterile organisms. Some delegations proposed alternative language, including “capable of metabolic activity.” Regarding LMOs, delegates debated a reference to “deliberately modified” genetic material, noting that modification could be unintentional. The Co-Chair clarified that while modification is deliberate, the result may be unpredictable, and pointed to the reference to an “expected or unexpected” outcome to cover this contingency. One delegate called for novelty of LMOs to mean “traits novel to the species in the receiving environment.” The Co-Chair informed SWG-I that legal definitions, including transboundary movement, export and import, were being transferred to CG-II.

CONTACT GROUP I

CG-I continued discussing definitions of organism, LMO and other legal terms for presentation to SWG-I at the end of the day (see SWG-I).

SUB-WORKING GROUP II

SWG-II discussed Articles 15/16 (Merged), 21, 25 and 27, using Conference Room Papers 1.Rev.1, 2.Rev.1, 9 and 10, respectively.

UNINTENTIONAL TRANSBOUNDARY MOVEMENTS AND EMERGENCY MEASURES (Merged Articles 15 and 16) and HANDLING, TRANSPORT, PACKAGING AND LABELLING (Article 17): At the urging of Co-Chair Herity, delegates generally limited comments to whether the revised text on these articles reflected previously stated positions.

CAPACITY BUILDING (Article 21): One country and a regional group, previously supporting the article’s removal, indicated their willingness to retain it.

ILLEGAL TRAFFIC (Article 25): Several countries stated that consideration of this article was premature as it depends on decisions with regard to procedures for AIA. A few countries preferred deletion of the article, while indicating flexibility on a provision for domestic legislation. Regarding information dissemination, some delegates questioned the reference to the biosafety clearing-house, still under discussion in Article 19, as well as the involvement of the Secretariat.

LIABILITY AND COMPENSATION (Article 27): Noting that UNEP/CBD/BSWG/4/SWG-II/CRP.10 did not reflect all submissions, three delegations requested inclusion of their options from UNEP/CBD/BSWG/4/Inf.2. A few developed countries and one regional group supported deleting the article, citing, *inter alia*, coverage under CBD Article 14(2), and/or domestic legislation. Many developing countries supported keeping the article, although in different forms. One delegate suggested a framework with components on: general principles for liability; civil liability; compensation; measures of reinstatement; duration of liability; emergency fund; and exceptions. Noting little time for proper consideration, a few countries supported revisiting the issue at the first meeting of the Parties (MOP) to the Protocol. Some countries questioned how the article would apply to non-Parties. Delegates also noted differences between liability of the Party and the exporter. One developing country stated that profiting from biotechnology while shifting responsibility for harm to others was unjust.

At the close of the afternoon session, the Co-Chair requested delegates to consider whether SWG-II should begin work on Articles 1 (Principles/Objectives) and 1 *bis* (General Obligations) or refer text, as is, to BSWG-5.

CONTACT GROUP II

CG-II met to discuss Articles 29 (Secretariat), 30 (Subsidiary Bodies and Mechanisms) and 31 (Conference of the Parties). Delegates also began discussing two options for the Preamble, but disagreed on the level of detail and content to be included.

BRIEFING WORKSHOP ON THE UNEP/GEF PILOT BIOSAFETY ENABLING ACTIVITY PROJECT

Hamdallah Zedan and Paul Chabeda of UNEP (United Nations Environment Programme) presented a workshop on the UNEP/GEF (Global Environment Facility) Pilot Project, designed, in part, to determine what assistance developing countries and countries in transition will need to implement the Protocol. The project has two components: assistance with creation of national biosafety frameworks; and support for regional workshops on biosafety, specifically on RA, RM and transboundary transfer of LMOs with novel traits (ONTs). Eighteen countries are participating in the framework component. Regional workshops will be held in Africa, Asia/Pacific, Central/Eastern Europe, and Latin America and the Caribbean.

IN THE CORRIDORS

Given polarization of positions on liability and compensation, some wondered whether the issue would be left to the final BSWG meeting in a game of political brinkmanship, or if delegates would opt out by deferring detailed discussions until the first MOP to the Protocol.

THINGS TO LOOK FOR TODAY

SUB-WORKING GROUP I: SWG-I will meet at 10:00 am to continue work on Article 12 and Annexes.

SUB-WORKING GROUP II: SWG-II will meet at 10:00 am to review revised text on Articles 18, 20, 21 and 24, and possibly, text on Articles 19 and 26.

CONTACT GROUP I: CG-I will meet at 10:00 am to discuss definitions and Annexes.

CONTACT GROUP II: CG-II will meet at 1:30 pm to continue work on the Preamble.

PRESENTATIONS: In Room 1.15

1:00 pm: Biotechnology Solutions to Animal Health Problems in Developing Countries: Rinderpest and Rabies Vaccines.

2:00 pm: Biotechnology: Experiences from the Czech Republic.