



## HIGHLIGHTS OF BSWG-5 THURSDAY, 27 AUGUST 1998

BSWG-5 conducted its final day of negotiations and met in an evening Plenary to adopt a partial draft report of the meeting and hear a statement by Colombia, host of BSWG-6.

### PLENARY

BSWG Chair Veit Koester invited delegates to consider UNEP/CBD/BSWG/5/L.1 (Draft Report of BSWG-5) for adoption. Delegates noted that Cameroon participated as an observer in the Bureau, as Mauritania could not attend BSWG-5. Australia, supported by Argentina, said the reference to the decision to discuss and negotiate LMOs and "products thereof" and related articles presumed agreement to negotiate inclusion of "products thereof." Ethiopia said he thought BSWG-5 was to negotiate all issues. Chair Koester said the Plenary agreed that items should be discussed together, and with that understanding delegates deleted "and negotiated."

Colombia, host government of the final session and extraordinary COP, reviewed the process' history, noting BSWG's accomplishments to date. She emphasized adherence to the precautionary principle and expressed concern over the little known impacts of LMOs on biodiversity-rich countries, especially when science has focused primarily on their impacts in more homogenous agricultural conditions. She said it would be a misnomer to call this a biosafety protocol if it simply serves as a mechanism for information exchange and if it unfairly burdens importing over exporting countries. She further lamented the delay in consideration of the liability issue, which now may not be possible to fully negotiate at BSWG-6. She expressed Colombia's commitment to an effective protocol balancing the CBD's objectives and the COP's mandate.

### SUB-WORKING GROUP I

SWG-I reviewed the Wednesday evening drafting groups' work on **Articles 12** (Risk Assessment) and **13** (Risk Management). Delegates incorporated into Article 13 text from Article 12 calling on Parties to take measures to prevent unintentional transboundary movement, including requiring that risk assessments be carried out prior to first release. This text remains bracketed. Delegates also agreed to delete text in Article 12 regarding responsibility for reliability of information provided, as Article 4 (Notification) contains similar bracketed text.

On Article 13, several speakers said text calling on Parties to ensure genomic and trait stability by observing LMOs over a period commensurate with their life-cycle or generation time before application to their intended use did not belong in a section on risk management. One delegate suggested altering text calling for technical assistance to note that "If the Party of import lacks the financial and technical capacity for risk management, it may ask the Party of export to provide technical and financial assistance." Others objected. Delegates continued to present opposing views on phasing out specific LMOs.

In **Article 6** (Decision Procedure for AIA), regarding the time period within which the Party of import shall indicate if the movement may proceed without written consent, SWG-I replaced "no more" with "after no less" than 90 days, and the text remained bracketed.

In **Article 3A** (Scope of Protocol) LMOs "resulting from modern biotechnology" was bracketed. In the bracketed paragraph limiting the scope, all subparagraphs were bracketed. In the subparagraph exempting transboundary movements of LMOs not likely to have adverse effects on the conservation and sustainable use of biodiversity, reference to "risks to human health" was bracketed and a footnote was inserted proposing a specified class of LMOs "which are pharmaceuticals for humans" in the annex.

In text in **Article 3B** (Application of AIA Procedure) exempting LMOs exempted under domestic legislation of the Party of import or bilateral, multilateral or regional agreements consistent with the objectives of the protocol, "and obligations under international law" was inserted and bracketed. In text exempting LMOs destined for the Party of import's market provided they have previously granted an AIA for that purpose, delegates specified that the action would be "without prejudice to any decision under Article 6(3)(a) made by the Party of import."

On **Article 9** (Simplified Procedure), Annex I was designated to contain information relating to a transboundary movement to be provided in the notification. In **Article 11** (Multilateral, Bilateral and Regional Agreements) text providing for such agreements "and obligations under international law" was inserted after "[consistent with the objectives of this Protocol]" and bracketed.

**CONTACT GROUP I:** CG-I presented a draft for Annex II (Risk Assessment), which identifies the objective, use, general principles and methodology of risk assessment and elaborates the characteristics



of relevant technical and scientific details. A footnote indicates that further discussion will occur on the technical details based on documents UNEP/CBD/BSWG/5/Inf.1 and UNEP/CBD/BSWG/5/2. One delegate bracketed references to "taking into account the risk to human health." SWG-I debated whether to change all references to "should" to "shall." Delegates also bracketed a reference to "novel genetic combinations."

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

A representative from the WTO addressed SWG-II concerning interrelationships of the Agreement on the Application of Sanitary and Phytosanitary Measures with the CBD and the protocol. He said an informal consultation between the CBD Secretariat and WTO members will take place on 17 September 1998 in Geneva.

On **Article 23** (Non-Parties) one developed country suggested deletion. One developing country supported requesting Parties to ban trade in LMOs with non-Parties; one developed country "strongly" opposed it. One developed country said the reference to the Protocol's objectives was unnecessary. Another outlined the importance of trade subject to bilateral, regional or multilateral agreements or arrangements with non-Parties as well as their availability through the Biosafety CH. Delegates split text on another paragraph into two separate sentences: one encourages non-Parties to adhere to the Protocol and the other encourages them to contribute appropriate information to the Biosafety CH on LMOs in their territory.

Discussing **Article 24** (Non-discrimination), many delegates favored deleting the article, either because such trade considerations are not relevant to the protocol or they could be effectively addressed in Article 34 (Relations with Other Agreements). A few countries supported the article, noting that the protocol will impact trade. Delegates also considered how to ensure that foreign LMOs would not be discriminated amongst each other as well as against domestic LMOs.

Developing countries supported the text of **Article 26** (Socio-Economic Considerations). One delegate suggested extending the article's scope to potential importing and affected Parties. Most developing countries recommended placing a paragraph with a principle entailing consideration of socio-economic impacts before a provision encouraging research. Most developed countries recommended deleting the article, instead one suggested a preambular reference. One delegate suggested bracketing text entailing consideration of socio-economic impacts during risk assessment. Another suggested text ensuring consideration that possible adverse consequences may require long observation periods to trace. The entire text was bracketed.

Developing countries supported **Article 25** (Illegal Traffic) without brackets. A few developed countries suggested bracketing the provision permitting the affected Party to require the Party of origin to dispose of the illegally-trafficked LMOs at its own expense and deleting the definition of illegal traffic. One developing country said it would be illogical to create an offense without defining it. A few countries reintroduced the provision requiring delivery of information concerning illegal traffic to the Biosafety CH, as it was not considered in Article 19. One developed country suggested that only "appropriate" information be divulged. The Co-Chair recommended moving the definition of illegal traffic to Article 2 (Use of Terms).b

Delegates discussed **Article 21** (Capacity-building) in association with SWG-I's recommendations to include text from Articles 11 (Multilateral, Bilateral and Regional Agreements), 12 (Risk Assess-

ment), 13 (Risk Management) and 14 (Minimum National Standards). Several delegates said these references were too detailed, inappropriate or already covered by existing language. On Article 21 several countries supported condensing two paragraphs. Some delegations supported existing text, delineating the article's elements: statement of principles; needs of developing countries and those with economies in transition; and aims of cooperation. These delegations supported deleting reference to private sector involvement, calling it an internal matter also covered in CBD Article 16.4. Several developed countries supported reference to the private sector, noting its advanced technological capacity. Some delegates supported removing reference to financial resources, noting coverage in Article 28 (Financial Mechanism and Resources), while others said such reiteration was helpful.

On **Article 1** (Objectives) many delegates stressed that language be consistent with CBD Articles 19.3 and 8(g), as well as the BSWG's mandate. Some countries stressed that the protocol's objective should focus specifically on transboundary movements of LMOs. One developed country suggested referencing the precautionary principle; others objected. Some developing countries proposed language on "products thereof" and "socio-economic considerations." Delegates deleted, *inter alia*, a phrase relating to the AIA process.

Delegates considered **Article 34** (Relationship with Other International Agreements) in association with Article 11. Several countries supported the zero option, although some noted that if retained the article should contain the bracketed exemption "where the exercise of those rights and obligations would cause serious damage or threat to biological diversity," mirroring CBD Article 22 (Relationship with Other International Conventions). Others supported the article without the aforementioned exemption. One delegation proposed altering language from "would" to "could reasonably be considered to," although several delegations objected by noting inconsistency with CBD language. Delegates deleted language regarding the provision's entry into force. Most delegates noted the irrelevance of text on Article 11 to the discussion.

On **Article 1 bis** (General Obligations) most developed countries suggested deleting paragraphs on involvement of interested organizations, AIA, handling, transport and use of LMOs and the law of the sea. A few delegates suggested deleting reference to punishment of illegal traffic, citing coverage in Article 25 (Illegal Traffic). One suggested deleting Article 25 instead. A few developed countries suggested replacing a paragraph permitting Parties to impose more stringent or comprehensive requirements with PIC language, "nothing in this protocol shall restrict the right of parties to take measures that are more protective..." One delegate reintroduced a provision on protecting States' rights under the law of the sea.

### **CONTACT GROUP II**

CG-II discussed **Article 28** (Financial Mechanism and Resources). CG-II also considered text on **Article 27** (Liability and Redress), which consolidated three options into one heavily bracketed paragraph including a zero option, an enabling option and a substantive option.

## **THINGS TO LOOK FOR**

**PLENARY:** The Plenary is expected to convene from 11:00 am to 2:30 pm to adopt the Sub-Working Groups' draft articles.