



# Earth Negotiations Bulletin

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## REPORT OF THE SIXTH SESSION OF THE OPEN-ENDED AD HOC WORKING GROUP ON BIOSAFETY AND THE FIRST EXTRAORDINARY SESSION OF THE CBD CONFERENCE OF THE PARTIES:

14-23 FEBRUARY 1999

The sixth session of the Open-ended *Ad Hoc* Working Group on Biosafety (BSWG-6) was held from Sunday, 14 February, to Monday morning, 22 February 1999, in Cartagena de Indias, Colombia. The first Extraordinary Meeting of the Conference of the Parties (ExCOP) to the Convention on Biological Diversity was held from 22-23 February 1999. Over 600 participants representing 138 governments, business and environmental NGOs and the scientific community, attempted to finalize a protocol on biosafety during the BSWG for adoption by the ExCOP. Despite ten days of non-stop debate, including weekend, late night and early morning sessions, delegates were not able to agree on a protocol. The main areas of contention centered on trade issues, treatment of commodities and domestic vs. international regulatory regimes. Instead the ExCOP adopted a decision to suspend the meeting and request the ExCOP President and the COP-4 Bureau to decide when and where the session would resume, no later than the fifth meeting of the Conference of the Parties. Delegates also decided that the Protocol will be called the Cartagena Protocol on Biosafety to the Convention on Biological Diversity. The text of the draft Protocol, set out in Appendix I to the Report of BSWG-6, as well as the statements by governments with respect to the text of the draft Protocol contained in that report, will be transmitted to the resumed ExCOP session for further debate.

### A BRIEF HISTORY OF THE BIOSAFETY PROTOCOL

The Convention on Biological Diversity (CBD), negotiated under UNEP's auspices, was adopted on 22 May 1992 and entered into force on 29 December 1993. There are currently 175 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.

**COP-1:** The first Conference of the Parties (COP-1) to the CBD, held in Nassau, the Bahamas, from 28 November - 9 December 1994, established an Open-ended *Ad Hoc* Group of Experts on Biosafety,

which met in Madrid from 24-28 July 1995. According to this meeting's report (UNEP/CBD/COP.2/7), most delegations favored the development of an international framework on biosafety under the CBD. Elements favored unanimously for such a framework included: all activities related to LMOs that may have adverse effects on biodiversity; transboundary movement of LMOs; release of LMOs in centers of origin/genetic diversity; mechanisms for risk assessment and management; procedures for advance informed agreement (AIA) information exchange; capacity-building and implementation; and definition of terms. Elements with partial support included: socio-economic considerations; liability and compensation; and financial issues.

**COP-2:** At COP-2 in Jakarta, Indonesia, in November 1995, delegates considered the need for and modalities of a protocol on biosafety. 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 transboundary movement of any LMO that may have an adverse effect on biological diversity." COP-2 also established an Open-ended *Ad Hoc* Working Group on Biosafety (BSWG) to elaborate the Protocol based on elements from the Madrid report. Other terms of reference for the BSWG state that it shall: elaborate key term

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and concepts; consider AIA procedures; identify relevant categories of LMOs; and develop a protocol that takes into account the precautionary principle and requires Parties to establish national measures.

**BSWG-1:** At its first meeting, held in Aarhus, Denmark, from 22-26 July 1996, the BSWG elected Veit Koester (Denmark) as its Chair and began the elaboration of a protocol on biosafety. Although the meeting produced few written results, it functioned as a forum for defining issues and articulating positions characteristic of a pre-negotiation process. Governments listed elements for a future protocol and outlined the information required to guide their future work.

**BSWG-2:** Delegates to BSWG-2, held from 12-16 May 1997 in Montreal, discussed a range of issues, including: objectives; AIA; notification procedures for transfers of LMOs; national competent authorities/focal points; information-sharing and a clearing-house mechanism; capacity-building; public participation and awareness; risk assessment and management; unintentional transboundary movement; handling, transportation, packaging and transit requirements; and monitoring and compliance. BSWG-2 convened a contact group to consider definitions of key terms and directed the Secretariat to compile an alphabetical list of terms requiring definition, as submitted by countries, for consideration at BSWG-3.

**BSWG-3:** BSWG-3 met in Montreal from 13-17 October 1997. Delegates produced a consolidated draft text to serve as the basis for negotiation. The meeting established two Sub-Working Groups to address the core articles of the Protocol, as well as a contact group on institutional matters and final clauses. It also extended the mandate of the existing contact group on definitions to address annexes. Delegates addressed outstanding issues in plenary, including: socio-economic considerations; liability and compensation; illegal traffic; non-discrimination; trade with non-Parties; as well as objectives, general obligations, title and preamble for a protocol.

**BSWG-4:** At the opening of BSWG-4, which met in Montreal from 5-13 February 1998, Chair Koester underscored that the BSWG was entering the negotiation phase and that participants must attempt to reduce, through negotiated consensus, the number of options under each article. Using the structure adopted at BSWG-3, delegates began consideration of several articles that had only received preliminary discussion at BSWG-3, including: principles/objectives, general obligations, non-discrimination, socio-economic considerations, and liability and compensation. Delegates also continued work on other issues previously addressed, including: matters relating to AIA, risk assessment and management, minimum national standards, emergency measures and capacity-building.

**COP-4:** The Fourth Meeting of the Conference of the Parties (COP-4) to the CBD took place from 4-15 May 1998 in Bratislava, Slovakia. In Decision IV/3, "Issues related to biosafety," the COP extended the deadline for the negotiation of a protocol from the end of 1998 to early 1999. It established an extra meeting to be followed by an ExCOP to adopt the Protocol in 1999.

**BSWG-5:** BSWG-5 met from 17-28 August 1998 in Montreal. Delegates consolidated options for 45 articles in the revised consolidated draft to 40 articles in the conclusions of the Sub-Working and Contact Groups. Thirteen articles remained entirely bracketed, however, indicating that delegates had not agreed on the key elements of a protocol, let alone the articles' content. Polarized positions continued to emerge during discussions over whether the Protocol's scope included "products thereof," whether the Protocol would address questions of liability and redress, and if the Protocol would facilitate information exchange for trade in LMOs or reflect a more precautionary approach. Nevertheless, the issues to be negotiated were clarified for further consideration at BSWG-6.

## REPORT OF BSWG-6

Chair Veit Koester opened BSWG-6 on Sunday, 14 February 1999, introduced the Bureau and noted the decisions of the Extended Bureau Meeting, held from 21-22 October 1998, to discuss related articles in clusters and to form a legal drafting group to facilitate drafting of the Protocol's text. The Bureau comprised: Elsa Kelly (Argentina) (replacing Diego Malpede); Lynn Holowesko (Bahamas); Behren Gebre Egziabher Tewolde (Ethiopia); Ervin Balazs (Hungary); R. H. Khwaja (India) (replacing A. K. Ahuja); Mohamed Mahmoud Ould el Gaouth (Mauritania); Darryl Dunn (New Zealand); Alexander Golikov (Russian Federation); and I.A.U.N. Gunatillake (Sri Lanka).

In his opening remarks, acting CBD Executive Secretary Hamdallah Zedan commented on the Protocol in the context of broader trends such as globalization, regionalization and the information era. On behalf of UNEP, Sipi Jaakola conveyed the best wishes of UNEP Executive Director, Klaus Töpfer, who was scheduled to arrive later in the week.

### ORGANIZATION OF WORK

Chair Koester referred to the 30 articles in the draft negotiating text (UNEP/CBD/BSWG/6/2) that were unresolved and encouraged delegates who had submitted proposals for further annexes to withdraw them. He identified the key concepts to be resolved including: "products thereof"; contained use of LMOs; socio-economic considerations; precautionary principle; liability and redress; and trade with non-Parties. He recommended confining the negotiation of each issue to specific groups and discussing articles in clusters. He outlined the elements of a mechanism, the "Friends of the Chair," consisting of individuals nominated by the different groups involved, to facilitate the negotiating process.

Delegates proceeded to break into two Sub-Working Groups, two Contact Groups and numerous informal groups to consider the draft negotiating text for a biosafety protocol, as contained in UNEP/CBD/BSWG/6/2. The working structure maintained the format of BSWG-5. Sub-Working Group I (SWG-I), co-chaired by Eric Schoonejans (France) and Sandra Wint (Jamaica), discussed Articles 4-16 and 37. Sub-Working Group II (SWG-II), co-chaired by John Herity (Canada) and R. H. Khwaja (India), discussed Articles 1, 2, 17-27 and 34. Contact Group I (CG-I), co-chaired by Piet van der Meer (Netherlands) and Osama El-Tayeb (Egypt), discussed Article 3 and the Annexes. Contact Group II (CG-II), co-chaired by John Ashe (Antigua and Barbuda) and Katarina Kummer (Switzerland), discussed the Preamble, Articles 28-33, 35, 36 and 38-42. The Legal Drafting Group was chaired by Lynn Holowesko (Bahamas).

At the outset, SWG-I was asked to reach agreement on "commodities and LMOs destined for deliberate release into the environment" and "products thereof," and SWG-II on "socio-economic issues" and the "precautionary principle" by Monday, 15 February, at 6:00 pm. The BSWG Chair asked all groups to finish work by midnight Wednesday, 17 February, to enable identification of outstanding issues by Thursday and completion of work by Friday. SWG-I created informal groups to deal with its two issues. The informal group on "products thereof" reported to SWG-I on Monday evening that it could not arrive at a consensus. The BSWG Chair asked the group to continue its work and report directly to the Friends of the Chair. The informal group on "commodities and LMOs destined for deliberate release into the environment" presented SWG-I with the results of its deliberations on Monday and, after a discussion in SWG-I, three options were presented to the BSWG Chair. SWG-II convened a small group to discuss "socio-economic considerations" and conducted informal consultations on the "precautionary principle." Since no consensus was reached on either issue by Monday evening, they were transferred to the Friends of the Chair for further consideration.



At a plenary convened on Wednesday, 17 February, the Co-Chairs of the Sub-Working and Contact Groups presented reports on the progress in their groups and all pending issues were transferred to the Friends of the Chair (FOC). After extensive consultations with the FOC, BSWG Chair Koester produced a Chair's text (UNEP/CBD/BSWG/6/L.2) on Thursday followed by a corrigendum correcting errors made in the first text (UNEP/CBD/BSWG/6/1.2/Corr.1). Throughout the day on Friday and into the early hours of Saturday, the Friends of the Chair reviewed the Chair's text. In a Saturday morning plenary, Chair Koester announced that outstanding issues would be considered by a "Friends of the Minister" group, convened at the initiative of Colombian Environment Minister Juan Mayr, the President of the ExCOP, which would include a few select countries. Deliberations continued through the weekend.

On Sunday, 21 February, a revised Chair's text was circulated (UNEP/CBD/BSWG/6/L.2/Rev.1) and a further text was issued (UNEP/CBD/BSWG/6/L.2/Rev.2) as a result of the Legal Drafting Group's work. This text aimed at ensuring legal coherence and consistency in the Chair's text without altering its substantive content.

On Monday, 22 February, the BSWG adopted the Chair's text to be forwarded to the ExCOP. Over 50 countries expressed reservations about the text, emphasizing that it did not reflect a balanced compromise. Several also objected to the manner in which the text had been prepared and adopted.

At the opening of the ExCOP, newly elected ExCOP President Juan Mayr took the initiative of establishing an informal working group, the "Group of 10," including representatives of common interest groups. He said this group would make an attempt to resolve the outstanding issues in order to reach consensus. The different interest groups included: the EU, the "Miami" group (consisting of Argentina, Australia, Canada, Chile, the US and Uruguay), and the "Like-minded Group" (the G-77/China less the developing country members of the Miami Group).

Throughout the day on Tuesday, 23 February, and into the morning hours of Wednesday, delegates debated the Chair's text in Mayr's informal group. However, in the end delegates could not arrive at a consensus. As later noted in the final plenary, a "package" proposal on the outstanding issues was presented by the EU and, after discussion, supported by the Like-minded group, the Central and Eastern European (CEE) countries and a third "Compromise Group," consisting of Japan, Mexico, Norway, the Republic of Korea and Switzerland. The Miami Group could not accept the package and noted there was no consensus. The Miami Group also proposed to suspend this session of the ExCOP and resume the discussions at a later date. In plenary, which began at approximately 3:30 am Wednesday morning, delegates adopted a decision on the continuation of the ExCOP. The draft Cartagena Protocol (UNEP/CBD/ExCOP/1/2) will be forwarded to the resumed session for further consideration.

### **NEGOTIATION OF THE BIOSAFETY PROTOCOL**

The following is a summary of the draft Cartagena Protocol on Biosafety. Some issues, in light of their cross-cutting nature and the fact that they were discussed as such in the Sub-Working and Contact Groups, are separately addressed below. All other issues are discussed under the relevant article of the draft Protocol.

*Editors' Note: As a matter of policy, the Earth Negotiations Bulletin does not directly attribute statements made by governments in informal negotiations when requested to do so by the Chair. Given the sensitivity to the presence of non-State participants as observers to these negotiations, this report does not include the use of country attributions in the work of the Sub-Working Groups and the Contact Groups.*

**"PRODUCTS THEREOF":** The term "products thereof," previously discussed in the context of the scope of the Protocol and the processes thereunder, is referenced in the draft Protocol under Article 17 (Information-Sharing and Biosafety Clearing-House) and Annexes I (Information Required in Notifications) and II (Risk Assessment), but excluded under Articles 4 (Scope) and 5 (Application of the AIA Procedure).

Discussions in SWG-I centered, initially, on an informal note on discussions held at BSWG 5, which proposed that certain processed products from LMOs are addressed in the Protocol to the extent that there is a provision in the Protocol that relevant information (risk assessment on environment and health issues) on LMOs used for processing is made available through the Clearing-House Mechanism. One delegate stated that the proposal could be a basis for negotiation, but several others disagreed. One country suggested that the Protocol could define categories of LMOs that could be subject to different provisions. Another delegation proposed that the issue could be dealt with under risk assessment provisions. SWG-I convened an informal group to discuss how the issue of "products thereof" should be dealt with. The informal group circulated a paper containing various options for treatment of "products thereof" in the Protocol: full inclusion, full exclusion, and a Co-Chairs' compromise proposal. The Co-Chairs of SWG-I distributed an additional paper with proposals for addressing "products thereof." Many delegations supported a proposal in that paper that "purified products thereof, not containing genetic material (DNA and RNA), need not be addressed in the Protocol." Some also agreed to the SWG-I Co-Chairs' proposal that, as agreement seemed unachievable before the end of the meeting, the COP could adopt a decision to conduct further work on the issue. Others did not support this option. No consensus was reached and the issue was forwarded to the Friends of the Chair.

**PRECAUTIONARY APPROACH:** The precautionary approach contained in Principle 15 of the Rio Declaration on Environment and Development, is referenced explicitly in the Preamble and Article 1 (Objective) and implicitly in Article 8 (Decision Procedure) and Annex II (Risk Assessment) of the draft Protocol. The precautionary approach was discussed earlier in the negotiations as the precautionary principle.

Bracketed references to the precautionary principle in the draft negotiating text (UNEP/CBD/BSWG/6/2) existed in, *inter alia*, the Preamble, Article 1 (Objective), Article 8 (Decision Procedure), Article 9 (Review of Decisions) and Article 12 (Risk Assessment). Delegates expressed a wide range of views on including the principle in the Protocol. Many delegates underscored the importance of referring to the precautionary principle in the operational Articles 8, 9 and 14 (decision procedure, review of decisions and risk assessment, respectively), as well as in the Protocol's objectives. Some stressed, in particular, the article on risk assessment, while others said that inclusion in Articles 8, 9 and 14 is the minimum required to limit risks from biotechnology. Some thought it best to address the issue in the Preamble. One delegate indicated that the precautionary principle is not defined in international law and is therefore difficult to implement without an agreed-upon definition. A number of delegates said the draft Protocol is, in itself, an expression of the precautionary principle. One delegate suggested that a scientific approach should be the priority and, when not available, the precautionary approach could be applied, cautioning that a subjective interpretation of the principle could result in unintentional restrictions and have harmful economic effects.

A small group was formed by SWG-II to discuss the issue, but no consensus was reached as some participants strongly opposed referencing the principle in operational articles.



**HUMAN HEALTH:** The draft Protocol references “taking into account risks to human health” in the objective and throughout the articles where adverse effects on biodiversity are mentioned, including Articles 2 (General Provisions), 4 (Scope) and 12 (Risk Assessment). A provision under Article 2 also calls on Parties to take into account specialized work on risks to human health undertaken in international fora.

Developed countries argued that addressing human health was outside the scope of the Protocol and that specialized international initiatives were already in place to deal with such questions. Developing countries countered that transboundary movements of LMOs could have adverse impacts on human health, that human health and biodiversity considerations were inseparable, and that a primary aim of the Protocol should therefore be to promote human health. An informal group co-chaired by Austria and Botswana was convened to consider the issue and develop options for the treatment of human health. Two of these options, referencing “taking into account risks to human health” throughout the Protocol and referring provisions on human health to the WHO/FAO Codex Commission and other international instruments, were reflected in the Chair’s text and remained unchanged in the draft Protocol.

**PREAMBLE:** The Preamble contains references to, *inter alia*: CBD Articles 8(g) (managing risks of LMOs), 17 (Exchange of Information) and 19 (Handling of Biotechnology and Distribution of its Benefits); CBD COP decision II/5 (Consideration of the Need for and Modalities of a Protocol for the Safe Transfer, Handling and Use of LMOs); the precautionary approach contained in the Rio Declaration on Environment and Development; the expansion of biotechnology and growing public concern over potential effects on biodiversity and human health; the potential of biotechnology for human well-being; the importance of centers of origin and genetic diversity; and the limited capabilities of many countries to cope with risks associated with LMOs.

CG-II considered two options for the Protocol, one brief and one extensive. Delegates started deliberating from the shorter version adding text from the longer. Specific elements raised included biotechnology’s expansion and public concern, along with centers of origin and genetic diversity. Some delegates supported reference to the precautionary principle, socio-economic considerations and liability and redress, but agreed to let the sub-groups discussing those particular issues decide on their inclusion in the Preamble. The draft Protocol includes the precautionary approach, while omitting references to socio-economic considerations and liability.

**ARTICLE 1 (Objective):** The objective of the Protocol is to contribute to ensuring an adequate level of protection in the field of safe transfer, handling and use of LMOs resulting from modern biotechnology that may have adverse effects on the conservation and sustainable use of biodiversity. It references the precautionary approach and risks to human health, and focuses on transboundary movements. It excludes references to socio-economic imperatives and “products thereof.”

Debates in SWG-II focused on the need for various references in the article, *inter alia*, to “products thereof,” the precautionary principle, human health and socio-economic imperatives. While many developing countries supported retention of such references, some developed countries objected. Several countries stated that the Protocol’s objectives should focus on transboundary movements of LMOs. One delegate emphasized the need for consistency with CBD Article 8(g) with respect to human health. As no consensus was reached in SWG-II, the issue was transferred to the Friends of the Chair.

**ARTICLE 2 (General Provisions):** This article seeks to outline the general obligations of Parties to the Protocol with regard to AIA and development, handling, transport, use, transfer and release of

LMOs. It also seeks to establish the superiority of the international Law of the Sea and accepts the rights of the Parties to take action that is more protective of the conservation and sustainable use of biodiversity provided that any action is in accordance with other obligations under international law, and is consistent with the objectives and provisions of the Protocol. Parties are also encouraged to take into account instruments and work undertaken in international forums with competence in human health.

**ARTICLE 3 (Use of Terms):** This article contains definitions of Conference of the Parties, contained use, export, exporter, import, importer, living modified organism, living organism, regional economic integration organization, and transboundary movement. Definitions of Parties of export and import were deleted. CG-I discussed contained use, LMO, living organism and modern biotechnology. Delegates added a definition of “contained use” referring to any operation within a physical structure involving LMOs that are limited in their contact with the environment. Delegates changed the definition of LMO to “any living organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology.” Discussions around modern biotechnology simplified text to the application of *in vitro* nucleic techniques and cell fusion beyond the taxonomic family. CG-II discussed definitions of export, exporter, import, importer, regional economic integration organization and transboundary movement. Delegates differed on the need for language excluding transit from definitions on transboundary movement, export and import. Noting the relevance to discussions under Articles 4 (Scope) and 5 (Application of the AIA procedure), the issue was forwarded to SWG-I. On export, exporter, import and importer, delegates opted to reference “Parties” as opposed to “States” and agreed that there was no need for a definition of illegal traffic. In the draft Protocol, transit was not included, although definitions of Conference of the Parties and regional economic integration organization were.

**ARTICLE 4 (Scope):** This article outlines the areas of applicability and non-applicability of the Protocol. The Protocol applies to the transboundary movement of LMOs that may have an adverse effect on the conservation and sustainable use of biodiversity, taking also into account risks to human health. The Protocol does not apply to transboundary movements of LMOs that are: not likely to have an adverse effect on the conservation and sustainable use of biodiversity; destined for contained use (subject to certain exceptions); and pharmaceuticals for humans. Furthermore, except for Articles 2 (General Provisions), 14 (Unintentional Transboundary Movements and Emergency Measures) and 15 (Handling, Transport, Packaging and Identification), the Protocol does not apply to the transit of LMOs.

Consideration of this article by SWG-I was informed by specific discussions on “human health,” “products thereof” and “contained use.” The issue of “contained use” engendered some discussion. While some delegations called for LMOs destined for contained use to be subject to the same provisions as other LMOs, others said that such LMOs should not be subject to AIA procedures. One delegation suggested that LMOs destined for contained use be excluded from the scope of the Protocol. An informal group was created by SWG-I to discuss the issue and the results of its deliberations were forwarded to the BSWG Chair. Informal groups were also convened to consider “products thereof” and “human health.”

The first draft of the Chair’s text included an empty third annex on LMOs not likely to have adverse effects on the conservation and sustainable use of biodiversity, taking into account risks to human health. The annex was removed in the draft Protocol, on the recommendation of the Legal Drafting Group, and reference was made to such a possible future annex under Article 4.



**ARTICLE 5 (Application of the Advance Informed Agreement Procedure):** This article sets out the application of the AIA procedure. The draft Protocol states that, subject to what is not included in the scope, the AIA procedure, as laid out in Articles 6-9, will apply prior to the first transboundary movements of LMOs for intentional introduction into the environment of the Party of import. It further states that intentional introduction does not refer to LMOs intended for direct use as food or feed, or for processing, and that Parties may, under their respective domestic laws, require procedures consistent with AIA for LMOs other than those excluded from the Protocol's scope. It also states that, subject to the provision regarding domestic laws, AIA shall not apply to the intentional transboundary movements of LMOs, to be identified in a decision of the COP serving as the Meeting of the Parties to the Protocol, not likely to have adverse effects on biodiversity, taking into account risks to human health.

A main point of contention under Article 5 was reflected in a separate discussion on commodities and LMOs destined for deliberate release into the environment and whether they should be subject to the AIA procedure. Several developed countries said that only LMOs destined for deliberate release into the environment should be subject to AIA procedures, and LMOs intended for human or animal consumption did not pose a significant threat to biodiversity and could be dealt with in other provisions. Some delegates emphasized that countries had the right to take stricter measures. Many developing countries said that all LMOs should be subject to AIA procedures as any LMO, irrespective of intended use, could be accidentally released during transfer and handling. An informal group met to further discuss commodities and reported to SWG-I that discussions revolved around obligations of exporting Parties, format of information and method of making it available. Regarding a proposal presented by the SWG-II Co-Chairs, many developing countries objected to elements suggesting potential differentiation in risk levels between LMOs intended for deliberate release and those intended for food, feed and processing, supporting instead the subjection of all LMOs to the AIA procedures. Others supported differentiation.

**ARTICLE 6 (Notification):** This article states that the Party of export shall notify or require the exporter to ensure notification in writing to the importer's competent national authority prior to the intentional transboundary movement of a LMO covered by the AIA procedure in Article 5 (Application of the AIA procedure). The notification shall contain, at a minimum, the information specified in Annex I (Information Required in Notification). Discussion on notification revolved around whether transit Parties should be notified. One delegate proposed that Parties may require notification of the intent to transit, but following other delegations' objections, transit notification was excluded from the article. There was also debate over whether the Biosafety Clearing-House should be notified, but this proposed reference was subsequently excluded. Discussions on legal responsibility for information accuracy resulted in two proposals. Although concern was expressed over whether there should be a legal obligation to provide accurate information, the draft Protocol states that the exporter shall ensure that there is a legal requirement for providing accurate information.

**ARTICLE 7 (Acknowledgement of Receipt of Notification for AIA):** This article states that the Party of import shall acknowledge receipt of a notification, in writing, within 90 days of its receipt. The content of the acknowledgement must include: date of receipt; whether the notification, *prima facie*, contains the information referred to in Article 6 (Notification); and whether to proceed according to the domestic regulatory framework of the Party of import, provided that it is consistent with the Protocol or according to Article 8 (Decision Procedure for AIA). The article specifies that failure to acknowledge receipt shall not imply consent for transboundary movement.

Article 7 was discussed in SWG I, with issues relating to the timeframe referred to an informal group. The main areas of debate centered around the timeframe and the application of domestic regulatory frameworks. The 90-day timeframe for acknowledgement emerged as a compromise between those arguing for 30 days and those calling for an unspecified "reasonable period of time." Some delegates called for provisions on domestic regulatory frameworks to be included in a separate article on domestic regulatory frameworks, but this was not accepted.

**ARTICLE 8 (Decision Procedure):** Article 8 requires Parties of import to inform the notifier, within the 90-day period allowed to acknowledge receipt, that the transboundary movement may proceed, either without subsequent written consent, or only after written consent. Parties are required to communicate their decision within 270 days of receipt of notification to the notifier and the Biosafety Clearing-House. The article then sets out four possible decisions that Parties may take: approval, including how the decision applies to subsequent imports; prohibition; request for additional information; or information that the 270-day timeframe has been extended by "a defined period of time." The article specifies that, if a Party does not communicate its decision within 270 days, this shall not imply consent. Parties must give reasons for their decision, except for unconditional approval. Highly contentious text permits importing Parties to invoke the precautionary approach by stating that lack of full scientific certainty or consensus shall not prevent them from prohibiting the import of LMOs. Regarding future action, the article provides for circumstances to be defined under which transboundary movements can take place without written consent, and for the first COP serving as the Meeting of the Parties to take steps to "facilitate the reaching of a decision by a Party of import."

Discussions in SWG-I centered on the draft provisions allowing an importing Party to inform the notifier that a transboundary movement may proceed without further written consent. Many developing countries were concerned that, if explicit consent was not required, bureaucratic error might result in unwanted transboundary movements. Timeframes also provoked debate, with SWG-I unable to agree between three options: 180 or 270 days, or "a reasonable period of time." This latter option raised concern over creating uncertainty. Language that would have allowed the exporter to proceed with a transboundary movement if a response was not received in time was removed.

**ARTICLE 9 (Review of Decisions under AIA):** This article permits a Party of import to review and change its decision regarding the transboundary movement of an LMO at any time. The Party of import must base its decision on new scientific information and taking into account risks to human health. The Party must then inform the notifier and the Biosafety Clearing-House within 30 days, giving reasons for the decision. Article 9 also sets out under what conditions a Party of export or notifier may request a review, that is, where it considers that a change of circumstances has occurred or that additional scientific or technical information is available. Parties of import are required to respond to requests for review within 90 days, giving reasons. Finally, the article provides for a Party of import to require risk assessments for subsequent LMO imports, at its own discretion.

SWG-I could not reach agreement on the article, and it was transmitted without amendment to the Chair. Debate focussed on whether it should be the Party of export or the notifier that is allowed to request the Party of import to review its decision on the transboundary movement of an LMO. The draft Protocol deleted a reference to the precautionary principle as a basis for taking a decision to review, and also removed a condition under which a Party of export or notifier could request a review if there was reasonable evidence that the original



decision was not based on scientific principles and evidence. Language defining the conditions under which risk assessments for subsequent imports may be carried out was deleted.

**ARTICLE 10 (Simplified Procedure):** This article allows a Party of import to specify in advance, to the Biosafety Clearing-House, LMOs to be exempted from AIA, as well as when transboundary movements may proceed simultaneously with notification, in which case such notifications would apply to subsequent movements to the same Party. SWG-I briefly discussed this article and a number of delegates called for its deletion, some on the grounds that it was unnecessary, others arguing that all LMOs should be subject to AIA. SWG-I transmitted the article unchanged to the Chair. The draft Protocol retained most of the language contained in the draft negotiating text.

**ARTICLE 11 (Multilateral, Bilateral and Regional Agreements and Arrangements):** This article sets out provisions applying to Parties who enter into multilateral, bilateral and regional agreements and arrangements with Parties or non-Parties regarding procedures for transboundary movements of LMOs. It was taken up in SWG-I, but no progress was made, with several Parties calling for the article's deletion. According to Article 11, agreements or arrangements entered into by Parties must be consistent with the objectives of the Protocol, and not result in a lower level of protection than that provided for by the Protocol. Parties must inform the Biosafety Clearing-House of any agreements or arrangements they have entered into before or after the Protocol's entry into force, and the Protocol's provisions will not affect transboundary movements taking place pursuant to these. The article also provides for an importing Party to determine that its domestic regulations shall apply to its imports, provided that it notify the Biosafety Clearing-House. Provisions allowing a regional economic integration organization to declare that the Protocol does not apply to movements within its territory was deleted.

**ARTICLE 12 (Risk Assessment):** This article sets out the provisions under which risk assessment will be carried out. It says that risk assessment shall be undertaken in accordance with the provisions set out in Annex II and be based, at a minimum, on information provided in accordance with the notification procedure and other available scientific evidence in order to identify and evaluate the possible adverse effects of LMOs on the conservation and sustainable use of biodiversity, taking also into account the risks to human health. The text also states that the importer shall ensure that risk assessment is carried out in accordance with the AIA procedure, but that the importer may require the exporter to carry out the risk assessment. Finally, it requires the notifier to bear the financial responsibility for risk assessment.

SWG-I convened a contact group to incorporate proposed amendments into a revised text. A proposal that risk assessment be developed by relevant international organizations was accommodated by the substitution of "appropriate" techniques for "recognized" techniques. Delegates debated whether responsibility lies exclusively with the importer or whether language should reflect that the importer may ask the exporter to carry out the risk assessment. Some developed countries opposed language specifying financial responsibility, while others felt that responsibility lay exclusively with the exporter. Some said use of "notifier" was ambiguous.

**ARTICLE 13 (Risk Management):** This article states that Parties shall establish and maintain appropriate mechanisms, measures and strategies to regulate, manage and control risks identified under the risk assessment provisions, and elaborates on the measures and controls. The measures shall be imposed, to the extent necessary, to prevent adverse effects on biodiversity, and Parties can require, as appropriate, risk assessments prior to the first release of an LMO. The article also states that each Party shall, in order to ensure genomic and trait stability, endeavor to ensure that any LMO undergo a period of observation commensurate with its life-cycle or before being put to its

intended use. Finally, the article states that Parties shall cooperate in identifying LMOs or specific LMO traits that may have adverse effects on biodiversity, taking into account risks to human health, with a view to taking appropriate measures on the treatment of such LMOs.

A number of delegates opposed deletion of the paragraph on taking measures without full scientific certainty, supported retention of a paragraph on taking appropriate measures to prevent unintentional transboundary movements, and proposed movement of a provision on technical and financial assistance to Article 19 on capacity-building. Many delegates supported one delegation's proposal to include a paragraph on phasing out or banning certain LMOs, with specific reference to antibiotic-resistance marker genes. Others opposed the inclusion of this paragraph. The draft Protocol does not include references to: technical and financial assistance for importers; taking measures without full scientific certainty; phasing out or banning specific LMOs that may have adverse effects; and antibiotic-resistance marker genes.

**ARTICLE 14 (Unintentional Transboundary Movements and Emergency Measures):** This article details the measures that Parties are to take in the event of unintentional transboundary movements of LMOs, including notification, provision of information and consultation. Some delegates said it was unrealistic to prevent unintentional transboundary movements of LMOs. Others noted the linkage between this article and those on risk assessment, LMOs and confidential information. One delegate emphasized the need to identify the Party who is to take responsibility for triggering responsive actions to minimize negative impacts. One delegation proposed changing the current title of the article to "Measures to be Taken in Emergency," and deleting a paragraph on measures to minimize unintentional transboundary movements of LMOs. Many developing countries objected. On the consultation process, delegations differed on the need for a request from an affected or a potentially affected Party and the entity to be consulted. Some favored references to socio-economic considerations and human health. A paragraph on confidential information was deleted and included in Article 18 (Confidential Information).

**ARTICLE 15 (Handling, Transport, Packaging and Identification):** This article seeks to ensure that LMOs for intentional transboundary movement are handled, transported and packaged under conditions of safety, and are clearly identified, including in accompanying documentation. The article also calls for consideration of the need for, and modalities of, developing standards for identification, handling, packaging and transport practices. SWG-II discussions centered on labeling/identification, relevant international rules and standards, and development of new standards under the Protocol. Most developing country delegations supported a mandatory provision on handling, transport, packaging and labeling. Some supported a clearly defined label on the package or the container in addition to accompanying documentation. One noted that workers handling the package should be made aware of, *inter alia*, proper storage and risks associated with handling LMOs. Many developed countries wanted to exclude labeling from the article, citing sufficiency of identification. Some did not support documentation requirements, claiming that these requirements, like labeling for consumers, is a domestic policy matter. Some delegations proposed either identification with documentation or labeling. Many developed countries supported references to relevant international rules and standards, noting existing standards to be taken into consideration and opposing development of new standards. Most developing countries opposed any reference, stating that these standards did not fit well with the Protocol and requested development of new standards. In addition, delegates differed on references to cross-cutting issues, including "products thereof" and "risks to human health." There was also disagreement on whether the article applies to all LMOs within the scope of the Protocol or only those subject to AIA procedure.



As a compromise, the draft Protocol refers to "identification" and "accompanying documentation," rather than "labeling." A separate paragraph was included, requesting Meetings of the Parties to the Protocol to consider the need for, and modalities of, developing standards with regard to identification, handling, packaging and transport.

**ARTICLE 16 (Competent National Authority and National Focal Point):** This article requires governments to designate national focal points and competent national authorities to liaise with the Secretariat and perform administrative functions under the Protocol. This article engendered no debate and was provisionally adopted by the plenary on Wednesday, 17 February 1999.

**ARTICLE 17 (Information Sharing and the Biosafety Clearing-House):** This article establishes a Biosafety Clearing-House (CH) and outlines its objectives and the types of information that should be provided to it. Modalities of the operation of the CH are to be considered by the first Meeting of the Parties to the Protocol.

Discussions focused on the nature of the CH. Some delegations preferred a database rather than a CH mechanism. Those who preferred a CH mechanism disagreed as to whether it should be an independent CH or part of the CBD CH. Many countries believed that an independent biosafety CH would not be cost effective and that two CHs would burden countries. Others cautioned that integration of two mechanisms may overburden the CBD CH and pointed to the different focuses of the two CHs. The Secretariat indicated that, technically, the CBD CH could cope with Protocol-related demands of information. In discussing information to be provided to the CH, delegates differed on references to, *inter alia*, "products thereof" and "confidential information." Several delegations also indicated the linkages between this article and those dealing with risk assessment and the AIA procedure. Based on discussion in SWG-II, delegates agreed to a Co-Chair's draft proposal contained in the BSWG Chair's text in which the biosafety CH was defined as a part of the CBD CH. The draft removed reference to "products thereof" but retained to "confidential information."

**ARTICLE 18 (Confidential Information):** This article provides for the Party of import to permit the notifier to identify information that should be treated as confidential. Such confidential information is to be protected under national legislation. It identifies information that "may not" be considered confidential, such as the general description of the LMOs, the name and address of the notifier, a summary of the risk assessment undertaken and plans for emergency response.

Discussions focused on the necessity for this provision. Most developing countries favored its exclusion, citing coverage of confidential information under domestic and other international legislation. One said that, since the Protocol was on biosafety not "biotrade," confidential information was irrelevant. One suggested that it be featured either in the Preamble or in Article 17 (Information-Sharing and Biosafety Clearing-House). Most developed countries supported its inclusion, as protection of confidential information would encourage provision of full information. No consensus could be reached on this article in SWG-II and it was transferred to the Friends of the Chair.

**ARTICLE 19 (Capacity-building):** This article states that Parties shall cooperate in the development and strengthening of human resources and institutional capacities in, *inter alia*: training in safe biotechnology management, risk assessment and risk management; technological and institutional capacities; and biotechnology to the extent that it is required for biosafety. The article references the needs of developing country Parties, in particular the least developed and small island developing States, as well as countries with economies in transition. Discussions were conducted in SWG-II, a sub-group of SWG-II and finally CG-II. The article was considered in conjunction with Article 26 (Financial Mechanism and Resources), as many stressed the inadequacy of addressing capacity-building without reference to financial resources. Some developed countries advocated

reducing the article's scope to issues related to transboundary movements and not more generally on biotechnology and biosafety, which extend beyond the Protocol's mandate. Such language was amended to biotechnology "to the extent that it is required for biosafety." Delegates also differed over language to facilitate private sector involvement, with some noting its domestic nature and others stressing its importance in biotechnology. The reference was retained in the draft.

**ARTICLE 20 (Public Awareness and Participation):** This article requires Parties to promote and facilitate public awareness, education and participation in the Protocol's implementation. It requires consultation with the public in the decision-making process and provision of results to the public, while respecting confidential information. It calls on each Party to inform its public about how to access the Biosafety CH.

Several developing countries suggested referencing products thereof and human health and deleting language referring to confidential information. Several developed countries proposed deleting language on products thereof, with one suggesting deletion of the reference to human health. Some delegates differed on whether it should be mandatory or discretionary for Parties to provide their public with information and opportunities for participation. The SWG-II Co-Chairs produced a revised text for discussion that generated further debate. Most delegations said that the revised text did not reflect the element of participation. Delegates differed on, *inter alia*, whether confidential information need be protected at all; whether complete or only appropriate information need be provided to the public; and whether the information relate only to the "release, safe transfer and handling and use of LMOs" or also to the results of the decision-making process regarding such activities. A small group created to deal with the issue produced text that included bracketed references to human health, products thereof and "release, safe transfer, handling and use." The issue was transferred to the Friends of the Chair. The draft Protocol contains language referencing human health and excludes from the purview of the public information on "release" of LMOs.

**ARTICLE 21 (Non-Parties):** This article states that transboundary movements of LMOs between Parties and non-Parties shall be consistent with the Protocol's objective and principles. Parties are to encourage non-Parties to adhere to the Protocol and contribute to the Biosafety Clearing-House. Additionally, the article references Article 11 (Multilateral, Bilateral and Regional Agreements and Arrangements) with regard to transboundary movements under such agreements and arrangements. SWG-II and a sub-group considered this issue in a cluster with Articles 22 (Non-discrimination) and 31 (Relationships with Other International Agreements). Many developing countries supported a paragraph prohibiting trade with non-Parties, stressing that it would encourage countries to sign the Protocol. Others said prohibition of trade with non-Parties would either deter countries from ratifying or that a trade ban would be unrealistic. Some preferred that Parties conduct their trade in LMOs with non-Parties in a manner consistent with the objectives of the Protocol. After consideration of questions related to the practicability of a trade ban and possible legal challenges under the WTO, the language on the ban was withdrawn. Delegates also raised questions on the standards with which non-Parties would have to comply (e.g., the Protocol's objectives, substantive provisions or consistency with the conservation and sustainable use of biodiversity). The draft refers to consistency with the Protocol's objectives and principles.

**ARTICLE 22 (Non-Discrimination):** This article states that Parties shall ensure that measures to implement the Protocol do not discriminate unjustifiably between or among domestic and imported LMOs and do not create unnecessary obstacles to international trade. SWG-II and a sub-group considered the article in a cluster with Articles 21 (Non-Parties) and 31 (Relationship with Other International



Agreements). Originally in brackets, many delegates supported deleting the provision with some wanting to avoid involving trade concepts, and others noting the difficulty of synthesizing appropriate WTO regulations. One regional group favored retaining the article, stressing the need for non-discrimination concepts that would clarify the relation of those not members of the WTO.

**ARTICLE 23 (Illegal Transboundary Movement):** This article, which was titled "Illegal traffic," in the draft negotiating text, obliges Parties to adopt appropriate domestic measures to prevent and penalize transboundary movements of LMOs carried out in contravention of the Protocol. It empowers the Party affected by illegal transboundary movement to request the Party of origin to dispose of the LMOs at its own cost. It requires Parties to make available to the Biosafety CH information concerning cases of illegal transboundary movement.

Discussions focused on the necessity of the article. Most developing countries favored its retention, citing a need to harmonize measures taken to deal with illegal traffic. Several developed countries opposed its retention since Parties could develop domestic regimes to address illegal traffic. In particular, they opposed the provision requiring the Party of origin, in the case of illegal traffic, to dispose of the LMOs at its own expense. Since CG-II had recommended deleting the definition of illegal traffic, one developing country introduced, within the provision, language defining illegal traffic as "transboundary movement of LMOs carried out in contravention of the relevant provisions of the Protocol." Several developing countries supported this formulation, which was included in the draft. Some developed countries stressed that concern about law enforcement and confidentiality demanded that only "appropriate" information be transmitted. This issue was transferred to the Friends of the Chair for further consideration and the results were included in the draft Protocol.

**ARTICLE 24 (Socio-Economic Considerations):** This article allows Parties to take socio-economic considerations arising from the impact of LMOs on the conservation and use of biodiversity into account in reaching decisions on whether to allow imports of LMOs. Such decisions are to be consistent with the international obligations of the Parties. It encourages Parties to cooperate in research and information exchange on socio-economic impacts.

Discussion centered on the article's necessity. Many developing countries preferred its inclusion, while developed country delegations characterized the issue as difficult to quantify, beyond the BSWG's mandate, differing from country to country, and more appropriate for domestic action. Among those who did not prefer a separate operative article, some suggested including it in the Preamble. Others suggested addressing it in the sections on capacity-building, financial assistance or liability and redress. A small group was convened by SWG-II to discuss the issue but it could not reach consensus.

**ARTICLE 25 (Liability and Redress):** This article states that the first COP serving as the Meeting of the Parties shall adopt a process with respect to the appropriate elaboration of international rules and procedures in the field of liability and redress for damage resulting from transboundary movements of LMOs. The COP will take into account any ongoing processes in international law on these matters and shall endeavor to complete this process within four years.

The Chair of the sub-group that first discussed this issue sought to elaborate a middle ground between polarized positions that either called for strong liability language or sought deletion of the article. Following lengthy discussions, many delegates agreed that the complex issue could not be fully elaborated at this meeting and supported a proposal to include an article that enabled future work on the issue. The debate then focused on the level of commitment to such work and possible timeframes for action. Throughout the debate, many developing countries objected to proposed drafts that called only for further consideration and possible action, arguing that this would

effectively postpone action indefinitely. Other delegates sought to include an article, but include less specific language with regard to action. They noted that civil liability regimes already exist worldwide and omitting them from the Protocol would not prevent or hinder legal redress.

The sub-group discussed the issue in three sessions before consideration by the Friends of the Chair. With regard to action, draft text emerging from each session contained language varying from "examining modalities" for establishing rules and further study to "adopting a process" for appropriate elaboration of international rules and procedures. Timeframes for completing such action varied from no specified timeframe to six years to four years. Some delegates also insisted that any process consider existing regimes.

**ARTICLE 26 (Financial Mechanism and Resources):** This article establishes the financial mechanism of the CBD as that of the Protocol and, with regards to guidance to the mechanism, references the need for capacity-building and financial resources for developing countries. The COP serving as the Meeting of the Parties to the Protocol shall provide such guidance to the Conference of the Parties to the CBD to consider and forward to the financial mechanism. Article 26 was considered by SWG-II and CG-II in association with Article 19 (Capacity-building), given their close connection and the desire of many developing country delegates to ensure inclusion of specific elements of capacity-building (e.g., risk assessment and management) in Article 19 before agreeing to their removal in Article 26. Delegates also debated the procedural grounds for the provision of guidance, with some stressing that providing guidance directly to the financial mechanism was contrary to the CBD's rules of procedure and the Global Environment Facility.

**ARTICLE 27 (COP serving as the Meeting of the Parties):** This article was provisionally adopted at BSWG-5 and was not discussed at BSWG-6.

**ARTICLE 28 (Subsidiary Body and Mechanisms):** This article was provisionally adopted at BSWG-5 and was not discussed at BSWG-6.

**ARTICLE 29 (Secretariat):** This article was provisionally adopted at BSWG-5 and was not discussed at BSWG-6.

**ARTICLE 30 (Relationship with the Convention):** This article was provisionally adopted at BSWG-5 and was not discussed at BSWG-6.

**ARTICLE 31 (Relationship with Other International Agreements):** This article states that the Protocol's provisions shall not affect a Party's rights and obligations under any existing international agreement to which it is also a Party. The article includes the qualifier "except where exercise of those rights and obligations would cause serious damage or threat to biological diversity." The article was considered by SWG-II and a sub-group in a cluster with Articles 21 (Non-Parties) and 22 (Non-discrimination), given underlying trade considerations. Delegates initially differed on the need to include the article in the Protocol. Some developed country delegations wanted to delete the article, since it would isolate the Protocol from the context of international law. Many developing country delegations also preferred deleting the article, claiming conflicts between international agreements and overlap with CBD Article 22 (Relationship with Other International Conventions). Other delegates supported the article, but not the reference to the exception for threats to biodiversity. The draft Protocol includes the article with the qualifier.

**ARTICLE 32 (Monitoring and Reporting):** This article was provisionally adopted at BSWG-5 and was not discussed at BSWG-6.

**ARTICLE 33 (Compliance):** This article states that the first COP serving as the Meeting of the Parties to the Protocol shall consider and approve cooperative procedures and institutional mechanisms to



promote compliance and address non-compliance. Brackets around the article were lifted when CG-II agreed to specify that compliance measures should be cooperative and not punitive.

**ARTICLE 34 (Assessment and Review):** This article provides that the COP serving as the Meeting of the Parties shall evaluate the Protocol's effectiveness, including its procedures and Annexes, five years after its entry into force and every five years thereafter. SWG-I agreed to drop the brackets around the five-year time period, and the article was provisionally adopted in the BSWG plenary on 17 February.

**ARTICLE 35 (Signature):** This article was provisionally adopted at BSWG-5 and was not discussed at BSWG-6.

**ARTICLE 36 (Entry into Force):** This article was provisionally adopted at BSWG-5 and was not discussed at BSWG-6.

**ARTICLE 37 (Reservations):** This article states that no reservations may be made to the Protocol. CG-II agreed to drop the brackets around this article.

**ARTICLE 38 (Withdrawal):** This article was provisionally adopted at BSWG-5 and was not discussed at BSWG-6.

**ARTICLE 39 (Authentic Texts):** This article was provisionally adopted at BSWG-5 and was not discussed at BSWG-6.

**ANNEX I (Information Required in Notification):** This annex provides a list of biosafety-related information required in notification, including: contact information on the importer and exporter; domestic biosafety classifications of the LMO in the exporting country; intended dates of the transboundary movement; characteristics of the recipient and/or parental organism(s); its centers of origin and genetic diversity; characteristics of the donor organism; description of the modification, technique and resulting characteristics of the LMO; intended use of the LMO or products thereof; quantity or volume; an existing risk assessment report; methods for handling, storage, transport and disposal; regulatory status of the LMO within the exporting State; information on any notifications of the exporter to other governments; and declaration that information provided is factually correct.

CG-I debated the scientific, technical and linguistic details of elements for inclusion, although discussions regarding inclusion of "products thereof" were deferred to other groups for consideration. The draft Protocol includes "products thereof" under the element of intended use.

**ANNEX II (Risk Assessment):** This annex includes more specific detail on risk assessment, including: objective, use, general principles, methodology, and points to consider (e.g., recipient or parental organism, donor organism, vector, insert and/or characteristics of modification, LMO, detection and identification, information on intended use, and receiving environment). Debate in CG-I generally centered around language on general principles referring to the precautionary approach and lack of scientific knowledge. Delegates inserted language on requesting additional information or implementing appropriate risk management techniques to address uncertainties or increased levels of risk. Information regarding safety considerations for human health and socio-economic considerations, as well as references to "products thereof" and the precautionary approach were referred to discussions in other sub-groups.

As a result of those discussions, the section on general principles in the annex contains an explicit reference to "products thereof" and an implicit reference to the precautionary approach.

## REPORT OF THE EXCOP

COP-4 President Laszlo Miklós (Slovak Republic) opened the first Extraordinary Meeting of the Conference of the Parties (ExCOP) to the Convention on Biological Diversity on Monday morning, 22 February 1999.

Colombian President Andrés Pastrana commented on the international community's increasing awareness of both the immense technological progress achieved by humankind, and of its potential threats. He emphasized the global interrelationship between the quest for peace, social justice and environmental protection. Pointing to the rich biodiversity in many developing countries, he called for international cooperation to enable these countries to make best use of that resource. President Pastrana urged delegates to agree on a biosafety Protocol that would promote food security, health and equity.

COP-4 President Laszlo Miklós highlighted the different understandings among delegations on biodiversity and biosafety issues. He urged them to consider which options under negotiation would best promote biodiversity.

Colombian Environment Minister Juan Mayr was elected to preside over the ExCOP. He called for the support of delegates in his efforts to forge consensus.

Hamdallah Zedan, acting Executive Secretary of the CBD Secretariat, noted that, although no Protocol text had yet been finalized, negotiations were only a few short steps away from consensus. He emphasized the significance of the negotiations for the CBD and sustainable development. Commenting that environment and trade agreements have overlapping mandates, he stated that the challenge was to make these agreements mutually reinforcing.

UNEP Executive Director Klaus Töpfer emphasized that reaching compromise on a Protocol should not create winners and losers, but rather build a secure basis for addressing biosafety issues. He said the Protocol could not solve all problems related to biosafety; but it should demonstrate that the international community could use modern biotechnology while taking responsibility for its repercussions.

After a break, the ExCOP plenary adopted its provisional agenda (UNEP/CBD/ExCOP/1/1/Rev.1). ExCOP President Juan Mayr invited countries and regional groups to make statements. PERU, on behalf of the Latin American and Caribbean Group, POLAND, on behalf of the Central and Eastern European (CEE) countries, and SWITZERLAND, on behalf of JUSSCANZ, expressed hope for a balanced Protocol by the meeting's end. GUYANA, on behalf of the G-77/CHINA, expressed disappointment with the current text, and along with MEXICO, KENYA, BRAZIL and EL SALVADOR, on behalf of the Central American countries, called for a transparent process. GERMANY, on behalf of the EU, stressed that a Protocol should ensure mutual supportiveness with international trade rules and that WTO provisions should account for a high level of environmental protection. CHINA suggested that commercial profits not be pursued at the expense of biosafety, but cautioned against creating international trade barriers. ZAMBIA stated the need for a protocol on biosafety, not trade, and with BENIN, ECUADOR and TOGO, expressed concerns about the predominance of economic and financial issues.

BRAZIL, ECUADOR, MEXICO, VENEZUELA and ZAMBIA supported a protocol covering all LMOs. The EU, KENYA, TOGO, VENEZUELA and ZAMBIA stressed the importance of the precautionary principle. MEXICO, TOGO and ZAMBIA requested inclusion of liability and redress. EL SALVADOR, the EU, TOGO and ZAMBIA emphasized the need for consideration of impacts on human health. ECUADOR called for a framework strong enough to enable further scientific, technical and political discussions under the Protocol over the coming years. ZAMBIA said the Protocol should, at a minimum, protect the weakest countries.

## FINAL BSWG-6 PLENARY

At approximately 3:00 pm, BSWG Chair Veit Koester called the final plenary to order. He regretted that the informal consultations over the last few days had not resulted in consensus, but appealed to all members to adopt the Protocol to present to the ExCOP, as contained in UNEP/CBD/BSWG/6/L.2/Rev.1 and, with the Legal Drafting Group's



modifications, in UNEP/CBD/BSWG/6/L.2/Rev.2. He appealed to delegates to consider the text as a whole, not article-by-article, noting that the package reflected a compromise, and said that future Parties to the Protocol could correct any shortcomings in this text based on Article 34 (Assessment and Review of this Protocol). He called for acceptance on the understanding that any Party could register reservations on the text, in the BSWG-6 report, or on any article and noted that they could raise the same concerns in the ExCOP. The BSWG then adopted the text to be forwarded to the ExCOP and the floor was opened for comments.

BRAZIL, ZIMBABWE, MEXICO, PERU, NORWAY, JAMAICA, VENEZUELA, ETHIOPIA, CANADA, INDIA, TURKEY, BARBADOS, BOTSWANA, CHILE, CHINA, HAITI, MALI, the RUSSIAN FEDERATION, SEYCHELLES, CUBA, MAURITIUS, JAPAN, EL SALVADOR, the GAMBIA, MALAWI, TOGO, PANAMA, UGANDA, BANGLADESH, MALAYSIA, TUNISIA, ECUADOR, PARAGUAY, CAMEROON, the EUROPEAN COMMISSION, MADAGASCAR, IRAN, LATVIA, EGYPT, BOLIVIA, SENEGAL, GUATEMALA, the REPUBLIC OF KOREA, GUYANA, ALGERIA, KENYA, INDONESIA, MOROCCO, and ST. KITTS AND ST. NEVIS expressed concern over the text and many criticized the lack of transparency in the negotiating process. Many said the text did not adequately reflect certain basic concerns of delegations. Some highlighted specific articles, including Articles 4 (Scope of the Protocol), 5 (Application of AIA Procedure) and 25 (Liability and Redress), and pointed to gaps that could undermine the Protocol's effectiveness.

MAURITIUS expressed shock over the lack of transparency, and said the text was thrust down delegates' throats without any discussion. A number of delegates referred to the current text as a "biotrade" Protocol, which would facilitate the trade of LMOs and not the conservation of biodiversity. Others noted that, although the text was not acceptable at the moment, it was a good basis for future negotiations. The SEYCHELLES supported the continuation of negotiations on the condition that they be carried out in a transparent manner. CANADA urged further efforts to compromise on outstanding issues. IRAN said it was open to continuing work in any manner of informal consultations to achieve consensus. MALI expressed hope that a conclusion would be reached in the near future.

Chair Koester confirmed that views expressed would be recorded in his report to the ExCOP, and emphasized his view that negotiations had been transparent and that the Chair's text represented a compromise. He highlighted the need to strike a balance between trade and the environment in order for an effective Protocol to be concluded.

Chair Koester then introduced the BSWG report (UNEP/CBD/BSWG/6/L.1). The first sections were adopted without comment, the paragraphs on the adoption of the Protocol were set aside, and an expression of thanks to Colombia was added. Chair Koester thanked all those who had assisted him during the BSWG process. After urging delegates to continue seeking agreement, stating that even a basic Protocol would be better than none, Chair Koester declared the final BSWG plenary closed.

### **EXCOP PLENARY**

President Mayr opened the plenary Monday afternoon, after the final BSWG plenary. He requested Chair Koester to present the report of the BSWG. Koester traced the history of the BSWG process and presented the outcome of BSWG's work (UNEP/CBD/BSWG/6/L.2/Rev.1 and Rev.2). President Mayr invited the ExCOP to adopt the report of the BSWG Chair. Delegates debated whether, in adopting that report, they would be adopting the Protocol. VENEZUELA suggested that the report be noted rather than adopted. The Secretariat clarified that the BSWG Chair's report was contained in UNEP/CBD/BSWG/6/L.1 and the Chair's text of the Protocol in UNEP/CBD/BSWG/6/L.2/Rev.1 and Rev.2.

The PHILIPPINES, on behalf of the COP-4 Bureau, presented a draft decision on the adoption of the Cartagena Protocol and on interim arrangements (UNEP/CBD/ExCOP/1/CRP.1). President Mayr suggested that the consideration of the draft decision and the BSWG Chair's report be postponed. He proposed establishing a small working group consisting of the "legitimate voices" of different groups with four to six spokespersons and their advisors, to review and revise the draft Protocol text. Several countries applauded the initiative. ECUADOR, NORWAY, ETHIOPIA, EL SALVADOR and others suggested that this number of spokespersons would be inadequate. MEXICO, CHINA and others proposed that representation in the small working group be along the lines of the UN regional groupings. Several delegations, including IRAN, CHINA, MAURITIUS, ETHIOPIA and CAMEROON, suggested that further discussions focus exclusively on Article 4 (Scope of the Protocol) and 5 (Application of AIA Procedure). Others, including the US, URUGUAY and AUSTRALIA suggested that the entire "package" be discussed. President Mayr proposed that the working group consist of 10 spokespersons for groups of countries (each with two advisors): one representative each from the CEE, the EU, Central America and the Caribbean; two from the Miami Group (one each from the North and South); and four from the Like-minded group. A final representative was added at Switzerland's suggestion to include the "Compromise Group."

### **GROUP OF 10**

ExCOP President Mayr's informal negotiating group began its discussions on Monday night. It resumed on Tuesday morning and worked throughout the day and night and into early morning Wednesday to continue negotiations in the hopes of reaching consensus. The group revisited the remaining outstanding issues, as identified by the various groups, but reached no consensus. At this point, President Mayr asked the various groups to give guidance in the form of proposals on how to proceed. Proposals ranged from immediately suspending the ExCOP and continuing work intersessionally, to making a last attempt to agree to a Protocol in Cartagena, with the possibility of leaving core issues for further discussion after entry into force. The EU proposed a package, which attempted to forge a middle ground on the core issues, including commodities and relationship with other international agreements. Although the majority of delegations supported it with an amendment, the package could not be accepted by all groups. As no consensus was reached, it was recommended that the proposals submitted in the informal group be forwarded to plenary for their consideration. The informal working group concluded its deliberations at 2:30 am on Wednesday, 24 February.

### **EXCOP FINAL PLENARY**

President Mayr opened the final ExCOP plenary at 3:15 am Wednesday, 24 February. The Secretariat introduced the BSWG-6 report (UNEP/CBD/ExCOP/1/2), noting that it included the text of the draft Protocol, as contained in document UNEP/CBD/BSWG/6/L.2/Rev.2, together with the views expressed by delegations in the final BSWG plenary.

President Mayr reported on the outcome of the working group, emphasizing the considerable efforts it had exerted over the past two days and nights. He stated that, although agreement had been reached on many points, consensus still eluded the group on some key issues. President Mayr reported that the EU and the Miami Group had put forward proposals to advance the process, and that the working group had recommended that these be brought to plenary. He noted that the EU proposal was supported by the majority of delegations. President Mayr invited the EU and the Miami Group to present their proposals.



GERMANY, speaking on behalf of the EU, introduced the package it had proposed in the informal working group. The proposal accepts the Chair's text, as contained in UNEP/CBD/BSWG/6/L.2/Rev.2, with the addition of the package, which includes the following points:

- An addition of a new Article 5 (3) *bis* states that without prejudice to paragraphs 2 and 3 (provisions on commodities and domestic laws, respectively) of Article 5 (Application of the AIA Procedure), the first COP serving as the Meeting of the Parties shall decide how the AIA provisions shall apply to transboundary movements of LMOs intended for direct use as food or feed or for processing;
- A modification to an earlier proposal on Article 15 (Handling, Transport, Packaging and Identification) made in the informal group;
- Maintenance of a reference to Article 15 in Article 4 (Scope), under the provision regarding transit;
- Deletion of Articles 31 (Relationship with other International Agreements) and 22 (Non-Discrimination), but insertion of a preambular paragraph recognizing that Parties to the Protocol should implement the Protocol in a manner mutually supportive of their other international obligations;
- Change of wording in Article 21 (Non-Parties), paragraph 1, to reflect that transboundary movements of LMOs between Parties and non-Parties shall be consistent with the objectives of this Protocol, not "consistent with the objective and principles," as stated in the draft Protocol;
- Retention of a reference to non-Parties in Article 11 (Multilateral, Bilateral and Regional Agreements and Arrangements), which states that entering into agreements with non-Parties regarding intentional transboundary movement of LMOs should be consistent with the Protocol's objectives and not result in a lower level of protection than that provided by the Protocol;
- Deletion of a reference to Article 11 in the definition of "transboundary movement" in Article 3 (Use of Terms);
- Maintenance of Article 1 (Objective) as it stands, but deletion of Article 8 (Decision Procedure), paragraph 7, specifying that importers can prohibit the import of an LMO without full scientific certainty or consensus;
- Acceptance in Article 23 (Illegal Transboundary Movements), paragraph 1, of a proposed reference to implementing domestic measures;
- Deletion of a paragraph in Article 23 stating that the affected Party may request the Party of origin to take financial responsibility for the disposal of the LMO in question; and
- Rewording of Article 18 (Confidential Information), paragraph 5, to read "If a notifier withdraws or has withdrawn a notification, a Party must respect the confidentiality of the information submitted."

CANADA, speaking on behalf of the Miami Group, pointed to the Group's concerns over certain provisions: Articles 15 (Handling, Transport, Packaging and Identification); 21 (Non-Parties); 31 (Relationship with Other International Agreements); 2.2 (under General Provisions); 1 (Objective) and 5.3 (application of domestic regulatory frameworks consistent with AIA for other LMOs for which AIA does not already apply). He announced that these concerns would be communicated in writing to the Secretariat and requested that the ExCOP report make reference to these, together with the draft Protocol text (UNEP/CSD/BSWG/6/L.2/Rev.2), the provisionally adopted articles and a statement that no consensus had been reached on either the draft Protocol or the EU proposal. CANADA then proposed that the ExCOP be suspended, and that interim work be carried out before its resumption to narrow differences between delegations.

COP-4 President Laszlo Miklos expressed regret that it had not been possible to reach consensus and stated that, in order for the Cartagena Protocol to eventually be adopted, the only possibility was to

suspend the ExCOP. President Miklós introduced a draft decision on the continuation of the first ExCOP to the CBD (UNEP/CBD/ExCOP/1/L.4) and highlighted key elements, including, *inter alia*:

- Suspending the first ExCOP and its resumption no later than the fifth meeting of the COP (May 2000), with the date and venue to be decided by the ExCOP and the COP-4 Bureau;
- Naming the Protocol the "Cartagena Protocol on Biosafety to the Convention on Biological Diversity;"
- Transmitting the draft Protocol contained in the appendix of the BSWG 6-report, and statements on that text, to the resumed session of the ExCOP; and
- Approving US\$48,000 for the resumed ExCOP, to be funded from savings and surpluses from the CBD budget and requesting delegations to provide voluntary contributions to fund participation of developing countries and countries with economies in transition.

Statements were then made by SWITZERLAND, EL SALVADOR (on behalf of the Central American States), BARBADOS, POLAND, MEXICO, GERMANY (on behalf of the EU), BAHAMAS, PERU, ETHIOPIA, CANADA, CAMEROON, BRAZIL, GUATEMALA, BOTSWANA, CUBA, CHINA, MALAYSIA, INDIA, SOLOMON ISLANDS, KENYA, SPAIN AND BOLIVIA. In their statements, delegations expressed gratitude to Colombia for its generous hospitality and paid tribute to President Juan Mayr for his dynamism, commitment and leadership. Many delegations congratulated President Mayr on the transparent way he had conducted negotiations. While several delegates expressed regret at the failure to adopt a protocol, many also emphasized their optimism that the Protocol would be completed at the resumed ExCOP. ETHIOPIA, speaking on behalf of the African Group and the Like-minded Group, proposed amending Article 5 (Application of the AIA procedure) to include provisions for AIA to apply prior to the first transboundary movement of all LMOs, and allowing a Party of import to decide not to apply AIA for LMOs destined exclusively for food, feed or processing. ETHIOPIA listed other concerns of the Group and called for these to also be noted in the ExCOP report. These included: the treatment of "products thereof," the precautionary principle, risk assessment, liability and redress, socio-economic considerations, contained use and transit; a request to delete paragraphs 3 and 4 of Article 11 (Multilateral, Bilateral and Regional Agreements and Arrangements) and Article 18 (Confidential Information); and to expand Annex II.

The THIRD WORLD NETWORK, on behalf of 13 NGOs, stated that the failed outcome bodes ill for the planet. He urged delegates, in future negotiations, not to give a signal that LMOs are always safe, not to pursue their trade agenda through the Protocol, and not to always submit to the might of the few.

The draft decision on continuation of the first ExCOP and a tribute to the Government of Colombia were adopted without comment.

UNEP Executive Director Klaus Töpfer stated that the skilled leadership of President Mayr and the excellent organization of the meeting had set high standards for future negotiations.

The Rapporteur, Maria Feliciano Ortigao de Sampaio, introduced the draft proceedings of the ExCOP (UNEP/CBD/ExCOP/1/L.2). She stated that the document would not be adopted now, but would be revised and presented to the resumed session.

President Juan Mayr thanked all those who had participated in the ExCOP. He emphasized how much he had learned over the course of the meeting, and undertook to do his best to secure the future of the Protocol. The meeting was adjourned at approximately 5:30 am.



## A BRIEF ANALYSIS OF BSWG-6 AND THE EXCOP

Colombia, as the site for negotiating a biosafety protocol, was a fateful choice. Seated in a café in Santo Domingo Square on a humid tropical afternoon, one understands the magical country depicted by Nobel laureate Gabriel García Márquez, whose writings blur the boundaries between truth and fiction, reality and fantasy, dreams and consciousness. Wandering the corridors during the BSWG-6 and subsequent ExCOP negotiations brought on a similar state and the crossing of traditional, albeit artificial, boundaries between trade, environment, science and agricultural issues. In the absence of clear categories, governments and reporters alike were unsure which specialist to send. Working well into the morning hours and floating from meeting to coffee line to meeting, delegates struggled to maintain their grasp on the issues, in order to develop a legal framework to address the implications of biotechnology and living modified organisms (LMOs). Despite the "emotional roller coaster" of the final hours, the meeting ended with the agreement that there was, as yet, no agreement on a Cartagena Protocol. This analysis, with a little help from Señor García Marquez, will attempt to examine the context surrounding the BSWG-6 negotiations, the key issues debated and the future of the process.

### STRANGE PILGRIMS

Delegates from 138 countries, as well as representatives from industry, the scientific community and environmental NGOs, traveled to Cartagena de Indias with their radically different and steadfastly held opinions for what they thought would be the final chapter of the biosafety negotiations. For centuries, humans have cross-pollinated plants and cross-bred animals to suit their own needs. But scientific advances in the late twentieth century now permit that manipulation to extend to the genetic level, an advancement that provokes differing reactions ranging from curious optimism to extreme caution to philosophical disgust.

Europe has witnessed strong public outcry, particularly regarding genetically-modified food. Amid accusations of "playing God" and "Franken-crops," much of the recent furor centered around the dismissal of a scientist claiming that brains and immune systems of rats, feeding on genetically engineered potatoes, suffered damage. British Prime Minister Tony Blair declared that products in Britain were perfectly safe, and that he had no objection to eating them, while Prince Charles stated that no genetically-modified food would cross his lips. French farmers of the Confederation Paysanne have destroyed sacks of genetically modified maize, and Denmark has even called for a one-year moratorium on genetically-modified crops. Elsewhere, an Indian court recently found Monsanto guilty of illegal test trials of genetically-modified cotton. Even during the negotiations, Greenpeace protested against a cargo ship carrying US genetically-engineered maize into the Colombian harbor of Santa Marta.

Newspapers elsewhere told a different story. In the US and Canada, some focused on possible trade restrictions on agricultural exports and the resulting profit losses. Industry representatives countered health and safety concerns by noting that foods containing LMOs have been consumed for years without health or socio-economic repercussions. Jimmy Carter, Nelson Mandela and other prominent figures have stressed the enormous potential of biotechnology to feed burgeoning populations in the developing world. This panoply of domestic pressures and their specific interests provided a diverse backdrop to discussions and will likely be very influential in the interim period before the next, and presumably final, negotiating session.

### ONE HUNDRED YEARS OF STALEMATE

In Cartagena, delegates engaged in seemingly endless debates, revisiting the same key recurring issues as they have since the beginning of the process in 1996. The scope of the Protocol, perhaps the most fundamental question, engendered so much confusion and

dissent that agreement proved impossible. Should all LMOs be covered by the Protocol, or should there be exceptions? Specifically, should the Protocol cover and should AIA apply to pharmaceuticals and other commodities, such as fabrics, detergents, food and other grains manufactured or produced with LMOs? What are the trade implications of the AIA procedure for the world's food supply and the multi-billion dollar agribusiness? What are the consequences for the scientific research community, small-scale and traditional farmers, local communities and the average person on the street? And the most important question, how could diametrically opposed views on very critical issues be reconciled in a protocol agreeable to everyone?

Several participants mentioned that the debate was "all about trade" and that such economic and financial considerations were at the heart of all issues being addressed. In substance, many were quick to note that the negotiations failed over the issue, some saying "perhaps with justification." Not surprisingly, a "savings clause" privileging obligations under previous international agreements, such as the WTO, created serious rifts within the developed nations. Some were motivated by concerns that the Protocol could be used as a protectionist device and others said that a provision privileging other "international agreements" (i.e., WTO) could handicap governments seeking to protect the environment and consumers from questionable LMOs. Efforts to include the article on non-discrimination could effectively commit even non-Parties to the WTO's principle of non-discrimination. Even the discussions on the precautionary principle raised concern over "arbitrarily legitimating the creation of trade barriers," with its "green light" to restrict imports without full scientific certainty.

Another contested terrain was the provision on socio-economic considerations. Concerned that countries could arbitrarily use the ambiguous "socio-economic considerations" to create trade barriers, some advocated that import decisions be consistent with parties' other international obligations.

Throughout the meeting, the article on non-parties held key significance. While attention on this issue focused on the US, with the world's largest biotechnology industry, the wider implications of ratification and the Protocol's entry into force were also of concern. Two groups are of specific interest: those members of the Miami Group, who, as grain exporters, might find the Protocol's provisions too stringent and those yet without the capacity to implement its provisions.

In Cartagena, the economic and financial strings tying all these elements together came vividly to the fore and many saw this as a battleground for trade and environment. The Protocol could prove to be the CBD's saving grace or a nail in its coffin, as resolution of such trade issues will be key to its final role. The trade implications of all MEAs are fast approaching. Under the FCCC, the Japanese recently proposed to prohibit the sale of carbon emitting European cars, stating that such heavy carbon emitters will hinder their ability to meet Kyoto targets. Refusal to consider labor and environmental concerns led to halt of MAI talks.

### THE CHAIR IN HIS LABYRINTH

Chair Veit Koester faced the unenviable task of reconciling all these seemingly irreconcilable positions and accommodating powerful but discordant countries accustomed to getting their way. With one expert meeting, six working group meetings, and innumerable informal meetings, and discussions in and across capitals prior to the session, delegates nonetheless, came to Cartagena facing hundreds of brackets and fundamental differences on major provisions of the Protocol. As a result, a myriad of contact and informal groups spun off from the sub-working groups to consider individual articles and issues.

The introduction of the Chair's text on Thursday marked a turning point as the text failed to generate widespread support. Some criticized the Chair for "trying to impose" an "unbalanced compromise." With



the benefit of hindsight, delegates questioned why a Chair's text had not been presented earlier, rather than on the eve of the scheduled negotiation deadline. Nevertheless, by removing bracketed elements held in the text for the past three working group meetings, it forced delegates to focus on the core bones of contention. Some thought the Chair had been too conciliatory when a forceful hand may have been called for. Others defended his approach as realistic, fully aware that many key players, or groups of players, in the negotiations had come to Cartagena with "no protocol" as a viable option.

Many delegates questioned the efficiency of isolated discussions on inter-linked issues, but equally many complained when the Chair consolidated the discussions into a single Friends of the Chair group. Furthermore, deliberations on the text by the "Friends of the Minister," which included the Colombian Environment Minister and a select few, left many countries out of the loop. This provoked resentment, with many delegates outspokenly complaining about "lack of transparency and democracy."

Even seasoned negotiators described the "tortuous negotiation process" as "bizarre" and "surreal." Few delegates took the official Friday deadline seriously, almost expecting that negotiations would continue over the weekend and through the following Tuesday. There was frequent confusion over the status of the text under negotiation, with a total of five different versions circulated over the course of the meeting. Some pointed to the still shaky foundations of the CBD Secretariat, particularly following the departure of its Executive Secretary a few months ago. Others thought part of the problem lay with the greater concentration of scientific and technical experts when compared to professional negotiators conversant with UN procedures.

By the opening of the ExCOP, many had threatened to walk out and the negotiation process was "all but stalled." The mood changed when ExCOP President Juan Mayr injected renewed optimism into the process by forming the "Group of 10." Delegates applauded the representative nature of the Group and the fact that it also included advisors. The transparency increased when, although only the 10 key negotiators remained sitting at the table, so many delegations had crowded into the meeting in the final hours to witness the negotiations that there was "standing room only."

Despite the suspension of the ExCOP and the failure to agree on a protocol in Cartagena, there was some optimism, inspired particularly by the level of transparency the process had reached. Some seasoned negotiators were "elated" that the process had been so open in the final days. One said that even if a protocol had been agreed upon in a non-transparent manner, a negative feeling over the process would have remained. "At least, we all saw for ourselves how hard everyone tried," said one.

### LOVE IN THE TIME OF GLOBALIZATION

While there was general gloom in the halls over failure to reach agreement, final statements in plenary affirmed support for a workable protocol with the aim of protecting the concerns of all. Expressing muted optimism, some sought a "silver lining," believing that the interim period would provide an opportunity to develop compromise solutions, rather than pushing through an unworkable protocol in Cartagena.

"Whither the CBD?" was another question on delegates' minds as they left Cartagena. Having generally deferred forest issues to the Intergovernmental Panel on Forests and now possibly biosafety considerations to trade, some NGO participants questioned the CBD's ability to maintain itself as a credible multilateral environmental treaty. Many participants hoped that an impending decision on a new Executive Secretary would provide more stability and drive to strengthen the CBD as an institution.

Addressing the current state of knowledge in biotechnology and LMOs, while instilling dynamism in a protocol to cover the full range of future permutations, which by their virtue remain unpredictable, is extremely difficult and requires acute foresight and flexibility. As opposed to the Kyoto and Montreal Protocols, as well as ongoing negotiations on persistent organic pollutants, the fundamental goal in Cartagena was not reduction or ultimate elimination of certain products. Instead, the ambition was to monitor and regulate an expanding quantity and variety of technologically engineered organisms, in order to protect the environment. For this reason, and in view of the multiple dimensions of globalization, discussions on the Cartagena Protocol need to incorporate the flexibility to deal with future developments without creating substantive loopholes or barriers to "progress."

Newspapers, government briefs and meeting reports will likely find many scapegoats for the events in Cartagena — the scattered process, various interest lobbies, one or several negotiating blocs. However, all of these things are directly or indirectly related to the fact that, at present, there is not enough international consensus that LMOs present a problem or what should be done about them. While there are some who view LMOs as potentially perilous, both to human health and environmental safety, there are others who see potentially miraculous increases in food yields and medicines. While some excitedly anticipate the gains to humanity that will follow increased control over natural processes, there are others who quickly ask whose human hands will control it, who will benefit and who will shoulder the blame for disasters. Bridging this divide will require a clearer scientific consensus, public knowledge of the risks and a better understanding of the ecological, economic and social implications of biotechnology.

## THINGS TO LOOK FOR

### FAO CONFERENCE ON BIOLOGICAL RESOURCE

**MANAGEMENT:** This conference, organized by the Directorate for Food, Agriculture and Fisheries (AGR), will be held from 29-31 March 1999 in Paris. For more information contact: Nicole Le Vourch, tel: +33-1-45-24-80-88; e-mail: Nicole.LeVourch@oecd.org. Internet: [http://www.oecd.org/news\\_and\\_events/upcoming.htm](http://www.oecd.org/news_and_events/upcoming.htm).

### EIGHTH REGULAR SESSION OF THE COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE:

The eighth regular session of the Commission on Genetic Resources for Food and Agriculture, which includes on its agenda the continuation of the negotiations for the revision of the International Undertaking, will be held in Rome from 19-23 April 1999. The Chair is also considering whether to convene an extraordinary negotiating meeting of the Commission, if extrabudgetary funds are made available, from 12-16 April 1999. A decision will probably be taken regarding the holding of this 6th extraordinary meeting towards the end of this month. For more information contact: David Cooper, Plant Genetic Resources Officer, e-mail: david.cooper@fao.org ; Internet: <http://www.icppgr.fao.org>.

**CONVENTION ON BIOLOGICAL DIVERSITY:** The fourth meeting of the CBD's Subsidiary Body for Scientific, Technical and Technological Advice (SBSTTA) is scheduled from 21-25 June 1999 in Montreal. An Intersessional Meeting on the Operations of the Convention will be held from 28-30 June 1999. An Expert Panel on Access and Benefit-Sharing will be held from 4-8 October 1999 at a location to be determined. The *Ad Hoc* Working Group on Article 8(j) will meet from 24-28 January 2000. The Fifth Meeting of the SBSTTA will be held in Montreal from 31 January - 4 February 2000. The Fifth Meeting of the Conference of the Parties will be held in Nairobi in May 2000. For information contact: CBD Secretariat; World Trade Center, 393 St. Jacques Street, Suite 300, Montreal, Quebec, Canada H2Y 1N9; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: [chm@biodiv.org](mailto:chm@biodiv.org); Internet: <http://www.biodiv.org>.