

**Informal Consultations on Biosafety Protocol****Vienna 15-19 September 1999****Chairman's Summary**

These informal consultations were a result of the consultations I held in Montreal on July 1st 1999 with the spokespersons of the Negotiating Groups, where they all expressed a clear and unequivocal commitment to have a Protocol on Biosafety to the Convention on Biological Diversity and to resolve the core and related issues left pending when the session of the ExCOP was suspended in Cartagena in February 1999. A decision was therefore taken to build on this momentum by holding a further round of informal consultations involving all Parties and Governments to provide an opportunity for the Negotiating Groups to meet internally and with other Negotiating Groups in order to clarify their positions and identify differences and possible solutions.

The participation of developing countries and countries with economies in transition at these informal consultations was made possible by the generous support of the following countries: Austria, Canada, Central African Republic, Denmark, Finland, France, The European Commission, Kenya, Namibia, Norway, United Kingdom and Sweden.

The consultations began on Wednesday, 15<sup>th</sup> Sept. 1999. The first two days were devoted to consultations within the Negotiating Groups in order to explore



positions within Groups. The third day was devoted to informal exchanges between the Groups.

When I arrived in Vienna in the afternoon of 17 September 1999, I held informal meetings with spokespersons/representatives of the Compromise Group, the Central and Eastern European countries, the European Union and the Miami Group. On 18 September 1999 in the morning, I met with the Like-Minded Group and thereafter with the NGOs and Industry representatives.

It was clear from the reports which I received that during the first three days, all delegates had used their time constructively to clarify their positions, identify differences and brainstorm on possible solutions with a view to working towards resuming the session of the ExCOP which would conclude the negotiations and adopt the Biosafety Protocol.

Based on the feedback that I received, I outlined to the first plenary held on 18 September 1999 the aims and objectives for the last two days as follows:

1. The goodwill and political commitment expressed at the meeting of 1<sup>st</sup> July in Montreal will continue, and I invited the spokespersons to ratify this commitment – Which they all did;
2. Our efforts must be devoted towards reaching an agreement regarding possible solutions to core pending issues;
3. We should leave Vienna with an agreement on the timing for the resumed session of the ExCOP to conclude the negotiations and adopt the Cartagena Protocol on Biosafety.

I then proposed to conduct the consultations along the format of the meeting we used in Cartagena. This was accepted by all Groups. Each of the Negotiating

Groups subsequently designated one spokesperson and one alternate for the meeting.

The spokespersons and alternates for the Groups were:

Miami Group: Richard Ballhorn (Canada)  
Ricardo Ernesto Lagorio (Argentina)

European Union: Christoph Bail (European Commission)  
Carl Arne Hartman (Finland)

Central and Eastern

Europe: Gabor Nechay (Hungary)  
Andrey Ivanov (Russian Federation)

Compromise Group: Beat Nobs (Switzerland)  
Peter Johan Schei (Norway)

Like-minded Group: Tewolde Berhan Gebre Egziabher (Ethiopia)  
Arthur Henrique Villanova Nogueira (Brazil)

Following the request made environmental NGOs and Industry representatives present at the meeting, I asked the plenary whether they could be accepted in the room. The response was affirmative.

We began the meeting by having an exchange of views on the core issues that are critical to concluding the protocol. I proposed that we discuss and agree on

concepts, rather than examining the detailed wording in the draft text of the Protocol at this point in time.

There was consensus that the present discussions ought to build on and begin where we left off in Cartagena. To this end it was agreed that the present meeting would focus on the pending core issues as identified in paragraph 52 of the draft report of the ExCOP meeting (UNEP/CBD/ExCOP/1/L.2/Rev.1 of 23 rd February 1999).

From the list of core pending issues, I proposed to examine the issue of “**commodities**” as our first agenda item. All Groups presented their positions and made proposals on how this issue could be addressed in the Protocol. From the discussions that ensued, the following points were considered as being important components in relation to the issue of commodities:

- A balance needs to be struck between the environment on the one hand and sustainable growth on the other;
- Information sharing and notification procedures;
- Information needs to be as precise as possible and be in an assessable manner to allow for decision making;
- Identification and/or documentation to monitor movements of LMOs;
- To take into account the needs of importers and exporters;
- To find a way to include commodities in the Protocol – (general agreement that commodities should appear in the Scope of the Protocol);
- Parties have a right to make, maintain and implement decisions;
- Capacity building can contribute to implementation, but it needs to be needs- driven.

Towards the end of this initial discussion the Compromise Group presented a written proposal in the form of a concept paper in order to facilitate the discussion

on a way forward towards developing an alternative “Advance Informed Agreement” procedure for commodities. All Groups found the proposal constructive and useful and agreed to consider it and to come back with constructive comments, which allowed the Compromise Group to further fine tune their initial proposal. After a further round of discussions on the revised paper, I decided to establish a small contact group, which included representatives from all of the Negotiating Groups to further the understanding and agree on the concepts and report back to the plenary. The results of the contact group are contained in the table below:

CONCEPTS GOVERNING TRANSBOUNDARY MOVEMENTS OF LMOs FOR FOOD,  
FEED AND PROCESSING (LMO-FFPs)

<b>Concepts in AIA</b>	<b>Alternative concepts for LMO-FFP</b>
Art 6 Obligation on Party of export to ensure notification prior to first movement and accuracy of information	Parties must inform all Parties within [10] days through the Biosafety Clearing-House and on request, National Focal Points domestic approvals and decisions for placing on the market of LMOs, including relevant information taking into account the appropriate elements of Annex 1. Parties should ensure the accuracy of this information.
Art 7 Obligation on Party of import to acknowledge receipt of notification	Any Party may: <ul style="list-style-type: none"> <li>· Require additional information,</li> <li>· Indicate its needs for assistance and cooperation</li> <li>· Refer to domestic legal, administrative or other measures relating to import of LMO-FFPs that are applicable</li> </ul> Responsibilities to respond in a timely fashion have to be clarified
Art 8 Rights and obligation on Party of import regarding decision procedures	Any Party of import may take a decision with respect to imports [under this protocol] based on concepts addressed in

	Article 8 which remain to be determined
Art 9 Rights and obligation concerning review of decisions	Parties may review decisions in light of new scientific information addressed in Article 9
	<ul style="list-style-type: none"> <li>· Adequate and differentiated documentation requirements for LMO-FFPs (Art.15)</li> <li>· Cooperation in capacity building (Art. 19.1)</li> <li>· Illegal traffic and the need for cooperation (Art 23)</li> </ul>

I then proposed to start exchanging ideas on the concept of “**Relationship between the Protocol and other relevant International Agreements**”, with regard to Article 31 of the draft Protocol. From the discussion that took place, the following emerged as the consensus concepts to take into account for Article 31:

- The main purpose of the Protocol is biosafety.
- There are other relevant international agreements for sustainable development with rights and obligations.

On the second day of the plenary we revisited this issue and after an initial exchange of views, I decided to establish a small contact group consisting of representatives from the respective Negotiating Groups, to further elaborate the basic concepts relating to Article 31. The concepts submitted by the contact group for consideration were as follows:

1. The main purpose of this protocol is biosafety.

2. We recognize that there are other international agreements relevant to sustainable development with rights and obligations.
3. The protocol and other international agreements are of equal status.
4. Trade and environment agreements and policies should be mutually supportive.

After discussion in plenary, a common understanding was reached on the four concepts in relation to Article 31. The four concepts were agreed upon by the Groups on the collective understanding that the list of concepts agreed upon is not closed and that agreement was without prejudice to the positions of the various Groups on Article 31.

I then invited the Groups to exchange views on the “**Scope**” (Article 4) of the Protocol. From the discussions that took place it was clear that the positions were still as they were reflected in annexes II, III & IV to the draft report of the ExCOP.

In view of this, I proposed to the Groups if we could reconsider **Article 4 in combination with Article 5** as had been the case in Cartagena . The Like-Minded Group presented the following draft proposal on the articles:

#### **Article 4**

##### *SCOPE*

*This protocol shall apply to the transboundary movement, transit and handling and use of all living modified organisms that may have an adverse effect on the conservation and sustainable use of biological diversity, taking also into account risks to human health.*

#### **Concepts for Article 5**

##### ***APPLICATION OF THE ADVANCE INFORMED AGREEMENT PROCEDURE***

- *Subject to Article 4, the advance informed agreement procedure in Articles 6, 7, 8 and 9 shall apply prior to the first intentional transboundary movement of a specific living modified organism intended for a specific use.*
- *The Party of export shall inform or require the exporter to inform in writing the competent national authority of the Party of import prior to any subsequent transboundary movement of living modified organisms referred to in Article 5.1.*
- *Without prejudice to paragraph 1, the Party of import may decide not to apply the advance informed agreement procedure of this Protocol to living modified organisms that are pharmaceuticals for humans and those destined for research in contained use. Such decision must be communicated to the Biosafety Clearing House.*
- *Each Party of export shall inform/notify or require the exporter to inform/notify in writing, the Competent National Authority of the Party of transit that LMOs shall transit through the territory of that Party.*

I invited other Groups to make comments on the above draft proposal. After a round of exchange of ideas, it became clear that we could not progress further on it as most Groups needed more time to examine the concepts introduced in the package of Articles 4 and 5 presented by the Like-Minded Group.

We thus came to the end of the informal consultations. In closing, I asked the Groups three questions:

1. Do they still have the political will they had expressed on 1<sup>st</sup> July 1999 in Montreal to conclude a protocol on biosafety?

2. Can we move to the resumed session of the ExCOP to conclude the negotiations and adopt a protocol on biosafety?
3. What were the Groups's assessments of the progress made in Vienna and what were the key issues still remaining to be addressed?

All Groups reconfirmed their political will to conclude the protocol and their support to conclude the negotiations at the resumed session of the ExCOP while appreciating that although some progress had been on some issues on a conceptual basis, there still remained significant work in order to progress on other important issues which had not been addressed at this meeting, such as the precautionary principle and socio-economic considerations, and to translate the concepts on which there was agreement into legal text.

I then invited Mr. Laszlo Miklos, Minister of Environment of Slovakia and President of the Bureau of COP4, to inform the meeting about the Bureau's views on the timing and venue of the resumed session of the ExCOP. Minister Miklos announced that the Bureau, based on these informal consultations here in Vienna, decided that the resumed session will take place in Montreal from 20-28 January 2000 along the following broad outline: two days of informal consultations within Groups, one day of informal consultations between Groups, one day break to allow delegations to communicate with their capitals, two or three days of formal negotiations within the ExCOP followed by one or two days of high-level segment of the ExCOP. He acknowledged that at this stage all details were not yet finalized and stated that the Bureau will meet again in the coming weeks to finalize the preparations for the resumed session of the ExCOP taking into account the comments made by the different Groups on the organization of the resumed session.

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