

**CONVENTION ON  
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CONFERENCE OF THE PARTIES TO THE  
CONVENTION ON BIOLOGICAL DIVERSITY  
First extraordinary meeting  
Cartagena, 22-23 February 1999

REPORT OF THE SIXTH MEETING OF THE OPEN-ENDED  
AD HOC WORKING GROUP ON BIOSAFETY

Introduction

1. The sixth meeting of the Open-ended Ad Hoc Working Group on Biosafety, established in accordance with decision II/5 of 17 November 1995 of the Conference of the Parties to the Convention on Biological Diversity, was held in Cartagena de Indias, Colombia, from 14 to 22 February 1999.

I. ORGANIZATIONAL MATTERS

A. Opening of the meeting

2. The meeting was opened by Mr. Veit Koester (Denmark), Chair of the Open-ended Ad Hoc Working Group, at 3 p.m. on Sunday, 14 February 1999. In his opening statement, Mr. Koester welcomed all participants and expressed his gratitude to the Government of Colombia for hosting the current meeting in Cartagena. Pointing to the work already accomplished, he stressed that participants needed to continue their work in a fair, constructive and flexible manner, in order to reach a conclusion and develop an instrument that would receive extensive support from the international community. On his own behalf and on behalf of all delegations present, he expressed sincere condolences to the people and Government of Colombia on the recent natural disaster that had struck the country.

3. The meeting observed a minute of silence in commemoration of the victims of the disaster.

4. In statements made during the course of the opening session, a number of representatives also expressed sympathy to the people and Government of Colombia for their sufferings resulting from the severe earthquake and acknowledged the effort made by the Government of Colombia to prepare the current meeting under such difficult circumstances.

5. At the opening session of the meeting, the Working Group also heard statements from Mr. Juan Mayr Maldonado, Minister of Environment of Colombia; Mr. Sippi Jaakolla, Senior Legal Officer, United Nations Environment Programme (UNEP), on behalf of Mr. Klaus Töpfer, Executive Director of UNEP; and Mr. Hamdallah Zedan, acting Executive Secretary of the Convention on Biological Diversity.

6. Mr. Mayr, welcoming delegations to Cartagena, said that, if properly utilized, biotechnology could have a positive impact on human well-being in all sectors, including the pharmaceutical, agricultural and environmental sectors. As an increasing number of biotechnology products were produced commercially, however, there was considerable uncertainty and disagreement about the interaction of living modified organisms (LMOs) with biological diversity, especially in countries like Colombia which had high levels of genetic diversity.

7. Over the following week, the Working Group had the enormous responsibility of completing a process which had begun with the signing of the Convention on Biological Diversity in 1992. The protocol must ensure adequate, transparent procedures, without unjustified costs, for responsible decision-making by the countries which were exporting and using the products of biotechnology. Fortunately, the Working Group had shown a high level of good will and flexibility in the negotiations. It was gratifying that civil society was playing an increasingly active part in the process. He was sure that delegations would be able to produce a final text of the protocol to be submitted to the Conference of the Parties for final approval, incorporating in a balanced and complementary manner the objectives established by the Convention on Biological Diversity and by the Conference of the Parties to the Convention at its second meeting.

8. Mr. Sippi Jaakolla conveyed to the meeting the best wishes of the Executive Director of UNEP and the hope that it would succeed in producing an agreed text of a protocol on biosafety.

9. Mr. Hamdallah Zedan, recalling the importance of the present negotiations beyond the immediate scope of providing a sound framework for the regulation of transboundary movements of LMOs, said that the protocol would be a substantial practical manifestation of the precautionary approach within the context of the Convention on Biological Diversity. In addition, at a time of profound change, sustainable development had to be a fundamental paradigm of the changing world, and the Convention on Biological Diversity needed to be developed in order to meet emerging challenges and changing circumstances. The current negotiations represented an important opportunity for the sustainable development sector to establish priorities and guidelines on transboundary movements of LMOs but, if the opportunity were to be missed, then the initiative would move to other forums, such as the World Trade Organization (WTO). After calling on the participants to keep in mind the wider issues involved, he paid tribute to those donors which had provided

assistance to the negotiations, namely, Australia, Austria, Canada, Denmark, the European Union, the Netherlands, Norway, Sweden, Switzerland and the United Kingdom. He closed by thanking the members of the extended Bureau of the Working Group for their work and the Chair for his guidance.

10. Ms. Bernarditas Muller (Philippines), Vice-President of the Conference of the Parties to the Convention on Biological Diversity, informed the meeting about preparations for the forthcoming first extraordinary session of the Conference of the Parties.

#### B. Attendance

11. The meeting was attended by representatives of the following States and regional economic integration organizations: Albania, Algeria, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Bahamas, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bhutan, Bolivia, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Cook Islands, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, European Community, Fiji, Finland, France, Gambia, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Guyana, Haiti, Holy See, Hungary, India, Indonesia, Iran (Islamic Republic of), Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kiribati, Lao People's Democratic Republic, Latvia, Lesotho, Lithuania, Madagascar, Malawi, Malaysia, Mali, Mauritania, Mauritius, Mexico, Micronesia (Federated States of), Mongolia, Morocco, Myanmar, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Samoa, Saudi Arabia, Senegal, Seychelles, Singapore, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Sudan, Swaziland, Sweden, Switzerland, Tajikistan, Thailand, Togo, Tunisia, Turkey, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela, Viet Nam, Yemen, Zambia and Zimbabwe.

12. The following United Nations bodies and specialized agencies were represented: Food and Agriculture Organization of the United Nations (FAO), Global Environment Facility (GEF) and World Trade Organization (WTO).

13. Representatives of the following intergovernmental organizations attended the meeting: Arab Centre for Studies of Arid Zones and Drylands (ACSAD), Commonwealth Secretariat, International Centre for Genetic Engineering and Biotechnology (ICGEB) and South Pacific Regional Environment Programme (SPREP).

14. The following non-governmental organizations, industry groups and other bodies were also represented: Afri Net, Ag-West Biotech Inc., AgrEvo Belgium, Alcaldia de Cartagena, Alcaldia de San Vicente del Caguan, American Agricultural Law Association, Amigrans, Asociación Mexicana de Semilleros, Asociación Nacional de Industriales (ANDI), Asociación Semilleros Argentinos (ASA), Biotechnology Industry Organization (BIO), BIOTECCanada, Canadian Federation of Agriculture, Canadian Pharmaceutical Industry (BCG Inc.), Cardique, Centro de Estudios Realidad Social (CERES), Cooperación Madre

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Tierra, Cooperación para el Desarrollo de las Comunidades, Coordinación Ambiental Bocata Siglo XX, Corporación de las Comunidades Afro-Caribes, Corporación Nuevo Arco Iris, Council for Responsible Genetics, Despadio Primera Dama de la Nación, Ecodesarrollo, Ecofondos, European Group for Ecological Action (ECOROPA), Edmonds Institute, Environmental Services, Foundation for International Environmental Law and Development (FIELD), Forum Environment and Development and its Working Group on Biodiversity, Friends of the Earth International, Fundación Ambiental Grupos Ecologicos de Risaralda, Fundación Ceres, Fundación Okawa, Fundación Proteger, Fundación Semilla, Fundación Social Viva la Ciudadanía, Fundación SWISSAID, German Association of Biotechnology Industries, Gobernación Devocivar-consultor, Good Works International, Green Industry Biotechnology Platform (GIBiP), Greenpeace, Grocery Manufacturers of America (GMA), Grupo Ambientalista de Antioquia, Harvard University, Hoechst Schering AgrEvo GmbH, Hogan and Hartson, ICA, Instituto Latinoamericano de Servicios Legales Alternativos (ILSA), Institute for Agriculture and Trade Policy, Instituto Colombiano de Derecho Ambiental, International Chamber of Commerce, Jardin Botanico Guillermo Piñeres, Mitsubishi Kasei Institute of Life Sciences, Monsanto, Negritudes Afrocaribeña, International Centre for the Study of the Neotropics (NEOTROPICO), International Centre for the Study of the Neotropics (INCENT), Novartis Seed, O'Mara and Associates, Organización Ambiental OKAWA, Organización Censar-Agua Viva, Parque Nacional Rosario y San Bernardo, Parque Nacional Tayrona, Pioneer Argentina, PNN Old Providence, Programme PNN Corales del Rosario y San Bernardo, Pulsar Internacional, Red de Liderazgo Costeño, Research Foundation for Science, Technology and Ecology, Rhone Poulenc Rorer Pharmaceuticals, Servicio Nacional de Aprendizaje (SENA), Smithkline Beecham, Strategic Diagnostics Inc., Third World Network, Universidad de Caldas, Universidad del Atlantico, Universidad Nacional de Colombia sede Medellin, U.S. Grains Council, Washington Biotechnology Action Council/Council for Responsible Genetics, Women Environmental Network Organization and World Wide Fund for Nature (WWF).

#### C. Confirmation of the Bureau

15. In line with paragraph 2 of decision IV/3 of the Conference of the Parties to the Convention on Biological Diversity, by which the Conference decided, inter alia:

"(a) That the bureau of the Open-ended Ad Hoc Working Group on Biosafety shall be composed of representatives of Argentina, Bahamas, Denmark, Ethiopia, Hungary, India, Mauritania, New Zealand, Russian Federation and Sri Lanka;

"(b) That the members of the bureau shall remain in office, under the chairmanship of Mr. Veit Koester (Denmark), until the adoption of the Protocol on Biosafety",

the Open-ended Ad Hoc Working Group confirmed and constituted the Bureau on the basis of the nominations made at the fourth meeting of the Conference of the Parties and those received thereafter by the secretariat, as follows:

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Chair: Mr. Veit Koester (Denmark)

Vice-Chairs: Mr. Behren Gebre Egziabher Tewelde (Ethiopia)  
Mr. Mohamed Mahmoud Ould el Gaouth (Mauritania)  
Ms. Elsa Kelly (Argentina) (replacing Mr. Diego Malpede)  
Ms. Lynn Holowesko (Bahamas)  
Mr. Ervin Balázs (Hungary)  
Mr. Rajen Habib Khwaja (India) (replacing Ms. Amargeet K. Ahuja)  
Mr. I.A.U.N. Gunatillake (Sri Lanka)  
Mr. Darryl Dunn (New Zealand)

Rapporteur: Mr. Alexander Golikov (Russian Federation)

D. Adoption of the agenda

16. The Working Group adopted the following agenda, on the basis of the provisional agenda that had been circulated under the symbol UNEP/CBD/BSWG/6/1:

1. Opening of the meeting.
2. Adoption of the agenda.
3. Confirmation of the Bureau.
4. Organization of work.
5. Elaboration of a protocol on biosafety in accordance with decision II/5 of the Conference of the Parties to the Convention on Biological Diversity.
6. Adoption of the final text of a protocol on biosafety and the report of the meeting.
7. Closure of the meeting.

E. Organization of work

17. The Working Group decided that the organizational arrangements established for the fifth meeting would be maintained at its sixth meeting, namely, to conduct the work of the meeting in two sub-working groups, two contact groups and in plenary.

18. In addition, the Working Group decided to set up an open-ended legal drafting group, which would not enter into any negotiations, but would aim to facilitate the drafting of the protocol by ensuring legal consistency and wording in its text. The Legal Drafting Group was chaired by Ms. Lynn Holowesko (Bahamas), with the following core membership: Australia, Bahamas, Bulgaria, Cameroon, China, Colombia, India, Poland, South Africa and United Kingdom.

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19. Based on the numbering of the articles in the new draft negotiating text (UNEP/CBD/BSWG/6/2), Sub-Working Group I, co-chaired by Mr. Eric Schoonejans (France) and Ms. Sandra Wint (Jamaica), was mandated to deal with articles 4-16 and 37. Sub-Working Group II, co-chaired by Mr. John Herity (Canada) and Mr. Khwaja (India), was mandated to deal with articles 1 and 2, 17-27 and 34.

20. Contact Group 1, under the authority of Sub-Working Group I, co-chaired by Mr. Osama El-Tayeb (Egypt) and Mr. Piet van der Meer (Netherlands), was mandated to deal with article 3 (Use of terms) and annexes. On request, it would also provide definitions to Sub-Working Group II for its consideration.

21. Contact Group 2, co-chaired by Mr. John Ashe (Antigua and Barbuda) and Ms. Katharina Kummer (Switzerland), was mandated to deal with the preamble and articles 28-33, 35 and 36 and 38-42. The Working Group also decided to retain the informal group under Contact Group 2 dealing with article 28 (Liability and redress), under the chairmanship of Ms. Kate Cook (United Kingdom).

22. In his work, the Chair of the Working Group was also assisted by a group of friends of the Chair, composed of individuals nominated by each of the regional groups. The Co-Chairs and a representative of the host Government were also invited to attend meetings of the friends of the Chair. In addition, the meeting agreed that further informal groups could be convened, as and when required, to consider specific issues.

23. With regard to participation by non-governmental organizations in sub-working groups and contact groups, the Chair reminded the Working Group of a decision reached by the Bureau, after extensive consultation and discussion at the fourth meeting of the Working Group, on how best to balance the need for appropriate negotiating conditions and for transparency. Outlining the major elements of that decision, he said that non-governmental organizations could participate as observers in the initial phase of the discussion of the sub-working groups and contact groups, but with no right to speak, except at the invitation of the co-chairs. Non-governmental organizations would not participate in negotiations or drafting of sensitive discussions, as defined by the co-chairs. Any Party could at any time ask, through the co-chairs, that the meeting be restricted and that non-governmental organizations be requested to withdraw. Non-governmental organizations could participate in plenary in the same way as they had done during the previous meetings of the Working Group. On the question of closed sessions, the Chair emphasized that, while any delegation could submit a request to have a closed session, in the interests of, inter alia, inclusiveness, such an approach should be utilized as prudently as possible.

## II. ELABORATION OF A PROTOCOL ON BIOSAFETY IN ACCORDANCE WITH DECISION II/5 OF THE CONFERENCE OF THE PARTIES TO THE CONVENTION ON BIOLOGICAL DIVERSITY

24. In response to a request by the Chair at the opening session of the meeting to the effect that the current heavy workload of the Group precluded consideration of any annexes additional to the two already contained in the

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draft negotiating text, one representative withdrew his country's proposal for the inclusion of an annex on contained use. His country maintained, however, that the protocol should include a provision to ensure that Parties guaranteed safety in the contained use of LMOs.

25. Another representative, drawing attention to article 16 (Minimum national standards) of the draft negotiating text, pointed out that, during the final plenary session of the fifth meeting of the Working Group, his country had been the sole Party to oppose the proposed deletion of the entire article. In a spirit of compromise, and having reviewed document UNEP/CBD/BSWG/6/2, his country was prepared to withdraw its previous objection to the deletion of the article in question.

26. At the 2nd plenary session on Wednesday, 17 February, Mr. Klaus Töpfer, Executive Director of UNEP, said that UNEP had attached the highest importance to biosafety for at least a decade. Biotechnology had the potential to change the way in which the world lived at least as much as communications technology had done over the preceding decade. Both food security and human health would benefit, but like any new technology, biotechnology could pose serious risks to the environment, biodiversity, human health and socio-economic structure, risks which had to be addressed on the basis of the precautionary principle. He pointed out that, since the first meeting of the Working Group, an enormous amount of work had been undertaken, and many and varied views had been expressed on the issues. He called on the participants to approach the final days of negotiation in a spirit of understanding and compromise, so that the Cartagena Protocol could be adopted by the Conference of the Parties at its extraordinary meeting.

27. At the same session, the Working Group heard reports from the Co-Chairs of Sub-Working Groups I and II and of Contact Groups 1 and 2, and from the Chair of the Legal Drafting Group. The Chair of the Working Group drew attention to the draft negotiating text contained in document UNEP/CBD/BSWG/6/2/Rev.1, which reflected the latest status of the draft articles of the protocol.

28. Ms. Wint (Jamaica), Co-Chair of Sub-Working Group I, speaking also on behalf of Mr. Schoonejans (France), Co-Chair, described the progress made by the Group in addressing articles 4-16 and 37, in accordance with its mandate. To advance the work on specific issues, contact groups had been established under the Sub-Working Group, and a number of internal working papers had been produced. In many cases, it had been possible to remove footnotes and square brackets from the draft articles, but a number of issues still remained to be resolved. Agreement had been reached on the text of article 37, as well as on the deletion of articles 10, 12 and 16.

29. Mr. Herity (Canada), Co-Chair of Sub-Working Group II, speaking also on behalf of Mr. Khwaja (India), Co-Chair, reported on the progress made by the Group in addressing articles 1 and 2, 17-27 and 34. Contact groups had been established under the Sub-Working Group, and a number of internal working papers had been produced. It had been possible to reach consensus on article

19. In the other articles, some progress had been made on removing footnotes and square brackets, but a large number of issues were still the subject of disagreement. Mr. Khwaja, reporting on the work of the Sub-Working Group on articles 21 and 23, noted that, although progress had been made, areas of disagreement remained.

30. Mr. van der Meer (Netherlands), Co-Chair of Contact Group I, speaking also on behalf of Mr. El-Tayeb (Egypt), Co-Chair, reported on the work of the Group in dealing with definitions and annexes. Although time constraints had prevented the Group from completing definitions on all the terms under its consideration, it had agreed on definitions of "LMO", "living organism" and "modern biotechnology". It had also completed its work on annexes I and II, which were ready for transmission to the Legal Drafting Group.

31. Ms. Kummer (Switzerland), Co-Chair of Contact Group 2, speaking also on behalf of Mr. Ashe (Antigua and Barbuda), Co-Chair, reported on the satisfactory conclusion of the work of the Group in dealing with the articles within its mandate, namely, the preamble and articles 28 and 33, 35 and 36 and 38-42. In addition, agreement had been reached concerning all but two of the definitions to be considered by the Group. She also reported that the informal group under Contact Group 2 dealing with article 28 (Liability and redress), under the chairmanship of Ms. Cook (United Kingdom), had made some progress, but had been unable to reach consensus.

32. Ms. Holowesko (Bahamas), Chair of the Legal Drafting Group, reported that the Group had reviewed draft articles 19 and 36, and had completed its work on the provisionally adopted articles 30-33, 35, 36, 38, 39, 41 and 42.

33. The Working Group agreed that, on the basis of the work carried out by the sub-working groups and contact groups, a new revised draft negotiating text would be prepared and submitted to the Friends of the Chair, with the aim of reaching consensus on the outstanding issues, while at the same time providing for transparency and the widest possible involvement of all delegations.

34. It was also agreed that the Legal Drafting Group would continue to examine the remaining draft articles of the protocol, as and when they were received from the Friends of the Chair. In addition, Contact Group 1 would continue its consideration of the definitions of terms that were still outstanding.

35. At the 3rd plenary session, on 20 February 1999, the Chair of the Working Group reported that, following a series of meetings of the group of friends of the Chair, Mr. Mayr, Minister of Environment of Colombia, had decided to hold meetings of a restricted character, which would focus on articles 4, 5 and 6.

36. At the 4th plenary session, on 22 February 1999, the Chair of the Working Group announced that there would be a further plenary session after the opening session of the extraordinary meeting of the Conference of the Parties, but before the Conference of the Parties started its substantive work. A number of representatives expressed concern at a lack of information on the progress of the negotiations.



III. ADOPTION OF THE FINAL TEXT OF A PROTOCOL ON BIOSAFETY AND  
THE REPORT OF THE MEETING

37. The articles as approved by the Working Group are contained in appendix I to the present report, and the process of their approval, including any concerns expressed by representatives at the time, is reflected in paragraphs 38 to 90 below.

A. Adoption of the final text of the Protocol

38. At the 2nd plenary session, on 17 February 1999, the Working Group provisionally adopted articles 22 (Capacity-building), 29 (Financial mechanism and resources), 30 (Conference of the Parties), 31 (Subsidiary bodies and mechanisms), 32 (Secretariat), 33 (Relationship with the Convention), 35 (Monitoring and reporting), 36 (Compliance), 37 (Assessment and review of this Protocol), 38 (Signature), 39 (Entry into force), 41 (Withdrawal) and 42 (Authentic texts). At the same session, the Working Group also provisionally adopted, under article 3 (Use of terms), the definitions of the terms "exporter", "importer", "living modified organisms", "living organism", "modern biotechnology" and "regional economic integration organization". Following consideration of those articles, in the Legal Drafting Group, some of their titles were amended.

39. At the same session, the Working Group agreed to delete articles 10 (Notification of transit), 12 (Subsequent imports) and 16 (Minimum national standards). Following their deletion, the articles of the draft text were renumbered accordingly.

40. At the 5th plenary session, on 22 February 1999, the Working Group agreed to forward to the Conference of the Parties for its consideration, as a package, the draft articles as contained in the Chair's proposed text (UNEP/CBD/BSWG/6/L.2/Rev.1), and as revised in the Legal Drafting Group (UNEP/CBD/BSWG/6/L.2/Rev.2), incorporating the articles already provisionally adopted. The text of the draft articles, as agreed by the Working Group for transmission to the Conference of the Parties at its first extraordinary meeting, is contained in appendix I to the present report.

41. At the same session, following agreement by the Working Group to the transmission of the Chair's proposed text, statements were made by a number of delegations, conveying their concerns regarding the text and the process of its preparation and registering objections. The Chair appealed to all representatives not to apportion blame to any particular party to the negotiations, and to recognize that the result of the discussions was their shared responsibility.

42. The representative of Algeria expressed reservations about the Chair's proposed text, saying that it did not take into account many countries' concerns. While the document could be the basis for future negotiations, in order to incorporate concerns about biodiversity, it was essential that such negotiations should be transparent.

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43. The representative of Bangladesh expressed the view that the Chair's proposed text lacked adequate provisions for the precautionary principle and for the issues of liability and redress. Although it was not acceptable to his delegation, it could serve as a basis for future efforts to draft the protocol.
44. The representative of Barbados, while expressing serious reservations at the Chair's proposed text, particularly its article 5, which failed adequately to address the issue of AIA, said that the text contained therein could represent a basis for future negotiation.
45. The representative of Bolivia expressed reservations about the Chair's proposed text, relating, in particular, to articles 4, 5, 21 and 25.
46. The representative of Botswana said that his delegation was unable to accept the package contained in the Chair's proposed text of the protocol.
47. The representative of Brazil expressed his delegation's reluctance to agree with the Chair's proposed text, since it believed that the protocol as drafted was seriously flawed in terms of its coverage and, as a whole, did not reflect the concerns of a great number of Parties.
48. The representative of Cameroon, while noting that the Chair's proposed text had many shortcomings and gaps, believed that it could form the basis for future work.
49. The representative of Canada, speaking on behalf of the group of countries known as the Miami Group, said that his group could not support the Chair's proposed text as a consensus document. In the group's view, continued efforts were needed to complete the draft in order to arrive at a protocol that could be adopted and implemented in the shortest possible time.
50. The representative of Chile, speaking also on behalf of Argentina and Uruguay as members of the Miami Group, said that, if the Chair's proposed draft protocol enjoyed no consensus, the informal negotiations that had been conducted under the auspices of the Minister of Environment of Colombia should be pursued.
51. The representative of China expressed the view that, in its current form, the Chair's proposed text could not guarantee safety in transboundary movements of LMOs, since article 4 failed to include LMOs for medical use; article 5 failed to include under the AIA procedure the LMOs used as feedstocks or process agents; and the scope of the draft protocol did not encompass adverse effects of products derived from LMOs.
52. The representative of Cuba expressed concerns about articles 4 and 5, saying that the document as a whole failed to meet the meeting's desire for a satisfactory and effective protocol.
53. The representative of Ecuador expressed concern about the excessive amount of time spent expressing reservations either about the text or about the procedure by which it had been drafted, instead of working in a constructive spirit to try find a text acceptable to all.

54. The representative of Egypt paid tribute to the efforts of the Chair to find a solution acceptable to all, but expressed reservations on the limited scope of the document, which, he said, fell short of the minimum goal of conservation of biological diversity, taking account of risks to human health.

55. The representative of El Salvador expressed serious concerns relating to the Chair's proposed text, describing it as a protocol for biotrade, although believed that it could provide a basis for future discussions.

56. The representative of Ethiopia, expressing the view that the Chair's proposed draft protocol failed to cover many issues appropriately, drew particular attention to article 5, paragraph 3, which was unacceptable, because of its glaring omissions. Even though the draft was unacceptable in its current state, he believed that it represented a useful basis for future consideration.

57. The representative of the European Community expressed the view that, by definition, a text which was a compromise would not fully please anybody. Nevertheless, since the meeting seemed close to reaching a compromise text which all could accept more readily, the remaining meeting time should be spent in resolving the last few outstanding critical issues.

58. The representative of Guatemala acknowledged that the work had been done under considerable pressure of time, but nevertheless felt compelled to express a number of reservations, with regard to human health, economic and social issues, and the protection of the environment.

59. The representative of Guyana recognized that a great deal of hard work had gone into the draft document. While it did not yet address the real issues of biosafety, it was nevertheless a basis for future negotiations.

60. The representative of Haiti expressed his serious disappointment at the Chair's proposed text and also his deep concern at the difficulty experienced by the Working Group in reaching consensus. In particular, he recorded his reservations concerning articles 5 and 25.

61. The representative of India, reserving his right also to raise issues of concern at a future time, registered serious concerns with regard to the Chair's proposed text relating, in particular, to the question of products of LMOs; the omission of pharmaceuticals from article 4; AIA; risk procedures and risk management; and the absence of liability and redress procedures. He said that, as currently drafted, the protocol appeared to facilitate trade in LMOs, rather than to protect biodiversity. In addition, he wished to register his disagreement over the procedure followed, whereby the Chair had first declared the draft protocol to be approved and only subsequently had allowed delegations to present their views.

62. The representative of Indonesia expressed concerns about consistency among the articles, and undertook to provide further details at a subsequent stage.

63. The representative of the Islamic Republic of Iran thanked the Chair for his efforts. While the present text was not satisfactory, notably in paragraph 3 of article 5, he felt that a little more effort would suffice to create a protocol that would be much more acceptable.
64. The representative of Jamaica considered that the Chair's proposed text did not properly address the major concerns and issues of the transboundary movement of LMOs.
65. The representative of Japan said that, to be effective, the protocol had to be realistic, well-balanced and based on scientific knowledge and experience. He registered his serious concern that the Chair's proposed text fell far short of that target.
66. The representative of Kenya expressed his country's gratitude to the Chair for his hard work, but regretted that the meeting had been unable to accomplish more than it had. Certain articles of considerable interest to his country had not been adequately drafted.
67. The representative of Latvia said that the current compromise text could be a basis for future work and called on all participants to work together towards that goal.
68. The representative of Madagascar expressed bitter disappointment that the Chair's proposed text was much more slanted towards trade than towards biosafety. While he rejected the Chair's proposal, he was prepared to continue to work towards a better text.
69. The representative of Malawi, expressing support for the reservations registered by a number of other representatives, said that the process followed in preparing the text had not been entirely democratic.
70. The representative of Malaysia expressed his regret at the meeting's inability to reach consensus and expressed support for the idea the Chair's proposed text should form the basis for future efforts.
71. The representative of Mali, while acknowledging the efforts made by the Chair to produce a text acceptable to all, said that his country was unable to support the protocol as embodied in the Chair's proposal.
72. The representative of Mauritius expressed his regret that so much time at the meeting had been wasted, while delegations waited around instead of negotiating. The text before the meeting was more a biotrade than a biosafety protocol. Registering his country's objection, in particular to paragraph 3 of article 5, he said that it was unable to accept the text proposed by the Chair.
73. The representative of Mexico said that the Chair's proposed text was unacceptable, since it provided for only a simplified AIA procedure and contained no provision allowing for a comprehensive system for liability and redress.

74. The representative of Morocco expressed reservations relating to articles 5 and 25. In addition, he said that the protocol should apply to all living modified organisms and that the current draft could serve as a basis for future deliberations.

75. The representative of Norway, while expressing his belief that the Chair's proposed text represented a good compromise, noted that certain important factors had been omitted, such as the need to control basic technologies and issues surrounding antibiotic resistance and marker genes. He considered, however, that the draft would form a sound basis for future negotiation.

76. The representative of Panama expressed the view that the Chair's proposed text was inadequate in its treatment of, on the one hand, conservation of biodiversity and, on the other, liability and compensation. Instead of safeguarding the environment, the draft protocol was slanted towards the interests of trade.

77. The representative of Paraguay expressed reservations about the Chair's proposed text and said that it was unacceptable in its current form.

78. The representative of Peru, voicing extreme concern at the Chair's proposed text, said that, in particular, articles 4 and 5 did not cover issues that had been the subject of years of work. Moreover, the provisions covering liability and redress also gave rise to concern.

79. The representative of the Republic of Korea expressed concerns about the Chair's proposed text, but urged that work should continue, using the draft as a basis.

80. The representative of the Russian Federation said that his delegation was prepared to support the Chair's proposed text on the understanding that the thrust of the protocol should be to environmental protection and not trade and that it could serve as a useful basis for further improvement. In no event could the Russian Federation support the use of individual provisions of the protocol to impede the development of normal trade relations.

81. The representative of Saint Kitts and Nevis expressed concerns and reservations about the Chair's proposed text, in which, he said, the precautionary principle and the protection of biodiversity had been made secondary to other interests.

82. The representative of Senegal recalled that all the participants had arrived in Cartagena full of hope. Of the 14 points listed as contentious in the early stages of the negotiations, many had still not been adequately resolved in the Chair's proposed text. He suggested that the document could be used as a basis for further work towards consensus.

83. The representative of Seychelles said that, while the Chair's proposed text did not represent a viable mechanism with which to minimize the risks associated with transboundary movements of LMOs, it could form a basis for future or ongoing consideration, provided that the consideration process was fully transparent.

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84. The representative of Togo regretted that, notwithstanding the Chair's commendable efforts to reach a consensus text, the proposed draft made no mention of the precautionary principle in crucial areas such as articles 4, 5 and 25. He considered that the Chair's proposed text was no more than a working document, not acceptable in its current form and in need of further negotiation.

85. The representative of Tunisia said that the proposed text did not in any way meet the concerns about human safety and biodiversity and regretted the lack of willingness to find a compromise between the interests of trade, on the one hand, and human safety and biodiversity on the other.

86. The representative of Turkey believed that the Chair's proposed text was not an adequate instrument for the protection and conservation of biological diversity. He regretted that the draft did not cover all LMOs and that the question of labelling had not been properly addressed.

87. The representative of Uganda said that the Chair's proposed text fell far short of expectations, notably in articles 4 and 5. More generally, it was not in line with the concerns and the general principles of the Convention on Biological Diversity.

88. The representative of Venezuela, expressing his country's reservation on the Chair's proposed text, pointed to its failure adequately to address certain issues, in particular, AIA and the need to take account of all LMOs.

89. The representative of Zambia expressed the view that the Chair's proposed text fell short of expectations and ran counter to the spirit of the Convention on Biological Diversity. Two particular issues to be resolved in the future were the participation of non-Parties in negotiations and what exactly was meant by consensus. He called on the Conference of the Parties to address those issues.

90. The representative of Zimbabwe said that the Chair's proposed text fell far short of expectations in many respects and he reserved the right to raise specific issues of concern at a future time.

#### B. Adoption of the report of the meeting

91. The present report was adopted at the 5th plenary session of the meeting, on 22 February 1999, on the basis of the draft report contained in document UNEP/CBD/BSWG/6/L.1 and on the understanding that the Rapporteur, in consultation with the secretariat, would be entrusted with its finalization in the light of the discussions during the remainder of the meeting.

## VI. CLOSURE OF THE MEETING

92. In his closing statement, the Chair expressed sincere appreciation on behalf of all participants to the Government of the Republic of Colombia and to its people for the cordial welcome, special courtesy and warm hospitality extended to the meeting and for the excellent facilities provided.

93. Following the customary exchange of courtesies, the Chair declared the sixth meeting of the Open-ended Ad Hoc Working Group on Biosafety closed at 3 p.m. on Monday, 22 February 1999.

Appendix I

## DRAFT PROTOCOL ON BIOSAFETY

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The Parties to this Protocol,

Being Parties to the Convention on Biological Diversity, hereinafter referred to as "the Convention",

Recalling Article 19, paragraphs 3 and 4, and Articles 8 (g) and 17 of the Convention,

Recalling also decision II/5 of the Conference of the Parties to the Convention to develop a protocol on biosafety, specifically focusing on transboundary movement of any living modified organism resulting from modern biotechnology that may have adverse effect on the conservation and sustainable use of biological diversity, setting out for consideration, in particular, appropriate procedures for advance informed agreement,

Reaffirming the precautionary approach contained in Principle 15 of the Rio Declaration on Environment and Development,

Aware of the rapid expansion of modern biotechnology and the growing public concern over its potential adverse effects on biological diversity, taking also into account risks to human health,

Recognizing that modern biotechnology has great potential for human well-being if developed and used with adequate safety measures for the environment and human health,

Recognizing also the crucial importance to humankind of centres of origin and centres of genetic diversity,

Taking into account the limited capabilities of many countries, particularly developing countries, to cope with the nature and scale of known and potential risks associated with living modified organisms,

Have agreed as follows:

#### Article 1

##### OBJECTIVE

In accordance with the precautionary approach contained in Principle 15 of the Rio Declaration on Environment and Development, the objective of this Protocol is to contribute to ensuring an adequate level of protection in the field of the safe transfer, handling and use of living modified organisms resulting from modern biotechnology that may have adverse effect on the conservation and sustainable use of biological diversity, taking also into account risks to human health, and specifically focusing on transboundary movements.

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Article 2

## GENERAL PROVISIONS

1. Each Party shall take necessary and appropriate legal, administrative and other measures to implement its obligations under this Protocol.
2. The Parties shall ensure that the development, handling, transport, use, transfer and release of any living modified organisms are undertaken in a manner that prevents or reduces the risks to biological diversity, taking also into account risks to human health.
3. Nothing in this Protocol shall affect in any way the sovereignty of States over their territorial sea established in accordance with international law, and the sovereign rights and the jurisdiction which States have in their exclusive economic zones and their continental shelves in accordance with international law, and the exercise by ships and aircraft of all States of navigational rights and freedoms as provided for in international law and as reflected in relevant international instruments.
4. Nothing in this Protocol shall be interpreted as restricting the right of a Party to take action that is more protective of the conservation and sustainable use of biological diversity than that called for in this Protocol, provided that such action is consistent with the objective and the provisions of this Protocol and is in accordance with its other obligations under international law.
5. The Parties are encouraged to take into account, as appropriate, available expertise, instruments and work undertaken in international forums with competence in the area of risks to human health.

Article 3

## USE OF TERMS

For the purposes of this Protocol:

- (a) "Conference of the Parties" means the Conference of the Parties to the Convention.
- (b) "Contained use" means any operation, undertaken within a facility, installation or other physical structure, which involves living modified organisms that are controlled by specific measures that effectively limit their contact with, and their impact on, the external environment.
- (c) "Export" means intentional transboundary movement from one Party to another Party.
- (d) "Exporter" means any legal or natural person, under the jurisdiction of the Party of export, who arranges for a living modified organism to be exported.

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(e) "Import" means intentional transboundary movement into one Party from another Party.

(f) "Importer" means any legal or natural person, under the jurisdiction of the Party of import, who arranges for a living modified organism to be imported.

(g) "Living modified organism" means any living organism that possesses a novel combination of genetic material obtained through the use of modern biotechnology.

(h) "Living organism" means any biological entity capable of transferring or replicating genetic material, including sterile organisms, viruses and viroids.

(i) "Modern biotechnology" means the application of:

(i) In vitro nucleic acid techniques, including recombinant DNA and direct injection of nucleic acid into cells or organelles,

(ii) Fusion of cells beyond the taxonomic family,

that overcome natural physiological reproductive or recombination barriers and that are not techniques used in traditional breeding and selection.

(j) "Regional economic integration organization" means an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Protocol and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it.

(k) "Transboundary movement" means the movement of a living modified organism from one Party to another Party, save that for the purposes of Articles 11, 14 and 21 transboundary movement extends to movement between Parties and non-Parties.

#### Article 4

##### SCOPE

1. This Protocol shall, subject to paragraph 2 below, apply to the transboundary movement, handling and use of 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.

2. Without prejudice to the right of the Parties to subject all living modified organisms to risk assessment prior to the making of decisions on import, this Protocol shall not apply to:

(a) Transboundary movements of living modified organisms that are not likely to have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, as may be specified in an annex to the Protocol;

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(b) Transit of living modified organisms, except as regards Articles 2, 14 and 15, and intentional transboundary movements of living modified organisms destined for contained use, except as regards Articles 2, 14, 15 and 17, paragraphs 1, 2, 3 (a) and 3 (b);

(c) Transboundary movements of living modified organisms that are pharmaceuticals for humans.

#### Article 5

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

1. Subject to Article 4, paragraph 2, the advance informed agreement procedure in Articles 6, 7, 8 and 9 shall apply prior to the first intentional transboundary movements of living modified organisms for intentional introduction into the environment of the Party of import.
2. "Intentional introduction into the environment" in paragraph 1 above does not refer to living modified organisms intended for direct use as food or feed, or for processing.
3. The Parties may, under their respective domestic laws, require procedures consistent with advance informed agreement for living modified organisms other than those specified in paragraph 1 above.
4. Subject to paragraph 3 above, the advance informed agreement procedure shall not apply to the intentional transboundary movements of living modified organisms identified in a decision of the Conference of the Parties serving as the meeting of the Parties to this Protocol as being not likely to have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health.

#### Article 6

##### NOTIFICATION

1. The Party of export shall notify, or require the exporter to ensure notification in writing to, the competent national authority of the Party of import prior to the intentional transboundary movement of a living modified organism that falls within the scope of Article 5, paragraph 1. The notification shall contain, at a minimum, the information specified in Annex I.
2. The Party of export shall ensure that there is a legal requirement for the accuracy of information provided by the exporter.

Article 7

ACKNOWLEDGEMENT OF RECEIPT OF NOTIFICATION

1. The Party of import shall acknowledge receipt of the notification, in writing, to the notifier within ninety days of its receipt.
2. The acknowledgement shall state:
  - (a) The date of receipt of the notification;
  - (b) Whether the notification, prima facie, contains the information referred to in Article 6;
  - (c) Whether to proceed according to the domestic regulatory framework of the Party of import or according to the procedure specified in Article 8.
3. The domestic regulatory framework referred to in paragraph 2 (c) above, shall be consistent with this Protocol.
4. A failure by the Party of import to acknowledge receipt of a notification shall not imply its consent to an intentional transboundary movement.

Article 8

DECISION PROCEDURE

1. Decisions taken by the Party of import shall be in accordance with Article 12.
2. The Party of import shall, within the period of time referred to in Article 7, inform the notifier, in writing, whether the intentional transboundary movement may proceed:
  - (a) After no less than ninety days without a subsequent written consent;
  - (b) Only after the Party of import has given its written consent.
3. Within two hundred and seventy days of the date of receipt of notification, the Party of import shall communicate, in writing, to the notifier and to the Biosafety Clearing-House the decision referred to in paragraph 2 (b) above:
  - (a) Approving the import, with or without conditions, including how the decision will apply to subsequent imports of the same living modified organism;
  - (b) Prohibiting the import;

(c) Requesting additional relevant information in accordance with its domestic legal framework or Annexes I and II. In calculating the time within which the Party of import is to respond, the number of days it has to wait for additional relevant information shall not be taken into account;

(d) Informing the notifier that the period specified in this paragraph is extended by a defined period of time.

4. Except in a case in which consent is unconditional, a decision under paragraph 3 above shall set out the reasons for the decision .

5. A failure by the Party of import to communicate its decision within two hundred and seventy days of the date of receipt of the notification shall not imply its consent to an intentional transboundary movement.

6. Parties concerned shall cooperate with a view to identifying, as soon as possible, the extent to which in relation to the procedures, and the cases in which, an intentional transboundary movement may not proceed between them without explicit consent.

7. Lack of full scientific certainty or scientific consensus regarding the potential adverse effects of a living modified organism shall not prevent the Party of import from prohibiting the import of the living modified organism in question as referred to in paragraph 3 (b) above.

8. The Conference of the Parties serving as the meeting of the Parties shall, at its first meeting, decide upon appropriate procedures and mechanisms to facilitate decision-making by Parties of import.

#### Article 9

##### REVIEW OF DECISIONS

1. A Party of import may at any time, in light of new scientific information on potential adverse effects on the conservation and sustainable use of biological diversity, taking also into account the risks to human health, review and change its decisions regarding intentional transboundary movements. In such case, the Party shall, within thirty days, inform any notifier that has previously notified movements, as well as the Biosafety Clearing-House, and shall give details of the reasons for its decision.

2. A Party of export or a notifier may request the Party of import to review a decision it has made in respect of it under Article 8 where the Party of export or the notifier considers that:

(a) A change in circumstances has occurred that may influence the outcome of the risk assessment upon which the decision was based;

(b) Additional relevant scientific or technical information has become available.

3. Parties of import shall respond to such requests in writing within ninety days and provide details on the basis of their decision.

4. The Party of import may, at its discretion, require a risk assessment for subsequent imports of a living modified organism.

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Article 10

SIMPLIFIED PROCEDURE

1. A Party of import may, provided that adequate measures are applied to ensure the safe intentional transboundary movement of living modified organisms in accordance with the objectives of this Protocol, specify in advance to the Biosafety Clearing-House:

(a) Cases for which intentional transboundary movement can take place at the same time as the movement is notified to the Party of import: such notifications may apply to subsequent similar movements to the same Party;

(b) Living modified organisms to be exempted from the advance informed agreement procedure.

2. The information relating to an intentional transboundary movement that is to be provided in the notifications referred to in paragraph 1 (a) above shall be the information specified in Annex I.

Article 11

MULTILATERAL, BILATERAL AND REGIONAL AGREEMENTS AND ARRANGEMENTS

1. Parties may enter into multilateral, bilateral and regional agreements and arrangements with Parties or non-Parties regarding intentional transboundary movements of living modified organisms, consistent with the objectives of this Protocol and provided that such agreements and arrangements do not result in a lower level of protection than that provided for by the Protocol.

2. The Parties shall inform each other, through the Biosafety Clearing-House, of any such bilateral, regional and multilateral agreements and arrangements that they have entered into before or after entry into force of this Protocol.

3. The provisions of this Protocol shall not affect intentional transboundary movements that take place pursuant to such agreements and arrangements as between the parties to those agreements or arrangements.

4. Any Party may determine that its domestic regulations shall apply with respect to specific imports to it and shall notify the Biosafety Clearing-House of its decision.



Article 12

RISK ASSESSMENT

1. Risk assessments conducted pursuant to this Protocol shall be undertaken in a scientifically sound manner in accordance with Annex II and taking into account recognized risk assessment techniques. Such risk assessments shall be based at a minimum on information provided in accordance with Article 6 and other available scientific evidence in order to identify and evaluate the possible adverse effects of living modified organisms on the conservation and sustainable use of biological diversity, taking also into account risks to human health.
2. The Party of import shall ensure that risk assessments are carried out for decisions taken under Article 8. It may require the exporter to carry out the risk assessments.
3. Financial responsibility for conducting risk assessments shall rest with the notifier.

Article 13

RISK MANAGEMENT

1. The Parties shall, taking into account Article 8 (g) of the Convention, establish and maintain appropriate mechanisms, measures and strategies to regulate, manage and control risks identified in the risk assessment provisions of this Protocol associated with the use, handling and transboundary movement of living modified organisms.
2. Measures based on risk assessment shall be imposed to the extent necessary to prevent adverse effects of the living modified organism on the conservation and sustainable use of biological diversity, taking also into account risks to human health, within the territory of the Party of import.
3. Each Party shall take appropriate measures to prevent unintentional transboundary movements of living modified organisms, including such measures as requiring risk assessments to be carried out prior to the first release of a living modified organism.
4. Without prejudice to paragraph 2 above, each Party, in order to ensure genomic and trait stability in the environment, shall endeavour to ensure that any living modified organism, whether imported or locally developed, undergoes a period of observation commensurate with its life-cycle or generation time as the case may be before it is put to its intended use.
5. Parties shall cooperate with a view to:
  - (a) Identifying living modified organisms or specific traits of living modified organisms that may have adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health;
  - (b) Taking appropriate measures regarding the treatment of such living modified organisms or specific traits.

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Article 14

UNINTENTIONAL TRANSBOUNDARY MOVEMENTS AND EMERGENCY MEASURES

1. Each Party shall take appropriate measures to notify affected or potentially affected States, the Biosafety Clearing-House and, where appropriate, relevant international organizations, when it knows of an occurrence under its jurisdiction resulting in a release that leads or may lead to an unintentional transboundary movement of living modified organisms that is likely to have significant adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health in such States. The notification shall be provided as soon as the Parties know of the above situation.

2. Each Party shall, no later than the date of entry into force of the Protocol for it, make available to the Biosafety Clearing-House the relevant details of the point of contact for the purposes of receiving notifications under this Article.

3. Any notification arising from paragraph 1 above should include:

(a) Available relevant information on the estimated quantities and relevant characteristics and/or traits of the living modified organisms;

(b) A point of contact for further information;

(c) Information on the circumstances and estimated date of the release, and on the use of the living modified organism in the originating Party;

(d) Any available information about the possible adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health, as well as available information about possible risk management measures;

(e) Any other relevant information.

4. Each Party, under whose jurisdiction the release of the living modified organism referred to in paragraph 1 above occurs, shall immediately consult the affected or potentially affected States to enable them to determine appropriate responses and initiate necessary action, including emergency measures, in order to minimize any significant adverse effects on the conservation and sustainable use of biological diversity, taking also into account risks to human health.

Article 15

HANDLING, TRANSPORT, PACKAGING AND IDENTIFICATION

1. The Parties shall take measures to require that living modified organisms that are subject to intentional transboundary movement within the scope of the Protocol:

(a) Are handled, packaged and transported under conditions of safety, taking into consideration relevant international rules and standards, in order to avoid adverse effects on the conservation and sustainable use of biodiversity, taking also into account risks to human health;

(b) Are clearly identified, including in accompanying documentation specifying:

- (i) the presence, identity and relevant characteristics and/or traits;
- (ii) any requirements for safe handling, storage, transport and use;
- (iii) the contact point for further information and, as appropriate, the name and address of the importer and exporter;
- (iv) a declaration that the movement is in conformity with the requirements of this Protocol, except that the Party of import may indicate that, in relation to imports, these requirements will not apply.

2. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall consider the need for and modalities of developing standards with regard to identification, handling, packaging and transport practices, taking into consideration the results of consultations with other international bodies.

Article 16

COMPETENT NATIONAL AUTHORITIES AND NATIONAL FOCAL POINTS

1. Each Party shall designate one national focal point to be responsible on its behalf for liaison with the Secretariat. Each Party shall also designate one or more competent national authorities, which shall be responsible for performing the administrative functions required by this Protocol and which shall be authorized to act on its behalf with respect to those functions. A Party may designate a single entity to fulfil the functions of both focal point and competent national authority.

2. Each Party shall, no later than the date of entry into force of this Protocol for it, notify the Secretariat of the names and addresses of its focal point and its competent national authority or authorities. Where a Party designates more than one competent national authority, it shall convey to the Secretariat, with its notification thereof, relevant information on the respective responsibilities of those authorities. Where applicable, such

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information shall, at a minimum, specify which competent authority is responsible for which type of living modified organism. Each Party shall forthwith notify the Secretariat of any changes in the designation of its national focal point or in the name and address or responsibilities of its competent national authority or authorities.

3. The Secretariat shall forthwith inform the Parties of the notifications it receives under paragraph 2 above, and shall also make such information available through the Biosafety Clearing-House.

#### Article 17

##### INFORMATION-SHARING AND THE BIOSAFETY CLEARING-HOUSE

1. A Biosafety Clearing-House is hereby established as part of the clearing-house mechanism under Article 18, paragraph 3, of the Convention, in order to:

(a) Facilitate the exchange of scientific, technical, environmental and legal information on, and experience with, living modified organisms;

(b) Assist Parties to implement the Protocol, taking into account the special needs of developing countries, in particular the least developed countries and small island developing States among them, and countries with economies in transition as well as countries that are centres of origin.

2. The Biosafety Clearing-House shall serve as a means through which information is made available for the purposes of paragraph 1 above. It shall provide access to information made available by the Parties relevant to the implementation of the Protocol. It shall also provide access, where possible, to other international biosafety information exchange mechanisms.

3. Without prejudice to the protection of confidential information, each Party shall make available to the Biosafety Clearing-House any information required to be made available to the Biosafety Clearing-House under this Protocol, and:

(a) National laws, regulations and guidelines for implementation of the Protocol, as well as information required by the Parties for the advance informed agreement procedures;

(b) Any multilateral, bilateral and regional agreements and arrangements;

(c) Summaries of its risk assessments or environmental reviews of living modified organisms generated by its regulatory process, and carried out in accordance with Article 12, including, where appropriate, relevant information regarding products thereof, i.e., processed materials that are of living modified organism origin, containing detectable novel combinations of replicable genetic material obtained through the use of modern biotechnology;

(d) Its final decisions regarding the importation or release of living modified organisms;

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(e) Reports submitted by it pursuant to Article 32, including those on implementation of the advance informed agreement procedures.

4. The modalities of the operation of the Biosafety Clearing-House, including reports on its activities, shall be considered and decided upon by the Conference of the Parties serving as the meeting of the Parties at its first meeting, and kept under review thereafter.

#### Article 18

##### CONFIDENTIAL INFORMATION

1. The Party of import shall permit the notifier to identify information submitted under the procedures of this Protocol or required by the importing Party as part of the advance informed agreement process of the Protocol that is to be treated as confidential. Justification shall be given in such cases upon request.

2. The Party of import shall consult the notifier if it decides that information identified by the notifier as confidential does not qualify for such treatment and shall, prior to any disclosure, inform the notifier of its decision providing reasons on request and an opportunity for consultation and for an internal review of the decision prior to disclosure.

3. Each Party shall, in accordance with its national legislation, protect confidential information received under the Protocol, including any confidential information received in the context of the advance informed agreement process of the Protocol. Each Party shall ensure that it has procedures to protect such information and shall protect the confidentiality of such information in a manner no less favourable than its treatment of confidential information in connection with domestically produced living modified organisms.

4. The Party of import shall not use such information for a commercial purpose, except with the written consent of the notifier.

5. If a notifier withdraws or has withdrawn a notification, the Party of import shall respect the confidentiality of all information identified as confidential, including information on which the Party and the notifier disagree as to its confidentiality.

6. Without prejudice to paragraph 5 above, the following information shall not be considered confidential:

- (a) The name and address of the notifier;
- (b) A general description of the living modified organism or organisms;
- (c) A summary of the risk assessment of the effects on the conservation and sustainable use of biological diversity, taking also into account human health;
- (d) Any methods and plans for emergency response.

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Article 19

CAPACITY-BUILDING

1. The Parties shall cooperate in the development and/or strengthening of human resources and institutional capacities in biosafety, including biotechnology to the extent that it is required for biosafety, for the purpose of the effective implementation of this Protocol, in developing country Parties, in particular the least developed and small island developing States among them, and in Parties with economies in transition, including through existing global, regional, subregional and national institutions and organizations and, as appropriate, through facilitating private sector involvement.

2. For the purposes of implementing paragraph 1 above, in relation to cooperation, the needs of developing country Parties, in particular the least developed and small island developing States among them, for financial resources and access to and transfer of technology and know-how in accordance with the relevant provisions of the Convention, shall be taken fully into account for capacity-building in biosafety. Cooperation in capacity-building shall, subject to the different situation, capabilities and requirements of each Party, include scientific and technical training in the proper and safe management of biotechnology, and in the use of risk assessment and risk management for biosafety, and the enhancement of technological and institutional capacities in biosafety. The needs of Parties with economies in transition shall also be taken fully into account for such capacity-building in biosafety.

Article 20

PUBLIC AWARENESS AND PARTICIPATION

1. The Parties shall:

(a) Promote and facilitate public awareness, education and participation concerning safety in the transfer, handling and use of living modified organisms in relation to the conservation and sustainable use of biological diversity, taking also into account risks to human health. In doing so, the Parties shall cooperate, as appropriate, with other States and international bodies;

(b) Endeavour to ensure that public awareness and education encompass access to information on living modified organisms identified in accordance with this Protocol that may be imported.

2. The Parties shall, in accordance with their respective laws, consult the public in the decision-making process regarding living modified organisms and shall make the results of such decisions available to the public, while respecting confidential information in accordance with Article 18.

3. Each Party shall endeavour to inform its public about the means of public access to the Biosafety Clearing-House.

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Article 21

NON-PARTIES

1. Transboundary movements of living modified organisms between Parties and non-Parties shall be consistent with the objective and principles of this Protocol. The Parties are encouraged to conduct such transboundary movements in accordance with multilateral, bilateral and regional agreements and arrangements with non-Parties under Article 11.
2. The Parties shall encourage non-Parties to adhere to this Protocol and to contribute appropriate information to the Biosafety Clearing-House on living modified organisms released in, or moved into or out of, their territory.

Article 22

NON-DISCRIMINATION

1. The Parties shall ensure that measures taken to implement this Protocol, including risk assessment, do not discriminate unjustifiably between or among imported and domestically produced living modified organisms.
2. The Parties shall also ensure that measures taken to implement this Protocol do not create unnecessary obstacles to international trade.

Article 23

ILLEGAL TRANSBOUNDARY MOVEMENTS

1. Each Party shall adopt appropriate domestic measures aimed at preventing and penalizing transboundary movements of living modified organisms carried out in contravention of the relevant provisions of this Protocol. Such transboundary movements shall be deemed illegal.
2. In the case of an illegal transboundary movement, the affected Party may request the Party of origin to dispose, at its own expense, of the living modified organism in question by repatriation or destruction, as appropriate.
3. Each Party shall make available to the Biosafety Clearing-House information concerning cases of illegal transboundary movements pertaining to it.

Article 24

SOCIO-ECONOMIC CONSIDERATIONS

1. The Parties, in reaching a decision on import, may take into account, consistent with their international obligations, socio-economic considerations arising from the impact of living modified organisms on the conservation and sustainable use of biological diversity, especially with regard to the value of biological diversity to indigenous and local communities.

2. The Parties are encouraged to cooperate on research and information exchange on any socio-economic impacts of living modified organisms, especially on indigenous and local communities.

Article 25

LIABILITY AND REDRESS

The Conference of the Parties serving as the meeting of the Parties shall, at its first meeting, 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 living modified organisms, analysing and taking due account of any ongoing processes in international law on these matters, and shall endeavour to complete this process within four years.

Article 26

FINANCIAL MECHANISM AND RESOURCES

1. In considering financial resources for the implementation of this Protocol, the Parties shall take into account the provisions of Article 20 of the Convention.

2. The financial mechanism established in Article 21 of the Convention shall, through the institutional structure entrusted with its operation, be the financial mechanism for this Protocol.

3. Regarding the capacity-building referred to in Article 19 of this Protocol, the Conference of the Parties serving as the meeting of the Parties to this Protocol, in providing guidance with respect to the financial mechanism referred to in paragraph 2 above, for consideration by the Conference of the Parties, shall take into account the need for financial resources by developing country Parties, in particular, the least developed and the small island States among them.

4. In the context of paragraph 1 above, the Parties shall also take into account the needs of the developing country Parties, in particular, the least developed and the small island States among them, and of the Parties with

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economies in transition, in their efforts to identify and implement their capacity-building requirements for the purposes of the implementation of this Protocol.

5. The guidance to the financial mechanism of the Convention in relevant decisions of the Conference of the Parties, including those agreed before the adoption of this Protocol, shall apply, mutatis mutandis, to the provisions of this Article.

6. The developed country Parties may also provide, and the developing country Parties and the Parties with economies in transition avail themselves of, financial and technological resources for the implementation of the provisions of this Protocol through multilateral, bilateral and regional channels.

#### Article 27

##### CONFERENCE OF THE PARTIES SERVING AS THE MEETING OF THE PARTIES

1. The Conference of the Parties shall serve as the meeting of the Parties to this Protocol.

2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any meeting of the Conference of the Parties serving as the meeting of the Parties to this Protocol. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, decisions under this Protocol shall be taken only by those that are Parties to it.

3. When the Conference of the Parties serves as the meeting of the Parties to this Protocol, any member of the bureau of the Conference of the Parties representing a Party to the Convention but, at that time, not a Party to this Protocol, shall be substituted by a member to be elected by and from among the Parties to this Protocol.

4. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall keep under regular review the implementation of this Protocol and shall make, within its mandate, the decisions necessary to promote its effective implementation. It shall perform the functions assigned to it by this Protocol and shall:

(a) Make recommendations on any matters necessary for the implementation of this Protocol;

(b) Establish such subsidiary bodies as are deemed necessary for the implementation of this Protocol;

(c) Seek and utilize, where appropriate, the services and cooperation of, and information provided by, competent international organizations and intergovernmental and non-governmental bodies;

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(d) Establish the form and the intervals for transmitting the information to be submitted in accordance with Article 32 of this Protocol and, as well, reports submitted by any subsidiary body;

(e) Consider and adopt, as required, amendments to this Protocol and its annexes, as well as any additional annexes to this Protocol, that are deemed necessary for the implementation of this Protocol;

(f) Exercise such other functions as may be required for the implementation of this Protocol.

5. The rules of procedure of the Conference of the Parties and financial rules of the Convention shall be applied, mutatis mutandis, under this Protocol, except as may be otherwise decided by consensus by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

6. The first meeting of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be convened by the Secretariat in conjunction with the first meeting of the Conference of the Parties that is scheduled after the date of the entry into force of this Protocol. Subsequent ordinary meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held in conjunction with ordinary meetings of the Conference of the Parties, unless otherwise decided by the Conference of the Parties serving as the meeting of the Parties to this Protocol.

7. Extraordinary meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol shall be held at such other times as may be deemed necessary by the Conference of the Parties serving as the meeting of the Parties to this Protocol, or at the written request of any Party, provided that, within six months of the request being communicated to the Parties by the Secretariat, it is supported by at least one third of the Parties.

8. The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State member thereof or observers thereto not party to the Convention, may be represented as observers at meetings of the Conference of the Parties serving as the meeting of the Parties to this Protocol. Any body or agency, whether national or international, governmental or non-governmental that is qualified in matters covered by this Protocol and that has informed the Secretariat of its wish to be represented at a meeting of the Conference of the Parties serving as a meeting of the Parties to this Protocol as an observer, may be so admitted, unless at least one third of the Parties present object. Except as otherwise provided in this Article, the admission and participation of observers shall be subject to the rules of procedure, as referred to in paragraph 5 above.

#### Article 28

##### SUBSIDIARY BODIES AND MECHANISMS

1. Any subsidiary body established by or under the Convention may, upon a decision by the Conference of the Parties serving as the meeting of the Parties, serve the Protocol, in which case the meeting of the Parties shall specify which functions that body shall exercise.

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2. Parties to the Convention that are not Parties to this Protocol may participate as observers in the proceedings of any meeting of any such subsidiary bodies. When a subsidiary body of the Convention serves as a subsidiary body to this Protocol, decisions under the Protocol shall be taken only by the Parties to the Protocol.

3. When a subsidiary body of the Convention exercises its functions with regard to matters concerning this Protocol, any member of the bureau of that subsidiary body representing a Party to the Convention but, at that time, not a Party to the Protocol, shall be substituted by a member to be elected by and from among the Parties to the Protocol.

#### Article 29

##### SECRETARIAT

1. The Secretariat established by Article 24 of the Convention shall serve as the secretariat to this Protocol.

2. Article 24, paragraph 1, of the Convention on the functions of the Secretariat shall apply, mutatis mutandis, to this Protocol.

3. To the extent that they are distinct, the costs of the secretariat services for this Protocol shall be met by the Parties hereto. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, decide on the necessary budgetary arrangements to this end.

#### Article 30

##### RELATIONSHIP WITH THE CONVENTION

Except as otherwise provided in this Protocol, the provisions of the Convention relating to its protocols shall apply to this Protocol.

#### Article 31

##### RELATIONSHIP WITH OTHER INTERNATIONAL AGREEMENTS

The provisions of this Protocol shall not affect the rights and obligations of any Party to the Protocol deriving from any existing international agreement to which it is also a Party, except where the exercise of those rights and obligations would cause serious damage or threat to biological diversity.

Article 32

MONITORING AND REPORTING

Each Party shall monitor the implementation of its obligations under this Protocol, and shall, at intervals to be determined by the Conference of the Parties serving as the meeting of the Parties to this Protocol, report to the Conference of the Parties serving as the meeting of the Parties to this Protocol on measures that it has taken to implement the Protocol.

Article 33

COMPLIANCE

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first meeting, consider and approve cooperative procedures and institutional mechanisms to promote compliance with the provisions of this Protocol and to address cases of non-compliance. These procedures and mechanisms shall include provisions to offer advice or assistance, where appropriate. They shall be separate from, and without prejudice to, the dispute settlement procedures and mechanisms established by Article 27 of the Convention.

Article 34

ASSESSMENT AND REVIEW

The Conference of the Parties serving as the meeting of the Parties to this Protocol shall undertake, five years after the entry into force of this Protocol and at least every five years thereafter, an evaluation of the effectiveness of the Protocol, including an assessment of its procedures and annexes.

Article 35

SIGNATURE

This Protocol shall be open for signature by States and regional economic integration organizations at United Nations Headquarters in New York from 24 May 1999 to 23 May 2000.

Article 36

ENTRY INTO FORCE

1. This Protocol shall enter into force on the ninetieth day after the date of the deposit of the fiftieth instrument of ratification, acceptance, approval or accession by States or regional economic integration organizations that are Parties to the Convention.

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2. This Protocol shall enter into force for a State or regional economic integration organization that ratifies, accepts or approves this Protocol or accedes thereto after its entry into force pursuant to paragraph 1 above, on the ninetieth day after the date on which that State or regional economic integration organization deposits its instrument of ratification, acceptance, approval or accession, or on the date on which the Convention enters into force for that State or regional economic integration organization, whichever shall be the later.

3. For the purposes of paragraphs 1 and 2 above, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

#### Article 37

##### RESERVATIONS

No reservations may be made to this Protocol.

#### Article 38

##### WITHDRAWAL

1. At any time after two years from the date on which this Protocol has entered into force for a Party, that Party may withdraw from the Protocol by giving written notification to the Depositary.

2. Any such withdrawal shall take place upon expiry of one year after the date of its receipt by the Depositary, or on such later date as may be specified in the notification of the withdrawal.

#### Article 39

##### AUTHENTIC TEXTS

The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

Annex I

## INFORMATION REQUIRED IN NOTIFICATIONS

- (a) Name, address and contact details of the exporter.
- (b) Name, address and contact details of the importer.
- (c) Name, identity and domestic classification, if any, of the biosafety level in the State of export of the living modified organism.
- (d) Intended date or dates of the transboundary movement, if known.
- (e) Taxonomic status, common name, point of collection or acquisition, and characteristics of recipient organism or parental organisms related to biosafety.
- (f) Centres of origin and centres of genetic diversity, if known, of the recipient organism and/or the parental organisms and a description of the habitats where the organisms may persist or proliferate.
- (g) Taxonomic status, common name, point of collection or acquisition, and characteristics of the donor organism or organisms related to biosafety.
- (h) Description of the nucleic acid or the modification introduced, the technique used, and the resulting characteristics of the living modified organism.
- (i) Intended use of the living modified organism or products thereof, i.e., processed materials that are of living modified organism origin, containing detectable novel combinations of replicable genetic material obtained through the use of modern biotechnology.
- (j) Quantity or volume of the living modified organism to be transferred.
- (k) A previous and existing risk assessment report consistent with Annex II.
- (l) Suggested methods for safe handling, storage, transport and use, including packaging, labelling, documentation, disposal and contingency procedures, where appropriate.
- (m) Regulatory status of the living modified organism within the State of export (for example, whether it is prohibited in the State of export, whether there are other restrictions, or whether it has been approved for general release) and, if the living modified organism is banned in the State of export, the reason or reasons for the ban.
- (n) Result and purpose of any notification by the exporter to other Governments regarding the living modified organism to be transferred.
- (o) A declaration that the above-mentioned information is factually correct.

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## Annex II

### RISK ASSESSMENT

#### Objective

1. The objective of risk assessment, under this Protocol, is to identify and evaluate the potential adverse effects of living modified organisms on the conservation and sustainable use of biological diversity in the likely potential receiving environment, taking also into account the risk to human health.

#### Use of risk assessment

2. Risk assessment is, *inter alia*, used by competent authorities to make informed decisions regarding living modified organisms.

#### General principles

3. Risk assessment should be carried out in a scientifically sound and transparent manner, and can take into account expert advice of, and guidelines developed by, relevant international organizations.

4. Lack of scientific knowledge or scientific consensus should not necessarily be interpreted as indicating a particular level of risk, an absence of risk, or an acceptable risk.

5. Risks associated with living modified organisms or products thereof, i.e., processed materials that are of living modified organism origin, containing detectable novel combinations of replicable genetic material obtained through the use of modern biotechnology, should be considered in the context of the risks posed by the non-modified recipients or parental organisms in the likely potential receiving environment.

6. Risk assessment should be carried out on a case-by-case basis. The required information may vary in nature and level of detail from case to case, depending on the living modified organism concerned, its intended use and the likely potential receiving environment.

#### Methodology

7. The process of risk assessment may on the one hand give rise to a need for further information about specific subjects, which may be identified and requested during the assessment process, while on the other hand information on other subjects may not be relevant in some instances.

8. To fulfil its objective, risk assessment entails, as appropriate, the following steps:

(a) An identification of any novel genotypic and phenotypic characteristics associated with the living modified organism that may have adverse effects on biological diversity in the likely potential receiving environment, taking also into account the risk to human health;

/...

(b) An evaluation of the likelihood of these adverse effects being realized, taking into account the level and kind of exposure of the likely potential receiving environment to the living modified organism;

(c) An evaluation of the consequences should these adverse effects be realized;

(d) An estimation of the overall risk posed by the living modified organism based on the evaluation of the likelihood and consequences of the identified adverse effects being realized;

(e) A recommendation as to whether or not the risks are acceptable or manageable, including, where necessary, identification of strategies to manage these risks;

(f) Where there is uncertainty regarding the level of risk, it may be addressed by requesting further information on the specific issues of concern or by implementing appropriate risk management strategies and/or monitoring the living modified organism in the receiving environment.

Points to consider

9. Depending on the case, risk assessment takes into account the relevant technical and scientific details regarding the characteristics of the following subjects:

(a) Recipient organism or parental organisms. The biological characteristics of the recipient organism or parental organisms, including information on taxonomic status, common name, origin, centres of origin and centres of genetic diversity, if known, and a description of the habitat where the organisms may persist or proliferate;

(b) Donor organism or organisms. Taxonomic status and common name, source, and the relevant biological characteristics of the donor organisms;

(c) Vector. Characteristics of the vector, including its identity, if any, and its source or origin, and its host range;

(d) Insert or inserts and/or characteristics of modification. Genetic characteristics of the inserted nucleic acid and the function it specifies, and/or characteristics of the modification introduced;

(e) Living modified organism. Identity of the living modified organism, and the differences between the biological characteristics of the living modified organism and those of the recipient organism or parental organisms;

(f) Detection and identification of the living modified organism. Suggested detection and identification methods and their specificity, sensitivity and reliability;

(g) Information relating to the intended use. Information relating to the intended use of the living modified organism, including new or changed use compared to the recipient organism or parental organisms;

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(h) Receiving environment. Information on the location, geographical, climatic and ecological characteristics, including relevant information on biodiversity and centres of origin of the likely potential receiving environment.

Appendix II

STATEMENTS BY NON-GOVERNMENTAL ORGANIZATIONS

1. The representative of a non-governmental organization, speaking on behalf of a group of environmental non-governmental organizations, expressed grave concern at the slow progress of negotiations towards the adoption of a biosafety protocol and called on all Governments to make every effort to ensure the conclusion of that process. In particular, in the view of those organizations, the following five issues were of crucial importance in the protocol: first, observance of the precautionary principle, which was pivotal to the biosafety protocol; second, inclusion of a liability regime; third, provisions to address social and economic impact; fourth, avoidance of subordination of the protocol to WTO; and, fifth, retention of transgenic crops within the scope of the protocol.

2. The representative of an industry non-governmental organization, representing more than 2,200 companies working worldwide, said that his organization was encouraged to note the growing awareness of the potential benefits of genetic engineering. The organization welcomed the progress towards the protocol, and had positive contributions to make to the discussions.

Appendix III

## DOCUMENTS BEFORE THE MEETING

Provisional agenda	UNEP/CBD/BSWG/6/1
Annotated provisional agenda	UNEP/CBD/BSWG/6/1/Add.1
Draft negotiating text	UNEP/CBD/BSWG/6/2
Clusters analysis: note from the secretariat	UNEP/CBD/BSWG/6/3
Preparation of the draft negotiating text of the protocol on biosafety: note from the secretariat	UNEP/CBD/BSWG/6/4
Development of a legally binding instrument: note from the secretariat	UNEP/CBD/BSWG/6/5
Report of the meeting of the Extended Bureau of the Open-ended Ad Hoc Working Group on Biosafety, Montreal, 21-22 October 1998: note from the secretariat	UNEP/CBD/BSWG/6/6
Transshipment: note from the secretariat	UNEP/CBD/BSWG/6/7
Overview and annotated draft negotiating text of the protocol on biosafety: note from the secretariat	UNEP/CBD/BSWG/6/8
Compilation of government submissions on the draft text (structured by article): note from the secretariat	UNEP/CBD/BSWG/6/INF/1
Government submissions on the preamble and annexes received prior to the fifth meeting of the Working Group	UNEP/CBD/BSWG/6/INF/2
Settlement of disputes - proposition by the Government of Chile: note from the secretariat	UNEP/CBD/BSWG/6/INF/3
Resolutions on biodiversity and the environment adopted by the ACP-EU Joint Assembly on 24 September 1998 in Brussels, Belgium: note from the secretariat	UNEP/CBD/BSWG/6/INF/4
Comments by the United Nations Economic and Social Council's Committee of Experts on the Transport of Dangerous Goods on the draft Protocol on Biosafety (UNEP/CBD/BSWG/5/INF/1): note from the secretariat	UNEP/CBD/BSWG/6/INF/5
Remarks submitted by the Republic of Slovenia	UNEP/CBD/BSWG/6/INF/6
Remarks submitted by the Office International des Epizooties	UNEP/CBD/BSWG/6/INF/7
Note by the Co-Chairs of Contact Group 1: programme of work	UNEP/CBD/BSWG/6/INF/8
Note from the Co-Chairs of Contact Group 2 to the Extended Bureau	UNEP/CBD/BSWG/6/INF/9

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