



HIGHLIGHTS FROM THE FIFTH INTER-SESSIONAL CONTACT GROUP MEETING FOR THE REVISION OF THE IU: MONDAY, 5 FEBRUARY 2001

The Fifth Inter-sessional Contact Group Meeting for the Revision of the International Undertaking on Plant Genetic Resources (IU), in harmony with the Convention on Biological Diversity (CBD), convened for a week of deliberations in Rome, Italy. Delegates met in an opening session to hear brief introductory remarks, following which they discussed Article 17 (Governing Body).

Editor's Note: As a matter of policy, the Earth Negotiations Bulletin does not directly attribute statements made by governments in informal negotiations when requested to do so.

OPENING SESSION

Amb. Fernando Gerbasi, Chair of the Contact Group, opened the meeting. Louise Fresco, Assistant Director General for Agriculture of the FAO, noted significant support by countries for continuing negotiations at the recent 119th FAO Council. She stated that the Contact Group needs to forward its work to the Commission on Genetic Resources for Food and Agriculture (CGRFA) in June for reporting to the 31st FAO Conference in November. She highlighted a number of potential consequences should agreement not be reached, including: loss of credibility within the agricultural sector and within the larger UN system; increased tensions within international institutions and agreements, including the CBD, WTO and the Consultative Group for International Agricultural Research; difficulties in fully implementing the Global Plan of Action (GPA); and reversion to bilateral negotiations which could prove cumbersome and expensive. She concluded by thanking the governments of Belgium, Italy, Japan, the Netherlands, Norway, Sweden and Switzerland for their financial support.

Chair Gerbasi reviewed his report to the 119th FAO Council and the Council's acknowledgement of the need for a regionally balanced legal group to address the legal consistency of negotiated text, and a technical group to address the definition of key terms. Chair Gerbasi then requested comments on a Chairman's proposal for the terms of reference for such groups. One regional group expressed support for a legal group, while noting, with others, a lack of legal expertise within delegations at this meeting. Chair Gerbasi agreed that creating such a group at this point might be premature, especially as only two articles have been completed. One developing country highlighted the need for input on the legal implications of issues still in brackets. One regional group of developed countries suggested that a legal group could also look at agreed sub-paragraphs as distinct from others still under debate within the same article. Chair Gerbasi requested that regions consult further on the terms of reference.

Chair Gerbasi proposed that the Contact Group address Articles 12 (Coverage of the Multilateral System [MS]), 13 (Facilitated Access), 17 (Governing Body), 18 (Secretariat), 20 (Amendments of the IU), 21 (Amendments of Annexes) and a new article on supporting components of the MS. He suggested that discussion begin with Articles 17, 18, 20 and 21, before returning to Articles 12 and 13. A regional group of developing countries agreed to the sequence, but recalled the need to overcome differences in Article 14 (Benefit-sharing in the MS). Chair Gerbasi said that Article 14 was excluded from the proposed list because it contains no brackets.

ARTICLE 17 (GOVERNING BODY)

Chair Gerbasi then called for general comments on Article 17 as contained in document CGRFA/CG-5/01/2. Several countries noted the IU's importance for food security as related to the FAO, and for biodiversity as related to CBD, welcomed continued institutional support from the FAO, called for strengthening harmonization with CBD, and supported the IU as a legally binding agreement. A regional group requested that the IU be mutually reinforcing with regard to agriculture, environment and trade, and noted their willingness to consider the IU as a protocol to the CBD.

ARTICLE 17.1: Delegates agreed to defer discussion on Article 17.1, on the establishment of the Governing Body, until agreement is reached on the IU's legal basis (i.e., its institutional and legal relationship to the CBD or the FAO system).

ARTICLE 17.2: Regarding Article 17.2's chapeau on the Governing Body's functions, the group agreed to reformulate the provision such that the Governing Body will promote the IU's full implementation, taking into account its objectives. The provision then segues into the Governing Body's particular tasks listed in Article 17.2's sub-provisions.

Regarding Article 17.2(a), on reviewing the state of PGRFA and implications for world food security, a developed country noted that it reflects a function of the CGRFA and, supported by another country, proposed its deletion. Two countries also questioned including Article 17.2(b), on the IU's role in reviewing and updating the GPA, given that the GPA itself states that it will be monitored and guided by the CGRFA. Two other delegations called for retaining both references. Chair Gerbasi, supported by a regional group of developing countries, proposed combining the provisions to note that the Governing Body would take into account the state of PGRFA and the GPA as reviewed by the CGRFA. Two developing countries cautioned against merging provisions on PGRFA and the GPA, since Article 8 (Global Plan of Action) has not yet resolved whether the GPA would be guided by the IU's Governing Body or by the CGRFA. Delegates agreed to retain separate references. Approved language on Article 17.2(a)

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states that the Governing Body shall take into account the state of PGRFA and implications for world food security. Article 17.2(b) remains bracketed pending resolution of Article 8.

Regarding Article 17.2(c), on providing policy direction for and monitoring the implementation of the IU, a regional group of developed countries proposed including reference to guiding implementation and omitting reference to “policy.” Several developing countries preferred its inclusion. Two developing countries stated that the function of any governing body is to provide policy direction. One country suggested reference to providing policy guidance. A developed country proposed, and delegates accepted, merging this text with language in 17.2(k) on adopting such recommendations. All agreed that the sub-provision would call on the Governing Body to provide policy direction and guidance for, monitor, and adopt such recommendations as necessary for the IU’s implementation, particularly for the operation of the MS. Following a suggestion by one country, the provision was renumbered as Article 17.2(a) to reflect its importance.

Article 17.2(d), on the adoption of plans and programmes for the IU’s implementation, was approved with only minor changes.

Regarding Article 17.2(e), on adoption and review of the IU’s funding strategy for implementation and adoption of its budget, the group discussed whether it was appropriate for the Governing Body or the FAO Council to adopt the budget. The FAO’s Legal Counsel noted that the answer depends on the relationship between the IU and FAO. The group agreed with a Chair’s proposal to split the provision into two sub-provisions and to bracket the sub-provision on the adoption of the budget, pending a decision on the IU’s legal basis.

Regarding Article 17.2(f), on the establishment of subsidiary bodies, the group approved a proposal that the Governing Body should consider their establishment, mandates and composition.

Regarding Article 17.2(g), on establishing rules and procedures for the resolution of disputes in accordance with Article 19 (Settlement of Disputes), one developed country noted that Article 19 does not specifically mention rules and procedures for dispute resolution, but instead refers to Annex VI (Settlement of Disputes), which has yet to be developed. Referencing the structure of CBD text on dispute settlement, the developed country proposed, and delegates accepted, deletion of Article 17.2(g).

Chair Gerbasi noted that Articles 17.2(h) and (i) had already been adopted.

Regarding Article 17.2(j), on adoption of amendments to the IU in accordance with the provisions of Article 20, one country proposed bracketing the entire provision as Article 20 has yet to be discussed. Another delegation proposed deleting the provision, to which others objected. Delegates ultimately agreed to a proposal, using CBD language, calling for the Governing Body to consider and adopt, as required, amendments to the IU in accordance with the provisions of Article 20.

Regarding a second Article 17.2(j) [*sic*], on reviewing and amending annexes, some delegations suggested bracketing the provision until Article 21 is discussed. Others noted that the Governing Body would still review and amend annexes, regardless of any substantive change to Article 21. Delegates eventually agreed that the Governing Body would periodically review and adopt amendments to the IU’s annexes in accordance with Article 21.

Article 17.2(k) was integrated into Article 17.2(c).

Article 17.2(l), on performing other functions as necessary to fulfill the IU’s objectives, was approved without comment.

Chair Gerbasi then asked whether delegates would suggest any other functions for the Governing Body. One regional group of developed countries recalled prior agreement that references to voluntary benefit-sharing contributions by the food industry and to forms of IPR restricting use of PGRFA under Article 14.2(d)(iv),

on commercial benefit-sharing, would be moved to Article 17.2. Regarding the second reference, four developed countries reiterated their continued reservations to the overall text of Article 14.2(d)(iv). Chair Gerbasi proposed deferring discussion on these references, suggesting a general provision on considering the modalities of a strategy of voluntary contributions under Article 17. One developed country noted a similar reference in Article 16.4(f) on voluntary contributions to the funding strategy. Chair Gerbasi stated that Article 16.4 defines a general funding strategy, and Article 17 should assist in defining the Governing Body. After some debate, delegates agreed to include more general language on considering the modalities of a strategy of voluntary contributions as a new provision under Article 17.2.

ARTICLE 17.3: Delegates accepted without debate Article 17.3, which states that the Governing Body shall be composed of all Parties to the IU.

ARTICLE 17.4: Regarding Article 17.4, on representation of Parties at the Governing Body’s sessions, discussion focused on the necessity of such language. Two developing countries supported its utility for defining governmental representation. One country proposed specifying that each Party shall have one vote. One group of developed countries stressed the particular situation of regional organizations with multiple Member States, arguing that they should not be accorded only one vote. The issue was clarified by reference to the FAO Constitution regarding regional economic integration organizations. Delegates approved the formulation with a footnote noting a reservation by one group pending final resolution of the IU’s legal basis.

On the issue of observers’ participation, the group discussed whether it should be addressed under Article 17 or elsewhere. Some countries suggested using language from CBD Article 23.5 referencing the participation of interested governmental and non-governmental bodies and agencies. One regional group of developing countries asked for time to consult, and delegates agreed to revisit the issue later.

ARTICLE 17.5: Regarding Article 17.5, which calls for a two-thirds majority vote if all efforts to reach decisions by consensus fail, two developing countries supported an exception that decisions regarding amendments to or revisions of Annexes I (List of Crops) and V (Conditions for Participation of International Institutions in the MS) be adopted by consensus. A group of developed countries proposed a more general clause that the two-thirds majority vote apply except where otherwise mentioned in the IU. Two other developed countries proposed that all decisions be approved by consensus as per the CBD. One developing country highlighted the need for a fallback position in case consensus could not be reached. Following a statement by the FAO’s Legal Counsel, Chair Gerbasi suggested that delegates consider the options, including specifying which decisions could be reached by majority vote, by a two-thirds majority vote or by consensus.

IN THE CORRIDORS

Many delegates supported starting work on Article 17 and other procedural issues in order to quickly advance on areas of agreement. Some noted that this would “provide cover” while delegates could informally broach more contentious political issues in the hallways. Others expressed surprise at Chair Gerbasi’s proposal to omit discussions on commercial benefit-sharing from this session, while some suggested that letting it sit might prove more beneficial than re-hashing the debate yet again.

THINGS TO LOOK FOR TODAY

The Contact Group will reconvene at 9:45 am to continue discussions on Article 17. Proposals on inclusion of observers and on reaching decisions under the Governing Body are expected.