



HIGHLIGHTS OF THE FIFTH INTER-SESSIONAL CONTACT GROUP MEETING FOR THE REVISION OF THE IU: WEDNESDAY, 7 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), discussed Articles 12 (Coverage of the Multilateral System [MS]), 18 (Secretariat), 20 (Amendments of the Undertaking), 21 (Amendments of Annexes) and an article on supporting components of the MS proposed during the Third Contact Group Meeting. The technical group met in an evening session to continue discussion on the list of definitions.

ARTICLE 12 (COVERAGE OF THE MS)

ARTICLE 12.1: Delegates noted that Article 12.1 had been adopted *ad referendum*, pending adoption of Article 21.

ARTICLE 12.2: Regarding Article 12.2, on inclusion of material held in *ex situ* collections, delegates discussed alternate text proposed by a regional group of developing countries during the Fourth Contact Group Meeting, requiring Centres under the Consultative Group on International Agricultural Research (CGIAR) and other international institutions to be subject to the provisions of the IU and to a new formulation of Annex V (Conditions for International Institutions). Developed countries reiterated that the Centres could not be legally compelled to join the MS, stressed that the IU should be created with incentives for participation, and noted that Centres would be required to adhere to the MS once they had agreed to be a part of it. A number of developing countries raised concerns that exclusion of Centres' collections would result in a parallel system outside of the MS, noted that material is currently held in trust for the international community, and emphasized the need to clearly define the relationship of the Centres to the IU. The regional group of developing countries said that the MS should first provide incentives for countries to join, should not have restrictive conditions for future growth, and should approve any additions to Annex I (List of Crops) by consensus while addressing collections not on the list in Annex V.

A representative for the CGIAR said that each of the 11 Centres is an independent legal entity having a separate agreement with FAO. He said that two overall models exist: Centres whose legal authority was conferred by the UN body that established them, and Centres created when three or more countries signed an agreement for their establishment. He supported an appropriate legal mechanism by which all Centres could become a part of the MS. He also advocated inclusion of as many crops as possible, asked Parties to consider how to resolve the issue of restricting material held in trust for the international community under the MS, and suggested that crops not on the list be maintained and accessed through

current FAO agreements. Responding to a question from a developing country, he highlighted the unlikely but theoretically possible situation of conflict between the national legislation of a Centre's host country and the international agreement signed by the Centre under the IU. The FAO Legal Counsel noted an increasing need to define how countries can or cannot impose legal restrictions, and advised avoidance of purely legal solutions in favor of examining the specific nature of each case. A regional group of developed countries suggested that the Governing Body sign separate agreements with each of the Centres, and tabled a written proposal on Article 12.2 for consideration. The proposal addresses plant genetic resources for food and agriculture (PGRFA) currently held in trust under FAO auspices in collections of CGIAR Centres that have concluded an agreement with the Governing Body and PGRFA held in collections of other international institutions that accept the provisions of the IU under terms to be mutually agreed with the Governing Body. They also proposed a new Article 12.3, which states that the Governing Body shall seek to establish agreements with the CGIAR Centres in accordance with the provisions of Article 12 and Annex V. Following a request by developing countries, Chair Gerbasi suspended the meeting to allow time for regional consultations.

ARTICLE 18 (SECRETARIAT)

ARTICLE 18.2: Article 18.2, on secretariat staff, was approved with an amendment suggested by a developing country that the Secretary shall be assisted by such secretariat staff, as may be required, with the approval of the Governing Body.

ARTICLE 18.3: Regarding Article 18.3, on the responsibilities of the Secretariat, a developed country highlighted, and others supported, a previous proposal stating that the functions of the Secretariat shall be to arrange and service meetings of the Governing Body, and perform such other tasks as identified under the IU or assigned by the Governing Body. A group of developed countries added that the Secretariat shall report to the Governing Body. A developing country emphasized the need to provide the Secretariat with an executive function and supported the original text. After some discussion, delegates agreed on text stating that the Secretariat shall: arrange for and service meetings of the Governing Body; assist the Governing Body in carrying out its functions and responsibilities, including specific tasks assigned by the Governing Body; and report on its activities to the Governing Body.

ARTICLE 18.4: Article 18.4, on the Secretariat's dissemination of decisions and information provided by the Parties, was approved without comment.



ARTICLE 18.5: Article 18.5, on providing translation of documentation for Governing Body meetings in official FAO languages, was approved with brackets around reference to FAO pending discussions on the IU's legal basis.

ARTICLE 18.6: Article 18.6, on cooperation with other organizations and treaty bodies particularly the CBD Secretariat and Conference of the Parties, was approved without comment.

NEW SUB-PROVISION: A developed country suggested adding a new provision stating that any expenses related to the operation of the Secretariat not covered by the FAO budget shall be subject to consensus approval by the Parties. Many noted inconsistencies regarding the organization and adoption of the budget by the Governing Body, and requested a footnote recognizing the pending decision on the IU's legal basis. A developing country proposed a formulation stating that anything exceeding the budget shall be approved by consensus. Delegates decided to reconsider the amended proposal under Article 17 (Governing Body).

A group of developed countries proposed additional text on delegation by the Secretariat of administrative tasks associated with the MS, upon approval by the Governing Body. Two countries stated that limitation to the MS was unnecessary. The group of developed countries clarified that the proposal referred to possible relations with the CGIAR and to the use of existing information systems. Chair Gerbasi suggested, and delegates accepted, text noting that some activities may be delegated or shared by the Secretariat, under conditions to be approved by the Governing Body.

ARTICLE 20 (AMENDMENTS OF THE UNDERTAKING)

ARTICLE 20.1: Regarding Article 20.1, on proposing amendments, delegates agreed to bracket reference to communicating amendments to the FAO Director-General, pending resolution of the IU's legal status.

ARTICLE 20.2: Article 20.2, on adopting amendments at meetings of the Governing Body, was agreed.

ARTICLE 20.3: Regarding Article 20.3, on reaching agreement through a two-thirds majority vote when consensus cannot be achieved by Parties present and voting, a developed country proposed adding that Parties present and voting shall mean Parties present and casting an affirmative or negative vote, as per Article 17.6, on voting in the Governing Body. Several delegates suggested first resolving parallel debate in Article 17.6. A number of countries stated that amendments should be adopted by consensus rather than by a two-thirds majority. Others noted that Parties not accepting an amendment would not be bound by it according to Article 20.4. Chair Gerbasi proposed adding text on exceptions where consensus is required. One developing country proposed text requiring a minimum attendance of two-thirds of the Parties. Another proposed that any amendment should only be made by consensus of all Parties. Chair Gerbasi bracketed these proposals, and deferred further discussion.

ARTICLE 20.4: After some debate over whether language in Article 20.4, on the entering into force of adopted amendments, was contingent upon resolution of Article 20.3, delegates agreed to the text as drafted.

ARTICLE 20.5: Article 20.5, on avoidance of repetitious voting, was approved without discussion.

ARTICLE 21 (AMENDMENTS OF ANNEXES)

ARTICLE 21.1: Article 21.1, stating that the annexes shall form an integral part of the IU, was approved without debate.

ARTICLE 21.2: Regarding Article 21.2, on adoption of amendments to annexes, a developing country suggested two alternate formulations, one stating that amendments should only be adopted by consensus, the other referring to the procedure for the proposal of amendments as set out in Article 20. These proposals and the existing text were bracketed.

ARTICLE 21.3: Regarding Article 21.3, on amendments to the annexes coming into force, delegates agreed to use the procedures detailed in Article 20.4.

NEW ARTICLE (SUPPORTING COMPONENTS OF THE MS)

This article was proposed by a regional group of developed countries for insertion in Part IV of the IU, encompassing Articles 11 (MS of Access and Benefit-sharing), 12 (Coverage of the MS), 13 (Facilitated Access) and 14 (Benefit-sharing). The group said that this article further develops the Montreux Elements on information systems, PGRFA networks and partnerships in research and technology development. Several developing countries expressed concern over: the article's relation to and possible duplication of Articles 9 (International Network of PGRFA/International PGR Networks) and 10 (World Information Network/Information Systems on PGRFA); perception of partnerships and networks as being integral to, and not simply supporting components of, the MS; potential confusion over the article's relevance to crops not included under the MS; the relation of networks with independent governing bodies and constitutions to the IU; and the proposal's relation to references regarding information systems and partnerships within Article 14.

The regional group clarified that the article refers solely to networks, partnerships and information systems addressing crops under the MS, and re-emphasized agreement on these components within the Montreux Elements. Regarding the specific components, a developed country highlighted that: information systems could serve as a supporting component to facilitate the exchange of information referenced in Article 14.2; networks could serve as a supporting component for access to and transfer of technology mentioned in Article 14.2; and partnerships for research and development would not be a supporting component since they are explicitly referred to in Article 12 and are thereby part of the MS. After suggestions to defer discussion, the group agreed to consider Articles 9 and 10 before returning to the proposed article.

TECHNICAL GROUP

The technical group met in an evening session to continue discussions on a list of terms requiring definition under the IU. The group refined the list, highlighting those terms in bracketed text (denoted in []) and those in text yet to be negotiated (denoted with an *). The list includes: *in situ* conservation; *ex situ* conservation; PGRFA (which would take into account [genetic parts or components]); [germplasm]; [genetic material]; underutilized species*; rights-holder; variety (recognizing the need for definitions of varieties, improved varieties and farmers' varieties*); [*ex situ* collection]; centre of origin; centre of crop diversity; traditional knowledge; crops (recognizing the need to consider various usages, such as crop vulnerability and neglected crops); management on-farm*; Parties; and living modified organisms*.

IN THE CORRIDORS

A preliminary list of terms to be defined by the technical group had some delegates wondering during the day whether this task will necessitate reopening old debates on the fundamental meaning and purpose of the IU. The technical group's efficiency during its evening session, however, left its participants heartily encouraged as they reduced the provisional list of definitions by more than half.

THINGS TO LOOK FOR TODAY

The Contact Group will convene at 9:45 am to continue discussions on Article 12. Delegates are expected to bring proposals for further consideration on inclusion of materials in CGIAR Centres and other international institutions. Discussion will then focus on Article 13.