



## HIGHLIGHTS OF THE FIFTH INTER-SESSIONAL CONTACT GROUP MEETING FOR THE REVISION OF THE IU: FRIDAY, 9 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), addressed a proposal made by developing countries on *ex situ* collections in a morning session. A small group was formed to continue negotiating during afternoon and late evening sessions. The technical group continued its discussions on definitions in an afternoon session.

### PROPOSED ANNEX V (EX SITU COLLECTIONS HELD BY INTERNATIONAL INSTITUTIONS UNDER THE IU)

Delegates discussed the developing countries' proposal for Annex V (*Ex Situ* Collections Held by International Institutions under the IU). The proposal includes articles on: 1) the annex's objective (to regulate the status, access and benefits derived from material and data held by international institutions); 2) conditions applying to Annex I (List of Crops) and non-Annex I material, with a distinction in the latter case for material held prior to and after the IU's entry into force; 3) terms of use, access and benefit-sharing, including a material transfer agreement (MTA) for non-Annex I material held prior to the IU's entry into force; 4) facilities; 5) management and administration; 6) policies; 7) staff; and 8) finances.

Regarding Article 2 (Basic Understanding) of the proposed annex, which addresses the terms for management of Annex I and non-Annex I crops, developing countries noted three categories. Under Article 2.1 of the proposed annex, Annex I material shall be dealt with in accordance with the provisions of the Multilateral System (MS). In Article 2.2, non-Annex I material held by international institutions, and thus excluded from the MS, shall be accessed in accordance with a standard MTA detailed in the Article 3 (MTA) of the proposed annex, and subject to the conditions set in Articles 13 (Facilitated Access) and 14 (Benefit-sharing) of the IU. In Article 2.3, non-Annex I material received after the IU's entry into force, shall be accessed according to mutually agreed terms (MAT) to be decided by the international institution and the country where the material is collected, in harmony with the CBD. He proposed that this annex be incorporated into the text of the IU.

A developed country suggested combining text from the proposal on non-Annex I material with text from an earlier proposal by a group of developed countries on providing such material at the discretion of the institution, and placing it within the body of the IU. Chair Gerbasi suggested moving Article 2.2 of the proposed annex to Article 12.2, on coverage of the MS. Developing countries and one developed country agreed, with the amendment that material "shall be dealt with in accordance with

the provisions of the MS." A developed country supported language from its group proposal, distinguishing between plant genetic resources for food and agriculture (PGRFA) currently held in Centres of the Consultative Group for International Agricultural Research (CGIAR) and material held in other institutions.

A group of developed countries generally supported the developing country proposal, questioned where to place elements of the proposed text within the body of the IU, and agreed that non-Annex I material should be subjected to provisions set out in Articles 13 and 14. Developing countries stressed that under the MS there would be no tracking and thus no need for MTAs. For non-Annex I material, MTAs would serve to track it and impose conditions set in Articles 13 and 14, as well as in Article 3 of the proposed annex. He further noted that such tracking in proposed Article 2.3 would be based on MATs between the international institution and the country providing the material, recognizing the terms of the CBD. A developed country questioned how to consider material outside the MS that will be affected by Articles 13 and 14, as well as MTAs in Article 3 of the proposed annex.

A developing country said that their proposal aims to include a coherent and integral approach towards management of PGRFA collections in the body of the IU. Following a remark by a developed country that the proposed annex creates parallel systems for managing Annex I and non-Annex I materials, the developing country said the proposal reflects a comprehensive way to handle PGRFA, which places all material under the authority of the Governing Body. Another developing country added that different categories of material require treatment under different conditions. A developing country stressed that the IU should address all collections, stating that handling of non-Annex I material in the same way as Annex I material, if left to the discretion of the institutions (as provided for in one of the developed country proposals), would extend Annex I in a manner not negotiated by countries. He underlined the clear distinction between Annex I and non-Annex I material, and the distinction according to the status and handling of material, noting that important concessions have been made regarding the multilateral handling of collections.

A developed country questioned the different treatment of material acquired before and after the IU's entry into force. Chair Gerbasi noted that this addresses the group's mandate to resolve the issue of *ex situ* collections not covered by the CBD. A developing country said the proposal addresses the status of this material, in order to facilitate its future management. He explained that both categories would be subject to the terms of the CBD. However, non-Annex I materials held in collections prior to the IU's entry into force would be subject to the terms of the MTA, whereas terms for non-Annex I materials received after the IU's entry into force would be regulated by MATs developed by the institution and the source country.

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Regarding Article 2.2 of the proposal, on non-Annex I, pre-IU material, a group of developed countries asked for specific reference to material held in trust for the international community. A developing country noted that such language would imply that Centres would still control material not held "in trust," and instead supported an inclusive formulation (covering material held "in trust" and "not in trust"). A developed country questioned the necessity of Article 2.3 of the proposal, on non-Annex I, post-IU material, as such material would automatically be governed by MATs under the terms of the CBD.

Article 3 of the proposal sets out the terms of a standard MTA for non-Annex I, pre-IU material, which recognize the sovereign rights of the providing country and any pre-existing property rights on such material, and obligate the recipients to bind third party recipients to the same terms. It also states that benefits arising from material under an MTA will be used for conservation and sustainable use as detailed in Article 14, and that any monetary benefits shall accrue to whatever financing mechanism or trust account is established under the IU. A group of developed countries noted that countries with economies in transition should be added to the beneficiaries of the MTAs' use, and suggested clear reference to the application of Articles 13 and 14. On the recognition of sovereignty rights of the source country, the group of developed countries asked how the origin of pre-CBD material would be recognized. He also asked for clarification of the term "pre-existing property rights." Chair Gerbasi questioned the purpose of recognizing sovereignty and property rights in a multilateral system of benefit-sharing. A developing country said that the FAO Agreements recognize that the Centres are not the owners of received material in such a way that pre-existing rights should be respected.

Regarding Article 4 (Management and Administration) of the proposal, a developed country asked about the appropriateness of providing guidance on managing other international institutions and whether this would over-step the Governing Body's mandate. She also questioned the provision's financial implications and asked for further elaboration of potential commitments within language on international institutions working to prevent violations of the MTA. A developing country noted that such questions related to text generally taken from the FAO Agreements signed with the Centres, in order to provide guidance for other, non-CGIAR institutions under the IU. Regarding the prevention of MTA violations, he highlighted the need to emphasize institutions' responsibility for binding third parties receiving materials, as part of their legal obligations.

A representative of the CGIAR noted practical difficulties in enforcement, stressing that in a period of approximately 20 years, one Centre distributed over 480,000 samples, which would be difficult to track, let alone challenge in the case of a patent. He noted that, although there was no reference to MTAs within the FAO Agreements, the FAO and the Centres had agreed on the need to develop an MTA, and issued a statement on the responsibility and standard course of action for Centres in the event of suspected violations. He noted that such efforts should not solely be the Centres' responsibility, stating that Parties and the FAO need to play a role. Chair Gerbasi, supported by a developing country, proposed examining how to include language on steps that international institutions would take in pursuing violations. Another developing country suggested that some of the issues could be addressed within Article 17 (Governing Body).

Chair Gerbasi then convened a small group of delegates to draft compromise language on how to include materials held by Centres and other international institutions. The small group met throughout the afternoon and late into the evening to continue deliberations.

## TECHNICAL GROUP ON DEFINITIONS

The technical group began defining terms that appeared in negotiated text. Regarding "*in situ* conservation," one delegate proposed defining it as the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated plant species, in the surroundings where they have developed their distinctive properties. After some debate, the group agreed to add language from the CBD definition to include the conservation of ecosystems and natural habitats. The group also discussed whether respect for the natural habitat or center of origin was implied.

Regarding "*ex situ* conservation," one delegate supported adherence to the CBD definition. Another proposed, and all agreed, to define *ex situ* conservation as the conservation of PGRFA outside their natural habitat, effectively exchanging the CBD's reference to components of biological diversity for reference to PGRFA.

Regarding "plant genetic resources for food and agriculture," delegates proposed various modifications to the existing language in Article 2 of the IU's original non-binding text. They debated: adding reference to plants' genetic components or whether these are implied; including language specifying plant species with actual or potential value for food and agriculture for present and future generations; and distinguishing between reproductive and vegetative material. Agreed language notes that "plant genetic resources for food and agriculture" means the reproductive or vegetative propagating material of plant species of actual or potential value for food and agriculture. No agreement was reached on including reference to genetic components, which remains in brackets.

Regarding "centre of origin," debate on one proposed definition revolved around whether this denoted an area where an individual plant taxon originated or developed its distinctive properties. Another alternative described it as the place where the wild progenitor of the cultivated species occurs in nature. One delegate supported amending this definition to specifically consider the relationship to farmers' rights as understood in Article 15 (Farmers' Rights). Both proposed texts remain in brackets.

Regarding "centre of crop diversity," three possible definitions were suggested: the region where maximum diversity of the species occurs in *in situ* conditions; a geographic area containing a high level of genetic diversity for one or more crop species; and a geographic region in which the greatest variability of a crop occurs. All three remain in brackets.

## IN THE CORRIDORS

Word circulated through the corridors that the small negotiating group was working to incorporate elements of the developing country proposal on Annex V into the body of the IU. Disagreements arose over the specific terms that would apply to non-Annex I materials held in collections by the CGIAR and other international institutions, with specific debate over recognition of sovereignty rights and end use of such materials. Additionally, establishing specific linkages to other articles, especially Articles 13 and 14, was proving to be a complicated task.

## THINGS TO LOOK FOR TODAY

**CONTACT GROUP:** The Contact Group will convene at 9:30 am to review the results of the small group negotiations on *ex situ* collections held by CGIAR Centres and other international institutions under the IU. It is also expected that the Contact Group will assess progress made during the week and consider the next steps towards completing the revision of the IU.