



## HIGHLIGHTS OF THE FOURTH INTER-SESSIONAL CONTACT GROUP MEETING FOR THE REVISION OF THE IU: 16 NOVEMBER 2000

During morning and afternoon/evening sessions, the Fourth Inter-sessional Contact Group Meeting for the Revision of the International Undertaking on Plant Genetic Resources (IU), discussed Articles 12.1, 12.2, 16.1, the results of the small group on renumbered Article 16.4(d) (formerly Article 16.4(c)), and Article 17.2. The small group discussing Article 14.2(d)(iv) met periodically throughout the day. Delegates also heard a presentation on the Consultative Group on International Agricultural Research (CGIAR) and a new proposal for Annex V (Conditions for International Institutions Holding *Ex Situ* Collections).

### ARTICLE 12 (COVERAGE OF THE MULTILATERAL SYSTEM)

**ARTICLE 12.1:** Chair Gerbasi recalled agreement on Article 12.1, stating that the Multilateral System (MS) shall cover PGRFA listed in Annex I (List of Crops), and suggested deferring discussion on footnote (b) which states that this provision would be agreed, pending adoption of Article 21 (Amendments of Annexes). One developing country proposed splitting Article 12.1 into two new sub-paragraphs, one specifying resources to be covered by the MS and stating that coverage of the MS shall be in accordance with applicable access laws and national legislation, and another stating that the criteria for inclusion of PGRFA in the MS be based on global food security and interdependence. One developed country made a point of order stating that Article 12.1 had been adopted by consensus *ad referendum*, and requested that the proposal be withdrawn. Chair Gerbasi said that additional proposals amounted to reopening the debate on the substance of this provision. The developing country highlighted links between Articles 12 and 14 (Benefit-sharing in the MS) and explained that the purpose of her amendment was to balance both articles by referring to national law and access rights, noting a need to make the IU consistent with pending national legislation in her country. One developing country supported the concern to have a balance between access and financial resources, but rejected, along with another developing country, the proposed changes. Two developing countries stated that a conclusive proposal from the working group on Article 14.2(d)(iv), on commercial benefit-sharing, could allow the text to remain as is. Another participant remarked that since the list in Annex I was pending, Article 12 was still open for discussion. The developing country making the proposal stated her under-

standing from Tehran that Articles 12 and 13 (Facilitated Access) would remain open for discussion in the absence of equal progress on other articles.

Following consultations, developed countries acknowledged that text in Article 12.1 was linked to provisions pending elsewhere, but refused to reopen the agreed text for negotiation. Developing countries stated that they shared the concern expressed by the delegate responsible for the proposal regarding the inter-relationship and balance among Articles 13, 14, 16 and 17. Developing countries agreed to withdraw the proposal if a footnote could be inserted stating that completion of Article 12 depends on its harmonization with Articles 13, 14, 16 and 17. Delegates agreed, and the text was maintained.

**ARTICLE 12.2:** This provision defines the material covered by the MS. Chair Gerbasi requested clarification on footnotes (c), (d) and (e), calling for further consideration of the CGIAR collections of PGRFA and how they could be addressed inclusively in the IU. A developing country recalled that the Contact Group accepted the footnotes of 12.2 in Tehran, not to restrict references to the CGIAR to a single place, but to address the CGIAR in a holistic manner. He noted that CGIAR collections would be addressed in: Articles 9.3 and 9.4, covering references to networks and international centers; Article 12; Article 13; Article 16; and Annex V. On Article 12.2 and Annex V, he said that the CGIAR collections are central to circulation of PGRFA throughout the world and constitute an extremely important asset for the IU. He stated that the objective should be to maintain the collections' integrity, noting that the FAO-CGIAR Agreements' temporary legal nature calls for clarification under the MS. He noted the collections come primarily from developing countries, which may continue to be the main suppliers of PGRFA, and recognized the need to respect the rights of these countries in managing the collections. He explained that CGIAR collections cover crops not included in some regional lists proposed for the MS, and underscored the need for, *inter alia*: rules to address management of crops not included under the MS; revision of current material transfer agreements; and the possibility of a system to channel commercial benefits into a fund to support these Centres.

In the afternoon, a developing country supported addressing both CGIAR Centres and other international organizations in this provision. A regional group of developing countries submitted new proposals for Articles 12.2, 12.4 and Annex V. For Article 12.2, they proposed one paragraph to replace the existing two, covering both CGIAR and other international collections, which

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states, "Parties agree that the germplasm collections held in *ex situ* collections by the CGIAR Centres, and other international institutions shall be subject to the provisions of this IU and in accordance with the provisions of Annex V." A proposed new Article 12.4 would state, "Parties agree that any alteration to Annex I and Annex V of this IU only be possible with the consensus of all Parties to this IU." Chair Gerbasi asked delegates to review the proposals for future consideration.

**CGIAR PRESENTATION:** A representative of the CGIAR Centres noted the Group's mission to contribute to food security and poverty eradication in developing countries through research, partnerships, capacity-building and policy support, and to promote environmentally sound and sustainable agriculture development. He outlined the CGIAR's structure (16 Centres – 13 in developing countries and 11 with genebanks), funding, organization and areas of work, which include: food crop conservation and improvement, livestock health and production, integrated natural resource management, aquatic resources, (agro-)forestry, socio-economic policy research and development of national systems. He noted that the Centres annually distribute more than 120,000 samples and their breeding programmes more than 500,000 samples of improved germplasm, mostly to developing countries. He noted agreements signed with the FAO, which designate that Centres hold designated germplasm in trust for the international community, make them available without restriction and prohibit intellectual property protection on accessed materials. He listed areas of benefit-sharing, including distribution of germplasm and improved materials, technology transfer, information sharing and capacity building.

Another representative of the CGIAR Centres, noted that while flows of germplasm historically moved mainly from developing to developed countries, such trends have shifted and could be considered in developing the MS. Based on several case studies, he highlighted that the ratio of samples accessed by developing countries to those provided by them has shifted from 4-1 during the CGIAR's peak period of collecting in the 1970s and 80s, to 60-1 in 1992, and to an estimated 100-1 today. He also noted significant crop interdependence, substantial flows within regions, larger flows from CGIAR improvement programmes, and fewer flows to the private sector of which more go to developing countries. He also noted the CGIAR's role as a form of insurance for countries that have had to restore their collections. Subsequent discussion highlighted that developed countries access a higher percentage of wild varieties, as improved materials are generally bred in developing countries under different climatic conditions, and concern over application for intellectual property protection on distributed material, which is pending guidance from the CGRFA, most likely in the form of the completed IU.

#### **ARTICLE 16 (FINANCIAL RESOURCES)**

**ARTICLE 16.1:** Chair Gerbasi asked delegates if brackets could be removed from a reference to implementation in the provision. One developed country stated that she could not accept removal of brackets at present.

**ARTICLE 16.4(d) (formerly Article 16.4(c)):** In the afternoon, a representative from the small group on renumbered Article 16.4(d) stated that a text was generally agreed, except for several brackets. Following a request from a group of developing countries. He noted that the unresolved points were: whether to include reference to multilateral channels to provide resources; the fact that the channels providing resources shall include a "Trust Account"

under the authority of the Governing Body; and the institutional links between this Trust Account and the FAO. Developing countries stated their general agreement if multilateral channels were included and reference to the Trust Account was replaced by a mechanism to be referred to in Article 17.2. Delegates agreed to delete reference to the FAO. A regional group of developed countries suggested replacing "for" implementation with "related to" implementation, and accepted reference to "mechanism." One developing country agreed with these suggestions but preferred, with another developing country, use of "for" over "related to." All agreed, and the text was accepted.

#### **ARTICLE 17 (GOVERNING BODY)**

**ARTICLE 17.2:** During the afternoon, Chair Gerbasi proposed adoption of the provision in Article 17.2 relating to the mechanism as proposed on Monday before continuing discussion. After discussions on wording, delegates agreed to adopt a new provision under Article 17.2 which states that the governing body shall "establish, as needed, an appropriate mechanism such as a Trust Account, for receiving and utilizing financial resources that will accrue to it for purposes of implementing the IU."

#### **ANNEX V (CONDITIONS FOR INTERNATIONAL INSTITUTIONS HOLDING EX SITU COLLECTIONS):**

Some developing countries presented a proposal on Annex V as related to earlier discussions on Article 12.2. A delegate from the group proposing the revised annex outlined the main changes from the version in the composite draft text. He noted that the first article now states that the annex shall include all international institutions holding PGRFA. He explained that the second article now states that: access to material listed in Annex I in such collections would be subject to the same provisions as those under the MS; non-Annex I material would be subject to a material transfer agreement under conditions established for the MS and with the Party providing the material and would also include prohibitions on providing access to third parties; and the international institution would inform the providing Party when access to germplasm and/or related information was granted. He stated that the third article includes a provision stating that collections will be in the trust of international centers by means of a standardized agreement with the providing country. He closed by noting that new language in the fifth article transfers responsibilities listed under the FAO to the MS Secretariat and the Governing Body. Chair Gerbasi asked delegates to review the proposal for later consideration.

#### **IN THE CORRIDORS**

As delegates eagerly anticipated moving beyond Articles 16 and 14.2(d)(iv) to break new ground on Article 12, some were ready to jump in Lake Neuchâtel when a proposal was made to amend a provision agreed upon *ad referendum*, which would subject coverage of the MS to applicable access laws and national legislation. Some participants also highlighted the proposal's deletion of conservation as an objective of the IU, fundamentally questioning the notion of harmonization with the CBD. Others wondered if this might even foreshadow attempts to revisit the IU's objectives in Article 1.

#### **THINGS TO LOOK FOR**

The Contact Group will reconvene at 10:00 am to hear a report from the small group on Article 14.2(d)(iv), continue consideration of Article 12, including Annex V, and review the week's results.