



## HIGHLIGHTS OF THE FIFTH INTER-SESSIONAL CONTACT GROUP MEETING FOR THE REVISION OF THE IU: TUESDAY, 6 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), continued considering Article 17 (Governing Body), and initiated discussions on Article 18 (Secretariat). The Contact Group also addressed the options for the legal basis of the IU and its relation to the FAO and the CBD. In a discussion on terms of reference for legal and technical groups, the Contact Group established a technical group, which met in the evening to discuss the list of definitions for the IU.

### ARTICLE 17 (GOVERNING BODY)

**ARTICLE 17.2:** Minor grammatical and editorial amendments were made to the revised text of Article 17.2, on the functions of the Governing Body.

**ARTICLE 17.4:** Regarding Article 17.4, on representation and observers, delegates agreed to create a new sub-provision based on previously proposed language from CBD Article 23.5 on observers.

**ARTICLE 17.5:** Regarding Article 17.5, on adopting decisions by a two-thirds majority within the Governing Body when consensus cannot be reached, developing countries, supported by several developed countries, proposed adding language noting exception where consensus is specifically required. Two developed countries stated that this would necessitate a review of all articles relevant to decision-making. One of them proposed using consensus as a general rule for decision-making, except where noted otherwise.

A developed country proposed replacing Articles 17.5 and 17.8, on adopting Rules of Procedure, with text based on CBD Article 23.3 stating that the Governing Body shall, by consensus, agree upon and adopt Rules of Procedure. This formulation would allow for detailing specific voting procedures for different issues. Chair Gerbasi proposed, and several developed countries supported, adding language stating that this shall not be inconsistent with the IU. A regional group of developed countries then suggested that financial rules governing the Secretariat's funding should be adopted by consensus as per language in CBD Article 23.3, since this would resolve outstanding issues in Article 17.2(f), on adopting the budget. One country questioned whether this would comply with Article 14 (Supervision of Other Organizations) of the FAO Constitution. A developed country called for deleting reference to funding the Secretariat, noting potential differences between the Secretariat of the IU and that of the CBD.

Developing countries supported retaining their initial proposal on Article 17.5 and amending Article 17.8 to state that the Governing Body shall adopt, by consensus, the Rules of Procedure consistent with the IU's provisions. A developed country expressed concern that failure to reach consensus in the Governing Body could result in decision-making by a two-thirds majority. Two developing countries noted that, according to their proposal, consensus would be required where specifically noted within the IU. The group agreed to bracket proposals for Articles 17.5 and 17.8 pending resolution of Articles 20 (Amendments of the Undertaking) and 21 (Amendments of Annexes), and to note the concern regarding financial rules.

**ARTICLE 17.6:** Article 17.6, on the term "Parties present and voting," was approved without debate.

**ARTICLE 17.7:** Regarding Article 17.7, on FAO Member Organizations fulfilling their obligations in accordance with the FAO's Constitution and General Rules, a group of developed countries noted the particular situation of regional organizations concerning voting rules and noted their reservation pending resolution of the IU's legal basis. The provision was approved with a footnote expressing this reservation.

**ARTICLE 17.8:** This provision was preliminarily addressed in discussions on Article 17.5.

**ARTICLE 17.9:** Regarding Article 17.9, on holding sessions of the Governing Body at least once every two years, a group of developed countries proposed that such sessions be held back to back with regular sessions of the Commission on Genetic Resources for Food and Agriculture (CGRFA). The amendment and provision were accepted.

**ARTICLE 17.10:** Article 17.10, on convening special sessions of the Governing Body at the request of at least one-third of Parties, was approved without discussion.

**ARTICLE 17.11:** Regarding Article 17.11, on election of the Governing Body's Chairperson and Vice-Chairpersons (Bureau), several countries posed questions regarding the number of Vice-Chairpersons, allowance of consecutive terms, determination of when terms would start and the length of terms. It was agreed that such issues would be detailed in the Rules of Procedure.

**NEW SUB-PROVISION:** A developed country proposed a new sub-provision requiring two-thirds of the Parties to constitute a quorum for any Governing Body session. Delegates discussed a quorum of two-thirds versus a simple majority. Noting connections to Articles 17.5 and 17.8, the group agreed to revisit the proposed sub-provision later.

### ARTICLE 18 (SECRETARIAT)

Regarding Article 18, on the Secretariat, a developed country proposed a new formulation replacing Articles 18.1, on appointment of the Secretary, 18.2, on Secretariat staff, and 18.3, on its

This issue of the *Earth Negotiations Bulletin* © <enb@iisd.org> is written and edited by Tonya Barnes <tonya@iisd.org>, Stas Burgiel <stas@iisd.org> and Elsa Tsioumani <elsa@iisd.org>. The Editor is Pamela S. Chasek, Ph.D. <pam@iisd.org> and the Director of IISD Reporting Services is Langston James "Kimo" Goree VI <kimo@iisd.org>. The Sustaining Donors of the *Bulletin* are the Netherlands Ministry of Foreign Affairs, the Government of Canada (through CIDA), the United States (through USAID), the Swiss Agency for Environment, Forests and Landscape (SAEFL), the United Kingdom Department for International Development (DFID) and the European Commission (DG-ENV). Specific funding for coverage of this meeting has been provided by the Rockefeller Foundation. General Support for the *Bulletin* during 2001 is provided by the German Federal Ministry of Environment (BMU) and the German Federal Ministry of Development Cooperation (BMZ), the Danish Ministry of Foreign Affairs, the Ministries of Environment and Foreign Affairs of Austria, the Ministries of Foreign Affairs and Environment of Norway, the Ministries of Foreign Affairs and Environment of Finland, the Government of Australia, the Ministries of Environment and Foreign Affairs of Sweden, and the Japan Environment Agency (through the Institute for Global Environmental Strategies – IGES). The *Bulletin* can be contacted by e-mail at <enb@iisd.org> and at tel: +1-212-644-0204; fax: +1-212-644-0206. IISD can be contacted by e-mail at <info@iisd.ca> and at 161 Portage Avenue East, 6th Floor, Winnipeg, Manitoba R3B 0Y4, Canada. The opinions expressed in the *Earth Negotiations Bulletin* are those of the authors and do not necessarily reflect the views of IISD and other funders. Excerpts from the *Earth Negotiations Bulletin* may be used in non-commercial publications only and only with appropriate academic citation. For permission to use this material in commercial publications, contact the Director of IISD Reporting Services. Electronic versions of the *Bulletin* are sent to e-mail distribution lists and can be found on the Linkages WWW server at <http://www.iisd.ca>. The satellite image was taken above Bonn ©2000 The Living Earth, Inc. <http://livingearth.com>. For information on the *Earth Negotiations Bulletin*, send e-mail to <enb@iisd.org>.



responsibilities and functions, with language stating that the CGRFA Secretariat shall act as the Secretariat of the Governing Body, arranging for its meetings and performing other functions that the Governing Body decides to assign to it. Several countries noted objections. A developing country stressed that the proposal does not address the need for staff. A developed country proposed adding that the Secretariat shall be assisted by such staff as required, and will perform other functions as provided in the IU or as the Governing Body assigns to it. Several countries highlighted the need for a strong say of the Governing Body in relation to the Secretariat.

A group of developed countries, supported by several developing countries, suggested using language from CBD Article 24.2, on the Governing Body designating the Secretariat at its first ordinary meeting. A developed country stated that, according to the FAO Constitution, Secretariats shall be appointed by the Director General after consultation with the body concerned. A group of developed countries noted that discussion on the Secretariat is subject to the decision on the IU's legal basis. Several countries stressed that text on the Secretariat could provide an opportunity to link the IU with both the FAO and the CBD. After discussing other formulations, Chair Gerbasi proposed, and delegates agreed, to retain the original text of Article 18.1, along with brackets around the two alternative proposals on reformulating Articles 18.1, 18.2 and 18.3, and on using text from CBD Article 24.2.

#### **GENERAL DISCUSSION ON THE IU'S LEGAL BASIS**

Noting difficulties in resolving particular issues in Article 17, Chair Gerbasi called for comments on the IU's legal relation to the FAO and CBD. The FAO's Legal Counsel drew attention to document CGRFA-8/99/9, on legal and institutional options for the IU's revision. Such options include: maintaining the IU as a non-legally binding agreement; adoption under Article 14 of the FAO Constitution; adoption at a diplomatic conference under the FAO's auspices, but outside its constitutional framework; adoption as a protocol to the CBD; and adoption as an Agreement for the implementation of the CBD in the area of PGRFA (under this option, the IU could be adopted either under Article 14 of the FAO Constitution, or at a diplomatic conference under the auspices of FAO but outside its constitutional framework). He noted that this last "implementing agreement" option could establish practical and legal links with the CBD, and allow non-Parties to the CBD to become members of the IU.

Several delegations generally supported the IU as a legally binding instrument with close links to both the FAO and CBD. A group of developed countries expressed preference for the "implementing agreement" option. A developed country preferred adoption under Article 14 of the FAO Constitution. Another developed country requested clarification on the institutional implications of the two possibilities in the "implementing agreement" option. He favored adoption in a diplomatic conference to achieve greater flexibility, provided the FAO Secretariat's support is guaranteed. A developing country expressed concern with the financial implications of each option, noting a shortage of FAO resources. The FAO's Legal Counsel stated that the FAO Constitution provides for different modalities on the degree of the IU's financial independence, noting a tendency for more autonomous agreements under the FAO. A group of developed countries highlighted the importance of the discussion for implementation and funding rules.

Chair Gerbasi asked for ways to operationalize the link between the IU and the FAO and CBD. A representative of the CGRFA proposed a parallel resolution for adoption by the FAO Conference and the CBD COP, which could address: mutual reporting at inter-governmental and secretariat levels; mutual access to information; development of joint programmes of work and joint working

groups; and response of the IU Governing Body to CBD COP requests in the area of PGRFA. The CBD Secretariat referenced CBD COP-3 and COP-5 Decisions welcoming options linking the FAO and the CBD to the IU.

In the afternoon, Chair Gerbasi noted general agreement that the IU should be a legally binding agreement related to both the FAO and the CBD. He also noted a slight preference that such an agreement could be created within the context of Article 14 of the FAO Constitution. He deferred further discussion on the specifics of the IU's legal basis.

#### **LEGAL AND TECHNICAL GROUPS**

Regarding terms of reference for proposed legal and technical groups, a number of delegates recognized the lack of legal representation at this meeting. Another developing country proposed that the FAO's Legal Counsel examine inconsistencies and provide the group with clarifications of terms. Chair Gerbasi called for a report on legal inconsistencies to be submitted by the FAO's Legal Counsel to the legal group, which would convene during the sixth meeting of the Contact Group. After some discussion, Chair Gerbasi also requested formation of an open-ended technical group to formulate a list of terms to be defined.

The technical group met in the evening to identify terms requiring definition under the IU. Agreement was reached on a provisional list, although some terms provoked debate due to the status of text in which they appeared. The group drew distinctions among terms in agreed text, in bracketed text, and in text yet to be negotiated. Terms provisionally selected for the list include: *in situ* conservation, *ex situ* conservation, PGRFA, indigenous and local communities, biotechnology, food security, country of origin, germplasm, genetic material, breeder/developer, agro-ecological zones, underutilized species, forages, rights holder, sustainable use/ utilization, sustainable system, variety, farmer's rights, wild crop relatives, *ex situ* collection, center of diversity, center of origin, and traditional knowledge. Terms proposed, but still under debate, include: small farmers, facilitated access, sustainable agriculture, crop, conservation and management on-farm, Parties, prospection, genetic integrity, genetic enhancement and Governing Body.

#### **IN THE CORRIDORS**

Unable to concretely define the specific parameters and implications of the IU's legal basis, which will determine procedural, institutional and financial issues surrounding the Governing Body and Secretariat, delegates found themselves struggling to solve the riddle of the chicken and the egg. Many were pleasantly surprised at the general level of agreement on linking the IU to both the FAO and the CBD, while expressing frustration with a lack of expertise on the minutiae of FAO rules and regulations. Some noted that such were the trials and tribulations of creating such a unique instrument within the realm of international legal institutions.

Rumors also surfaced that informal corridor discussions instrument contentious language regarding conditions for access under Article 13 (Facilitated Access) were bearing fruit.

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

The Contact Group will meet at 9:45 am to continue discussions on Article 18 (Secretariat) focusing on specific functions. Delegates will then address Articles 20 (Amendments of the Undertaking) and 21 (Amendments of Annexes), which will have significant implications for resolution of outstanding issues under Article 17.