



HIGHLIGHTS OF THE FIFTH INTER-SESSIONAL CONTACT GROUP MEETING FOR THE REVISION OF THE IU: THURSDAY, 8 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 Article 12 (Coverage of the Multilateral System [MS]), including Article 12.2 on coverage of Centres under the Consultative Group on International Agricultural Research (CGIAR) and other international institutions, identification of the IU's scope and a new proposal on information to access plant genetic resources for food and agriculture (PGRFA).

ARTICLE 12 (COVERAGE OF THE MS)

ARTICLE 12.2: Regarding Article 12.2, on inclusion of material held in *ex situ* collections, delegates discussed a proposal by a group of developed countries and the more general question of including collections held by the CGIAR Centres and other international institutions. The proposal addresses PGRFA listed in Annex I (List of Crops) and held in the collections of CGIAR Centres or other international institutions agreeing to be bound by the IU's provisions on facilitated access and benefit-sharing, and by other management, administrative and dispute resolution requirements. It also states that participating institutions may, at their discretion, provide facilitated access to PGRFA not listed in Annex I on the same terms as for materials in Annex I, although such material shall not be considered part of the MS.

Developing countries objected to giving international institutions holding PGRFA the latitude to decide whether they should be included in the MS, as this would leave open the possibility for a parallel system to the IU. They supported creating a single MS under a single authority, which would automatically include all Annex I material, including collections held by the Centres. A representative of the group making the proposal noted that creating a separate system was not their intention, while stating that binding provisions cannot be imposed unilaterally on other international institutions. Another group of developed countries said that the last provision in the proposal suggested creation of an alternative system for Centre collections not in Annex I and not held in trust for the international community under the FAO Agreements, and supported their inclusion within the MS.

A developed country said that any voluntary effort by the Centres to make more of their material available should be permitted and encouraged, and that the ideal situation would be to include all CGIAR crops within Annex I. Two developing coun-

tries said that identical treatment of all material, left to the Centres' discretion, would contravene the sovereignty principle enshrined in the CBD, as countries would no longer have control over resources that they had provided. This raised the issue of who owns the genetic resources within the Centres, with some developing countries emphasizing national sovereignty over resources provided and some developed countries noting the FAO Agreements with Centres stating that such resources would be held in trust for the international community.

Chair Gerbasi stressed the political nature of the issue of including materials held by the Centres. Several developing countries supported this, with calls for the Centres to amend their constitutions to reflect their willingness to accord with the IU and decisions of the Governing Body. Most developed countries disagreed, highlighting the issue's legal nature and noting that one legal instrument cannot impose conditions on other legal bodies. Two developing countries emphasized that only changes in the management of *ex situ* collections under the auspices of the IU would be necessary, and that FAO agreements with the Centres did not need to be modified. A representative of the CGIAR clarified that each Centre has a legal personality allowing it to sign onto an agreement. He agreed with the interpretation that the Centres cannot be legally bound to sign the IU, but underscored that they want to be a part of the system. He proposed consideration of procedural measures whereby the IU's entry into force would pend formal adherence by all Centres to the terms of the IU. A developing country proposed such language within a separate article.

Delegates raised questions regarding inclusion of genetic materials within the CGIAR Centres collected prior to the CBD's entry into force, held in trust for the international community, versus those collected afterwards, along with the consequences for crops within those collections not contained in Annex I (List of Crops). An NGO representative emphasized that germplasm flows between countries show benefits to developing countries; stressed the importance of the Centres to food security; and agreed with developing countries that legal, structural and political change should take place within the CGIAR Centres to harmonize them with the IU so that collections would be securely in the hands of the IU and the international community. A developing country advised delegates to consider the issue within the larger context of existing intellectual property regimes.

In an afternoon session, developing countries introduced a new text for Annex V (*Ex Situ* Collections Held by International Institutions under the IU). The proposal distinguishes among: material listed in Annex I, to be treated in the MS; material outside Annex I, to be treated in accordance with a standardized Material Transfer

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Agreement; and material outside Annex I received after the coming into force of the IU, to be treated on terms agreed between the country providing the material and the receiving institution, in harmony with the CBD. It also gives countries the right of permanent access to samples obtained in their territory and addresses issues of scientific and technical facilities, management and administration, staff and finances. Chair Gerbasi deferred discussion on the proposal to allow for its consideration.

IDENTIFICATION OF MATERIALS: A developed country introduced the issue of identification of materials covered by the IU's scope. She noted that certain federal states do not have the authority to commit to providing material outside their management and control, namely private property and material in control of tribes or constituent states. A developing country asked whether the scope of the MS would then be limited to national collections. The developed country answered that arrangements for participation of other institutions could be made. Following another question by the developing country, regarding whether entities unwilling to place their material in the MS would have access to other materials in the MS, the developed country said it is up to the Parties to provide benefits in accordance with the IU's terms. One delegate responded that developing countries hold most PGRFA in the public domain, which could result in unequal participation in the MS. The developed country stressed that they intend to make available a very large collection of PGRFA held in the public domain, and that the minimum governments can do is influence the private sector's participation in the MS. Chair Gerbasi said that implementation at the national level is the responsibility of governments.

A developing country supported incentives to encourage the private sector to make material available under the MS. A developed country asked delegates to consider whether it is feasible for governments to require private companies or farmers to provide genetic samples to be included in the MS. A representative from an NGO, supported by an industry representative and a developing country, noted that according to Article 13.2(e), material under development would fall outside of the MS, and stressed that the private sector actually holds less than two percent of germplasm collections. The industry representative further noted that private enterprise often accesses material available through public genebanks.

A developing country noted that: intellectual property rights (IPR) should be considered in relation to making material available to private companies; facilitated access to private property does not mean loss of ownership; systems for handling genetic resources are changing and will continue to change under the IU; and clarification is necessary on collaboration between beneficiaries and the MS. A group of developed countries recalled that access would be discussed under Article 13 (Facilitated Access). Another developed country noted that some national genebanks are semi-privatized, since the private sector can often more effectively develop a plant variety, and supported an inclusive rather than exclusive MS. A developed country also highlighted the implications for benefit-sharing, noting that this article would impact implementation of Articles 14.2(d)(iv), on commercial benefit-sharing, and 13.2(e), on access to PGRFA under development. A group of developed countries said that this article did not address ownership or control and did not agree that inclusion in the MS was an issue of access.

A developed country then proposed language to be inserted before Article 12.2, stating that the MS shall encompass only those PGRFA that are under the management and control of a Party's

national government. Chair Gerbasi asked how this proposal would impact Article 14.2(d)(iv). The delegate responded that governments could encourage partnerships and other benefit-sharing arrangements that would not be in conflict with the MS. A developing country asked whether this implies that the MS will become an exchange process between governments. Another developed country noted that the proposal excluded material exchanges within the private sector. Their inclusion would create problems for implementation of relevant benefit-sharing provisions since private sector materials are protected by IPR, exchanges of material would be difficult to track, and payment of royalties would be hard to enforce. A number of developing countries opposed the proposal, stating that it was too restrictive. An NGO representative said that governments hold the power to determine how material is accessed and used by the private sector, that tracking would not be required under the MS and that this provision should not be connected to 14.2(d)(iv).

The developed country making the initial proposal suggested modifying language to state that the MS shall at a minimum encompass those PGRFA that are under the management and control of the national government of a Party, and that Parties may, at their discretion, include in the MS, material that is not under the management and control of the national government. Several delegates still could not agree, noting problems with designating materials for the MS, the need to address the issue under Article 13 and disagreement over the extent to which tracking for benefit-sharing would be required. Noting no immediate resolution, Chair Gerbasi deferred subsequent discussion.

NEW SUB-PROVISION: A group of developed countries proposed a new sub-provision on providing information, such as contact details, for obtaining PGRFA available for facilitated access. Several delegates questioned how the provision related to other information provisions under Articles 10 (World Information Network/[Information Systems] on PGRFA), 13 and 14.2(a), and whether such a provision should be included under Article 13, given its focus on accessed PGRFA. Some developing countries also stated that the provision was more restrictive than similar language on exchange of information under Article 14.2(a). The group of developed countries clarified that the provision intends to identify how to access PGRFA, as opposed to: Article 10, which addresses knowledge of PGRFA; Article 13, which addresses information to accompany accessed material; and Article 14.2(a), which addresses more substantive information related to benefit-sharing. He indicated a willingness to consider the proposal under Article 13.

IN THE CORRIDORS

As delegates spun their wheels on inclusion of the CGIAR Centres and designation of public/private collections, some noted that the day's protracted deliberations were merely a microcosm of debates raised previously in the process. One delegate quipped that so many issues were being deferred for future discussion that he was getting dizzy. Some suggested the need for a fresh approach to break the impasse(s), noting the positive results and mood initially generated by closed group discussions in Tehran on commercial benefit-sharing.

THINGS TO LOOK FOR TODAY

The Contact Group will convene at 9:45 am to discuss Annex V, including the new developing country proposal. It will then return to Article 12 before turning to Article 13, where it is expected that results of informal discussions will be addressed.