



## HIGHLIGHTS OF THE FOURTH INTER-SESSIONAL CONTACT GROUP MEETING FOR THE REVISION OF THE IU: 14 NOVEMBER 2000

The Fourth Inter-sessional Contact Group Meeting for the Revision of the International Undertaking on Plant Genetic Resources (IU), continued deliberations in the morning and in a six-hour afternoon/evening session. Delegates discussed Article 16.4(a), (b), (c) and (e) relating to the funding strategy, and initiated a discussion on Article 14.2(d)(iv) on commercial benefit-sharing.

### ARTICLE 16 (FINANCIAL RESOURCES)

**ARTICLE 16.4(a):** Chair Gerbasi called for reactions to text proposed yesterday stating that "Parties shall take the necessary and appropriate measures within the governing bodies of relevant international mechanisms, funds and bodies to ensure due priority and attention to the effective allocation of predictable and agreed resources for the implementation of plans and programmes under the IU." Three developed countries said that after consultation with their capitals, they could accept the text, which was then agreed.

**ARTICLE 16.4(b):** This provision states that the extent to which developing country Parties and Parties with economies in transition can effectively implement their commitments will depend on the effective allocation of resources. A developed country proposed that implementation depend "in part" on allocation of resources. A developing country noted the insufficiency of some countries' own resources to implement the Global Plan of Action (GPA) and opposed reducing the importance of developed country contributions. Another developing country suggested that implementation "depend primarily on" effective allocation of resources.

Several developed countries noted that reference to a funding target in Article 16.3 did not indicate that funding would be provided only by developed countries, and that while the CBD refers to global interests, the IU addresses national interests. One observed that the extent to which any country can implement its commitments depends on all Parties, and proposed deleting reference to developing countries and countries with economies in transition.

A developing country said that the commitment of developed countries to help developing countries should be reflected. Another developing country acknowledged that all countries are making contributions, but stressed that developed countries should contribute more in terms of financial resources because developing countries are contributing genetic resources. One participant reminded delegates that developing countries alone do not bear the burden of providing access. Another conceded that all must assume an obligation to implement the GPA, and suggested the text should address developing countries without excluding the role of developed countries.

Chair Gerbasi proposed, and some developed countries supported, adding a reference to developed country Parties following text on effective allocation. One developing country cautioned against shifting the focus away from developing countries. Another recalled Agenda 21's agreed principle on common but differentiated responsibilities. Three delegates supported text addressing both developing and developed countries. Two developed countries then proposed language stating that developing countries will ensure that the priority they accord to building capacity in PGRFA shall be expressed in their own plans and programmes. A developing country remarked that this proposal could imply linkages between prioritization and allocation of resources under the IU. A developed country proposed, Chair Gerbasi amended, and delegates accepted text stating that "the extent to which developing Parties and countries with economies in transition will effectively implement their commitments under this IU will depend on the effective allocation, particularly by developed country Parties, of resources referred to in this Article. Developing country Parties and Parties with economies in transition will accord due priority in their own plans and priorities, to building capacity in PGRFA."

**ARTICLE 16.4(c):** In this provision on funding channels, delegates again took up debate on the concept of a funding mechanism proposed by a group of developing countries. Referring to the group's draft text, several developed countries expressed difficulty in commenting since references to a funding mechanism were not agreed in preceding paragraphs. Several developing countries said that reference to a funding mechanism here could be linked to Article 17 (Governing Body). Several other developing countries called for deletion of reference to bilateral and regional channels in the original text, and inclusion of a general reference to a funding mechanism. A developed country underscored the importance of including all channels for financial resources, noting that bilateral and regional agreements are instrumental to project implementation. One developing country elaborated that although all channels are important, bilateral and regional contributions should not override the creation of the Multilateral System (MS). Several developed countries explained that bilateral contributions could be used to leverage multilateral sources. The developing country responded that he supported existing bilateral mechanisms, but here they were perceived as inhibiting the creation of the MS. Some developed countries responded that language supporting a more comprehensive system reflected CBD Article 20.3. Two developing countries said the point was not to exclude bilateral and regional mechanisms, but simply to de-emphasize them here to focus on the MS and create a mechanism that all Parties can depend on and control.

One delegate expressed concern that funneling all contributions through the MS would become costly, diverting funds from project activities. A developing country clarified that such a mechanism would channel some financial resources but not those of

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direct bilateral or regional programs. Another asked delegates to consider the broader purpose of the IU in administering a funding mechanism. One questioned if financial resources invested domestically by Parties would be included in overall tallies for contributions to the MS, thus falsely inflating figures. A developed country stated that he did not intend to add national contributions to the financial system. Another delegate emphasized the need to consolidate funds in a single place. A number of countries highlighted the distinction between funds for administration and substantive resources for programs and contributions directly funneled to the IU. Chair Gerbasi suggested that the FAO budget be increased to cope with ordinary expenses.

A developed country delegate noted that the financial system would be supplied by resources from benefit-sharing and voluntary contributions, and restated that developed countries do not want a funding mechanism. Developed and developing countries debated whether voluntary contributions, countries' contributions, a funding mechanism and a funding strategy were consistent with the Montreux Elements. One developing country noted these Elements constitute guidelines open to interpretation and negotiation, and a developed country asserted that the question of a fund was rejected in Montreux. Another remarked that if developing countries want national contributions to be compulsory, delegates would not reach agreement. A developing country questioned why genetic resources should be placed in the MS on a mandatory basis when countries' contributions remain voluntary. A regional group of developed countries refuted the notion that developed countries provide only financial resources while developing countries mainly provide genetic resources. Noting lack of progress, Gerbasi convened a small group to continue discussion.

**ARTICLE 16.4(d):** Regarding this sub-article addressing the provision of benefits arising from commercialized resources, delegates considered the developing countries' proposed text, which states that "Parties undertake to provide the financial benefits arising from 14.2(d)." Three developed countries requested bracketing the provision until Article 14.2(d), on commercial benefit-sharing, is resolved. Two supported discussion of related issues in Article 12 (Coverage of the MS) and 13 (Facilitated Access) impacting this provision. A group of developed countries proposed alternative language calling for incorporation of royalties accruing from Article 14.2(d)(iv) (on benefit-sharing from resources protected by restrictive intellectual property protection) into the funding strategy. One developing country called for the text's adoption without change. Chair Gerbasi proposed an alternative formulation, but the provision went unresolved as the discussion turned to Article 14.2(d)(iv) (see below).

**ARTICLE 16.4(e):** This provision relates to Parties providing support for their national activities. During the morning discussion on Article 16.4(e), some developing countries and a group of developed countries supported reformulation of the developing country proposal on this provision and its new placement following Article 16.4(b). A developed country noted that the purpose of this provision differs from the purpose of 16.4(b), and called for a clear commitment from developing countries on the priority they give to national activities if they expect to receive funds. A developing country agreed to insert a reference to financial resources provision in the text.

In the afternoon, this provision was reconsidered as new Article 16.4(c). One developed country, supported by developing countries, proposed deleting the amendment, noting that the new placement and an earlier suggestion to specify "each" Party could create problems for Parties with federal systems. Several other developed countries preferred inclusion. One noted the provision's importance in specifying the commitments of Parties to national activities and financial support as one of a range of financial resources to support the IU. Another also noted that the Montreux Elements reference Party contributions to implement their national priorities and parallel language contained within CBD Article 20 (Financial

Resources). Developing countries supported text from their original proposal on Article 16 including the proposed amendment on provision of financial resources.

The developed country calling for the provision's deletion then suggested qualifying language "subject to national laws and policies," while noting concern over placement. Two countries questioned its legal implications under an international agreement. Another country noted that similar language was accepted under the CBD without such a clause. Delegates eventually agreed to text reading "Each Party agrees to undertake, and provide financial resources for, national activities for the conservation and sustainable use of PGRFA in accordance with its national capabilities and financial resources." A footnote was added stating that one delegate reserved her right to consult with her capital.

**ARTICLE 14.2(d)(iv):** This provision addresses payment of royalties for materials accessed under the MS on which intellectual property rights (IPR) or commercial protection restrict further access. The provision had been agreed upon in principle in Tehran, subject to consultations by some developed countries in their capitals. Four developed countries noted that they could not accept the provision as it stands, for reasons including, *inter alia*: potential conflicts with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (e.g., discrimination against fields of technology and impairment of enjoyment of patent rights); confusion over the article's purpose (for royalty sharing, venture capital or compensation for material excluded from the MS); confusion over the meaning of "product" and "exploitation"; unresolved issues within Article 12 on the scope of the MS and Article 13 regarding access and IPR; concern over implementation of such a provision at the national level and the costs involved; potential contravention of Article 13 ensuring minimal costs for access and benefit-sharing; and relation to international agricultural research centers.

Two countries objected to arguments regarding potential conflicts with TRIPS, noting that: patent holders' privileges would not be infringed upon; TRIPS has exceptions for discriminating against a field of technology; and TRIPS has an exception regarding plants and animals. One developing country noted that only in the case of a patent will benefit-sharing be mandated and royalties paid, and that only a few countries permitted patenting and thereby treat a plant variety as a product. Several delegates requested clarification of issues relating to TRIPS by a representative of the World Trade Organization (WTO). Two countries noted that there are no fixed answers to these legal questions.

Several developing countries remarked that participants have had ample time to consult and that reopening agreed language from Tehran posed a dangerous challenge. Chair Gerbasi urged those with reservations to avoid reopening debate, and expressed hope that the input of a WTO expert scheduled to address the group the following morning would resolve technical and legal confusion.

### IN THE CORRIDORS

The temperature in the room fell along with the snow outside, as delegates continued their third day of deliberations on Article 16, again circling around the question of developed country contributions and a funding mechanism. The room got even colder when a few countries noted their inability to accept a provision regarding commercial benefit-sharing and a package provisionally agreed upon in Tehran. All ears now await clarification by a WTO representative on legal questions regarding potential conflicts between TRIPS and the IU.

### THINGS TO LOOK FOR

The Contact Group will reconvene at 10:00 am to seek clarification from a representative of the WTO. Also, expect a report on the results of the small group discussion on Article 14.2(c) and efforts to conclude discussions on Article 16.