



HIGHLIGHTS FROM THE OPEN-ENDED WORKING GROUP ON THE INTERNATIONAL UNDERTAKING WEDNESDAY, 31 OCTOBER 2001

The Open-ended Working Group on the International Undertaking on Plant Genetic Resources for Food and Agriculture (IU) resumed its discussions at FAO headquarters in Rome. Delegates met in morning, afternoon and evening sessions to continue discussions on a draft resolution for the FAO Council on the adoption of the International Treaty on Plant Genetic Resources for Food and Agriculture, as well as outstanding issues in Articles 4 (Relationship with Other International Agreements), 13 (Facilitated Access to Plant Genetic Resources for Food and Agriculture [PGRFA] within the Multilateral System [MS]), 19 (Financial Resources), 20 (Governing Body) and the list of crops. In the afternoon, Chair Amb. Fernando Gerbasi (Venezuela) also delivered a brief progress report to the FAO Council.

WORKING GROUP

DRAFT RESOLUTION: Chair Gerbasi invited comments on paragraph 3 *bis* of the draft resolution, stating that the CGRFA acting as the Interim Committee would establish an Expert Group to develop recommendations on the terms of the standard material transfer agreement (MTA). It also notes Draft Terms of Reference to be attached to the draft resolution for consideration by the Interim Committee.

BRAZIL questioned the status of the Draft Terms of Reference. Chair Gerbasi noted that the Friends of the Chair had circulated a proposal that had not been examined, and suggested that the proposal be distributed to the Working Group as a non-paper. He also proposed, and delegates agreed, that language noting its attachment to the draft resolution be replaced with text stating that the Terms of Reference shall be agreed at the first meeting of the Interim Committee. The draft resolution was accepted.

ARTICLE 4: Regarding relationships with other international agreements, Chair Gerbasi reported on a compromise formulation involving a negotiated package on Article 4 and Article 19.4(d) on subsidies. He proposed deleting Article 4 and inserting preambular language: recognizing that international agreements relevant to PGR are mutually supportive; affirming that nothing in this treaty shall affect the rights and obligations of the Contracting Parties under other international agreements; and understanding that the above recital is not intended to create a hierarchy between this treaty and other international agreements.

The EU, with ANGOLA and ETHIOPIA, proposed amending the three phrases: the first would refer to international agreements relevant to the treaty's objectives and to achieving sustainable development; the second would include nothing in the treaty being "interpreted as implying a change" in Parties' rights and obligations; and the third would state that the second phrase is not intended to subordinate the treaty to other international agreements. AUSTRALIA and the US opposed.

In the first phrase, CANADA noted that the treaty's objective does not refer to sustainable development. IRAN, with SYRIA supported retaining Article 4, and later proposed replacing its existing content with language on mutual supportiveness and reference to food security and conservation of PGRFA. The EU said it could accept preambular reference to food security and conservation. The US proposed deleting reference to objectives and using "should be" over "are." In the second phrase, AUSTRALIA, supported by the US, proposed inserting "in any way" after "implying." In the third phrase, AUSTRALIA and the US noted problems with "subordinate" and, with CANADA, supported reference to "hierarchy." EGYPT questioned the clarity of "hierarchy." The EU, supported by ARGENTINA, then proposed returning to the original compromise formulation for the third phrase.

Chair Gerbasi then proposed acceptance of text recognizing that this treaty and other international agreements relevant to this treaty should be mutually supportive with a view to sustainable agriculture and food security; affirming that nothing in this treaty shall be interpreted as implying in any way a change in the rights and obligations of the Parties under other international agreements; and understanding that the above recital is not intended to create a hierarchy between this treaty and other international agreements.

The EU expressed a reservation on the text.

ARTICLE 13.3(d): CUBA, on behalf of the G-77/CHINA, reported on regional consultations and presented text stating that recipients shall not claim any IPR that limit the facilitated access to PGRFA, or their genetic parts or components, received from the MS, unless they are the result of innovative modifications. CANADA and the US opposed, noting that farmers' varieties, landraces and breeding lines all result from innovations. The EU reiterated support for the second option in the text stating that modified PGRFA may be the object of IPR provided that criteria for such rights are met.

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Chair Gerbasi proposed accepting the first option in the text, stating that recipients shall not claim any IPR that limit facilitated access to PGRFA, or their genetic parts or components, in the form received from the MS. ARGENTINA, BRAZIL and URUGUAY agreed. The US expressed preference for yesterday's proposal from Australia. Regarding overall support for Chair Gerbasi's proposal, a hand count revealed that ANGOLA, AUSTRALIA, CANADA, IRAN and the US opposed it, while many more opposed the second option as supported by the EU. Some opposed both options.

The EU, with SWITZERLAND and the US, preferred that the two options contained in the draft treaty be kept on the table until the last minute. SWITZERLAND and the US also supported the provision's deletion. Chair Gerbasi noted that reaching agreement at the Conference would be difficult if the Working Group could not reach consensus, as the Conference would not allow for discussion on the issue.

After a break for informal consultations, the G-77/CHINA and the EU agreed to Chair Gerbasi's proposal. The US noted that it could not accept the formulation and requested that the option for deleting the provision be retained. Chair Gerbasi noted that he would eliminate the second option in the existing text, and provide the Conference with the choice of accepting the first option or deleting the entire provision. JAPAN expressed concern regarding the extent and cases where IPR over PGRFA are protected. IRAN also expressed concern that the text could contribute to the depletion of PGRFA within the MS and place restrictions on access.

ARTICLE 19.4(d): Regarding the package deal with Article 4, Chair Gerbasi noted compromise text on Article 19.4(d) stating that financial resources shall not be used to ends inconsistent with this treaty, in particular in areas related to international trade in commodities. The EU accepted the text. The US noted the need to consult with its capital. CANADA proposed a grammatical rephrasing of the text.

ARTICLE 20.2: Chair Gerbasi noted issues regarding Article 20.2, which states that all decisions by the Governing Body shall be taken by consensus. He highlighted the recommendation by the FAO's Committee on Constitutional and Legal Matters to add "unless by consensus another method of arriving at a decision on certain measures is reached." CANADA and NORWAY supported the addition. BRAZIL proposed that decisions on Articles 24 (Amendments of the Treaty) and 25 (Annexes) shall always require consensus. A number of developing countries supported both suggestions. JAPAN preferred that all decisions be taken by consensus, but in a spirit of cooperation, agreed to the text.

LIST OF CROPS: During an evening session, Chair Gerbasi opened discussion on the list of crops in Annex I. The EU proposed adding a new article stating that the MS shall also include, after five years following the treaty's entry into force, crops listed in Appendix E as agreed at the sixth Extraordinary Session of the CGRFA, provided that the funding strategy and the standard MTA have been adopted.

ANGOLA, BRAZIL, CHINA, COLOMBIA, CUBA, INDIA, IRAN and NAMIBIA highlighted the lack of agreement on IPR; stressed successful review of the treaty's financial mechanism, benefit-sharing provisions and standard MTA before expanding the list; generally recognized the need for periodic updates; and opposed creation of a new article.

NORWAY, POLAND and the US noted that crops essential to food security omitted from the list were of little economic interest to developed countries and questioned why developing countries were acting against their own interests. The CGIAR highlighted the importance of tropical forages, groundnuts and soybeans to food security and said their omission would result in reallocation of

research funding. The ETC GROUP said that the current list was "shameful." BRAZIL, CUBA and IRAN responded that distorted trade policies were equally disgraceful and had greater impact on food security. ANGOLA, BRAZIL, INDIA and IRAN emphasized that concern over ensuring the treaty's successful implementation should not be misconstrued as opposition to future expansion of the list.

After consultations, the EU proposed new text in Annex I calling for a biannual review of the list with a view to its expansion based on crops in Appendix E. COLOMBIA, with INDIA, proposed simply referring to the review of Annex I. IRAN, with CHINA and INDIA, proposed a review mechanism to examine the funding mechanism, benefit-sharing and IPR provisions. CANADA stated that countries would add to the list of crops when they realized their benefits. The US noted that governing bodies generally review the functioning of an agreement as a matter of course.

The G-77/CHINA proposed text on a periodic review of Annex I provided that the funding strategy, benefit-sharing measures and IPR practices have been implemented to the Parties' satisfaction. The EU suggested: including the provision in the existing resolution; referring to Appendix E; and deleting reference to IPR. IRAN and the PHILIPPINES supported review of IPR. The US proposed referencing facilitated access provisions. CANADA and the US questioned the need to satisfy all Parties on implementation issues before reconsidering the list.

After regional consultations, the G-77/CHINA presented a reformulation of their original proposal. The EU rejected the proposal, stating that none of its concerns had been incorporated.

The EU also requested that Chair Gerbasi's report to the Council include in Annex I bracketed reference to tropical forages and all crops in Appendix E. Chair Gerbasi refused.

NEW PROPOSALS: The US proposed two additional provisions, which were not considered. The first states that nothing in the treaty shall be construed to prevent a Party from taking action necessary to protect its security interests. The second addressed means to access PGRFA in Annex I for purposes outside the scope of the treaty, under mutually agreed terms and without the right to facilitated access.

FAO COUNCIL

In the afternoon, Chair Gerbasi reported to the FAO Council on the Working Group's progress, noting the need for additional time. The US asked how the Working Group's results would be included in the Council's report. Sjarifudin Baharsjah, Independent Chair of the FAO Council suggested, with agreement from Chair Gerbasi, that the group's results be presented to Council on Thursday morning for comment and the Council would forward these results to the Conference for adoption.

IN THE CORRIDORS

Reintroduction of discussions on the list once again had the group lamenting divergencies between political discourse and reality. As the issue broadened to the reevaluation of the treaty's most substantive provisions, many signalled that good faith in the process had all but disappeared. Delegates hope that the FAO Conference will resolve outstanding differences, but following Chair Gerbasi's statement that the Conference would not negotiate the issues, some say a vote may be inevitable.

THINGS TO LOOK FOR

FAO COUNCIL: The Council will meet at 10:00 am in the Red Room, where it will consider the Working Group's report.