



CGRFA-EX6 HIGHLIGHTS:

25-26 JUNE 2001

The sixth extraordinary session of the Commission on Genetic Resources for Food and Agriculture (CGRFA) opened on Monday, 25 June 2001, at FAO headquarters in Rome. In a brief morning Plenary, delegates heard opening statements, considered the agenda and organizational matters, and adjourned for the day to allow for regional consultations. The working groups on the list of crop genera and definitions met informally in the evening.

On Tuesday, 26 June 2001, delegates met in parallel sessions of the Plenary and Committee of the Whole (COW). Plenary considered and concluded discussion of 10 articles. The COW held general discussion on ensuring the IU's autonomy under Article XIV of the FAO Constitution and began considering institutional issues. The working groups on the list of crops and on definitions met in the late evening.

OPENING PLENARY

CGRFA Chair Amb. Fernando Gerbasí (Venezuela) opened the session and reported that the 120th FAO Council meeting, held from 18-23 June, had recognized a number of unresolved substantial issues, and underscored the need for consensus. FAO Assistant Director-General Louise Fresco urged delegates to conclude negotiations on the IU before these are pre-empted by parallel fora.

ORGANIZATIONAL MATTERS: Chair Gerbasí introduced, and delegates adopted, the session's agenda (CGRFA/Ex-6/01/1). The Commission then elected by acclamation Andrée Sontot (France) as Rapporteur. On organization of work, Chair Gerbasí proposed that the Plenary deal with Articles 1-18 and the COW with Articles 19-32 of the Chairman's Simplified Text (CGRFA/Ex-6/01/2). The working groups on the list of crops and on definitions would meet in evening sessions. The EUROPEAN REGION, requested, and delegates agreed, to admit non-participant countries as observers in the working groups. Chair Gerbasí highlighted the question of the IU's legal basis, outlined the different options and urged regional groups to discuss the issue and inform him of their decisions by Monday afternoon.

A representative of the Convention on Biological Diversity (CBD) Secretariat drew attention to CBD COP-5 decisions recognizing the IU's importance in the CBD's implementation, and noted the CBD COP's willingness to consider a decision by the FAO Conference that the IU become a legally-binding instrument with strong links to both the FAO and the CBD.

PLENARY

Chair Gerbasí opened the session, calling for general comments on the text. GRAIN highlighted food security over narrow trade interests, emphasized the central role of farming communities, and reinforced free access and exchange of PGRFA. An INDUSTRY representative supported more effective use of the IU system to ensure food security and flow of benefits to access

providers. During negotiations, delegates accepted Articles 3 (Scope), 14 (Global Plan of Action), and 16 (International Plant Genetic Resources Networks) without comments.

ARTICLE 1 (OBJECTIVES): Regarding the IU's objectives of conservation and sustainable use of PGRFA and fair and equitable benefit-sharing (Article 1.2), delegates discussed the IU's link with the CBD and FAO. The US proposed deferring debate pending resolution of the relationship of the IU to FAO Article XIV. Many supported the existing text. The EU noted that the general language would not be affected by decisions on the IU's legal basis. ETHIOPIA, with AFGHANISTAN, stated that the IU's link with the CBD is a substantive, not an administrative matter. Delegates agreed to retain the Chairman's text.

ARTICLE 5 (CONSERVATION, EVALUATION OF PGRFA): In the chapeau on promoting an integrated approach to the exploration, conservation and sustainable use of PGRFA, the EU proposed, while many opposed, adding reference to the CBD. The text was agreed with no such reference.

In 5.1(c), on supporting farmers and local communities' efforts to manage their PGRFA, ETHIOPIA, with others, suggested language supporting *in situ* conservation of farmer's varieties. Following discussion recognizing lack of consensus on definition of "landraces/farmers' varieties," ETHIOPIA proposed, and all supported, alternate language on farmers and local communities' efforts to manage and conserve on-farm their PGRFA.

ARTICLE 6 (SUSTAINABLE USE OF PGRFA): Regarding promoting sustainable use of PGRFA (Article 6.1), delegates agreed to replace reference to legal "arrangements" with "measures."

In Article 6.2(a), on development and maintenance of diverse farming systems, AUSTRALIA suggested replacing "agricultural policies" with "fair and market-oriented policies." ETHIOPIA said this failed to recognize the role of non-market oriented farmers, local peoples and NGOs in maintaining agricultural biodiversity and producing innovations. Decision was deferred pending discussion on Article 4 (Relationship of the IU with Other International Agreements).

With regard to Article 6.2(b), on strengthening research that enhances biodiversity, CUBA, with ARGENTINA and URUGUAY, proposed replacing reference to research that preserves biodiversity. ZAMBIA suggested reference to research that promotes conservation. HAITI stated that conservation is addressed elsewhere in the text. NORWAY noted that biodiversity is not only used, but also created. The PHILIPPINES proposed, and all accepted, reference to research that enhances and conserves biodiversity. CANADA opposed reference to smallholder farmers who generate and use their own crops, suggesting text on farmers who use PGRFA. The PHILIPPINES suggested alternate language on farmers who generate and use their own varieties. With these changes, the text was agreed.

On Article 6.2(c), regarding promoting plant breeding efforts that strengthen capacity, delegates agreed to retain reference to varieties adapted to specific conditions.

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ARTICLE 7 (NATIONAL COMMITMENTS): In Article 7.2(d), on strengthening or establishing funding mechanisms, delegates debated the consistency of proposals with Article 18 (Financial Resources). MALAYSIA proposed, and all accepted, replacing the Chairman's text with language on implementing the funding strategy of Article 18. IRAN and AUSTRALIA noted that Article 18 is still pending.

ARTICLE 9 (FARMERS' RIGHTS): On farmers' rights, ETHIOPIA sought to ensure that the IU can be implemented at the national level, and noted links with Article 4. The text was agreed.

ARTICLE 17 (GLOBAL INFORMATION SYSTEM (GIS)): Concerning the GIS on PGRFA, CUBA and the EU suggested a clearer link between the GPA and the CBD's Clearing-House Mechanism (CHM). The EU proposed, and delegates agreed, to add text in 17.1 stating that in developing the GIS, cooperation would be sought with the CBD's Clearing-House Mechanism.

ARTICLE 18 (FINANCIAL RESOURCES): In Article 18.4(c), regarding a footnote on whether language on financial resources should be moved to Article 7, CANADA proposed, and all agreed, that it should remain in Article 18. ARGENTINA suggested, and delegates accepted, additional text on avoiding the creation of distorting subsidies. Discussion on 18.4(e), on financial benefits arising from Article 13.2(d), was deferred pending resolution of Article 13 (Benefit-sharing in the Multilateral System (MS)).

COMMITTEE OF THE WHOLE

AUTONOMY OF THE IU: Chair Francis Montanaro Mifsud (Malta) noted the COW's mandate to ensure maximum autonomy for the IU's Governing Body (GB), and to negotiate on the basis of text prepared by the legal working group. Regarding the IU's legal basis, most delegates supported the FAO Article XIV option, but underscored issues to be resolved to ensure its autonomy. Discussion focused on whether the FAO Council could disallow amendments to the IU by the GB. The need for autonomy for non-FAO members to be IU Contracting Parties was also stressed. BRAZIL noted the complex nature of Article XIV, and highlighted concerns about possible interference by non-Parties to the GB's right to make autonomous decisions. CANADA said the alternatives are equally complex, but BRAZIL noted the possibility of signing memoranda of understanding with either the FAO or CBD. In response to concerns raised by BRAZIL and INDIA, among others, the FAO Legal Office clarified that the GB's decisions do not require approval by the FAO Council or Conference. He said that, according to FAO non-binding guidelines (Part R of the FAO basic texts), amendments may be disallowed by the FAO Council in cases of inconsistency with its objectives, but a clause could be inserted to prevent such action. However, he said the FAO Council or Conference has virtually no control over a body once it is operational, raising concerns regarding the Council's action should the body "head off in an unknown direction." Following a question by Chair Montanaro Mifsud, the FAO Legal Office said there is no legal way for the FAO Council or Conference to influence the GB's work, although politically they could do so by passing resolutions. Discussion remained inconclusive, as the Legal Office is expected to provide the mandatory conditions to be fulfilled under Article XIV.

ARTICLE 19 (GOVERNING BODY): Delegates adopted the reformulation on establishment of the GB composed of all Contracting Parties (Article 19.1).

Article 19.2(a), on the GB's function of providing policy direction, monitoring and adopting recommendations was approved, while BRAZIL's proposal that decision making by consensus would be required, was bracketed. Delegates agreed to delete Article 19.2(b), on considering the state of PGRFA and its implications for world food security. Delegates approved Article 19.2(c), on the adoption of implementation plans and programmes. The US noted that decision making by consensus would be required.

Regarding Article 19.2(d), the function of adoption and review of the IU's funding strategy was deferred, pending resolution of Article 18 (Financial Resources). The US again noted that consensus would be required. Regarding Article 19.2(e), on adoption of the budget, the EU and US noted that consensus would be required. Discussion focused on the meaning of consensus, and

whether it would be required from all Contracting Parties or from those present at the GB's meeting, in which case a quorum provision would be necessary. The provision was left pending. Article 19.2(f), on establishment of subsidiary bodies, was examined with reference to the IU's required autonomy, and left pending. Regarding Article 19.2(g), on establishment of a mechanism for utilizing financial resources, reference to consensus requirement was bracketed. The US called for inclusion of language on the availability of funds.

Regarding Article 19.2(h), on cooperation with relevant international organizations, the EUROPEAN REGION, with CANADA, suggested including reference to the CBD COP. The Region also proposed two new functions for the GB: to consider relevant decisions of the CBD COP and other international bodies; and to inform those bodies on the IU's implementation. Delegates agreed to cross-reference Articles 19.2(i), on consideration and adoption of the amendments to the IU, and 19.2(j), on the annexes, to pending Articles 22 and 23 on IU and annex amendments. Delegates accepted Article 19.2(l), on performance of functions "for" fulfillment of IU objectives.

Regarding voting procedure, Article 19.5, the EUROPEAN REGION, supported by others, proposed addressing the issue in the Rules of Procedure following the IU's completion. Following extensive discussion, delegates accepted the provision envisaging that all decisions would be agreed by consensus, and by a two-thirds majority only as a last resort. They also agreed on Article 19.7, regarding adoption and amendment by the GB of its Rules of Procedure by consensus.

The US suggested a new subparagraph 19.5 *bis* stating that consensus would be required for all GB decisions relating to: acquisition, utilization or allocation of financial resources; agreements under Article 15 with CGIAR Centres or other international institutions and their implementation; dispute settlement procedures; benefit-sharing; and compliance. INDIA, with ARGENTINA, suggested adding amendments to the IU and the annexes. The EUROPEAN REGION asked for time to consider the US proposal.

ARTICLE 22 (AMENDMENTS TO THE UNDERTAKING): Delegates agreed that proposed amendments to the IU shall be communicated to the Secretariat, not to the FAO Director-General (Article 22.1).

Article 22.3: No agreement was reached on whether amendments would require consensus, or subject as a last resort to a two-thirds majority. BRAZIL noted inconsistency with the proposed subparagraph 19.5 *bis*, as all major decisions, except the functioning of the MS, would require consensus.

IN THE CORRIDORS

Delegates exuded varied feelings after their first two days of work. A majority from the Plenary was jubilant over rapid progress and spirit of cooperation, although some were cautious, recognizing more difficult issues waiting on the horizon. The COW was said to have provided more "confusion than content." That delegates were tight-lipped about the nature of discussion or progress being made in informal consultations held in a "Friends of the Chair" contact group that began meeting Monday evening, is an indicator of the precarious nature of the discussions. The group is said to be exploring possibilities on how to resolve outstanding key issues on coverage, benefit-sharing, IPR and *ex situ* collections.

THINGS TO LOOK FOR TODAY

PLENARY: Plenary will convene from 9:30 am to 12:30 pm and from 2:30-5:30 pm in the Red Room to begin consideration of issues relating to the MS and to the *ex situ* collections of PGRFA held by the IARCs of the CGIAR Centres.

COMMITTEE OF THE WHOLE: The COW will meet from 9:30 am to 12:30 pm and from 2:30-5:30 pm in the Malaysia Room to continue consideration of the functions of the GB, new proposals introduced on Tuesday and submissions requested of the Legal Office, after which it will take up other institutional issues.

INFORMAL WORKING GROUPS: The Working Groups on the list of crops and on definitions will meet for informal consultations at 7:30 pm.