



## CGRFA-EX6 HIGHLIGHTS:

### WEDNESDAY, 27 JUNE 2001

Delegates met in parallel sessions of the Plenary and Committee of the Whole (COW). In the brief morning Plenary, delegates addressed Articles 10 and 13, relating to the Multilateral System (MS) of Access and Benefit-sharing, and then adjourned for the day to allow for regional consultations. The COW continued consideration of institutional provisions in morning, afternoon and evening sessions. The working group on the list of crops continued debate on inclusion of outstanding crop genera and forages in an evening session.

#### PLENARY

Article 10 (MS of Access and Benefit-sharing) was agreed without comment.

**ARTICLE 13 (BENEFIT-SHARING IN THE MS):** Provisions 13.1 through 13.2(d)(i), regarding exchange of information, access to and transfer of technology, and capacity-building, were approved without comment. Discussion on Articles 13.2(d)(ii)-(iv) was deferred pending the outcome of discussions in the "Friends of the Chair" contact group. Chair Amb. Fernando Gerbasi (Venezuela) then informed delegates that the working group on use of terms was close to final agreement, and announced that the Plenary would be suspended for the rest of the day. The Intermediate Technology Development Group emphasized their concern to ensure free flow of plant genetic resources for food and agriculture (PGRFA) and real benefits for rural livelihoods and food security. They expressed hope that the IU would be agreed with the inclusion of a significant list of crops and forages.

#### COMMITTEE OF THE WHOLE

A number of articles were discussed briefly and adopted or left pending. Article 23, on amendments of Annexes, was bracketed for the Plenary's consideration, pending the outcome on the content of the list of crops. It was agreed that although Article 25, on member organizations of the FAO, is a standard provision, it may require revision for members outside the FAO. Regarding Article 27, on reservations, delegates discussed various technical aspects, drawing comparisons with other instruments. Delegates agreed to replace "Director-General" with "Depositary" in Article 29, for consistency with discussion on other provisions. Article 30, on termination, was adopted with the addition of a reference to notification of termination. Despite US opposition, the RUSSIAN FEDERATION proposed, and Chair Montanaro Mifsud acknowledged the need, to include and bracket "Russian" in Article 32 (Languages). The article was renamed "Authentic Texts."

**ARTICLE 19 (GOVERNING BODY):** Article 19.3 was accepted following the Legal Office's explanation, in response to the US, that Article 3.2 of the FAO Constitution allows authorized alternates, associates and advisors to vote as substitutes of delegates. Regarding Article 19.6, on the rights of regional economic

integration organizations, delegates accepted the text, pending a decision on the IU's institutional framework. Delegates amended and adopted Article 19.7, which now provides for the Governing Body (GB) to "adopt and amend by consensus, as required, its own Rules of Procedure and financial rules." The reference on ensuring consistency with the IU is bracketed.

To allow greater flexibility in constituting special sessions, delegates accepted a EUROPEAN REGION proposal to substitute Article 19.10 with the footnoted alternative from Prior Informed Consent Convention Article 18.3, so that special sessions are constituted upon the written request of one delegation with support from one-third of the Contracting Parties, or as deemed necessary by the GB.

Delegates agreed to Articles 19.4 on participation of the UN and its specialized agencies, 19.8, on the necessity for a quorum for the GB's sessions and 19.11, on election of the Bureau. A US-proposed Article 19.5 *bis*, outlining issues requiring consensus, is also pending.

**ARTICLE 20 (SECRETARIAT):** Regarding Article 20.1, on appointment of the GB's Secretary by the FAO Director-General with the GB's approval, delegates bracketed the reference to appointment by the FAO Director-General pending final decision on the IU's institutional framework.

Under Article 20.2, on the Secretariat's functions, delegates agreed to refer to the GB's Secretary in the body of the article and retain Secretariat in the title. Article 20.2(a), on provision of administrative support for the sessions of the GB and subsidiary bodies, was approved with a minor amendment. Articles 20.2(b), on assistance to the GB in carrying out its functions, 20.2(c), on report of activities to the GB, and 20.4, on communication of GB's decisions and information received by parties to all Contracting Parties, were approved without comment.

Regarding Article 20.5, on providing documentation for the GB's sessions, discussion focused on whether documentation would be provided in the FAO languages, or the UN languages, which include Russian. The RUSSIAN FEDERATION stressed that reference to the FAO languages preempted the decision on the IU's legal basis. Both alternatives are bracketed. Article 20.6, on cooperation with other organizations and treaty bodies, including the CBD Secretariat, was approved with editorial changes.

**ARTICLE 21 (SETTLEMENT OF DISPUTES):** On Article 21, ARGENTINA expressed preference for the more concise Chairman's Simplified Text, but Chair Montanaro Mifsud noted the article lacks the reference to the Annexes. Both texts are bracketed. AUSTRALIA said Article 21 lacks provisions for independent arbitration processes that can be binding on disputing Parties, especially if Parties are unevenly matched, in light of the nature of the issues under negotiation such as royalty payments, and protection of legal rights and PGRFA. Delegates agreed that Australia should develop the proposals for consideration by the COW. Regarding Article 21.3, on choosing the preferred means of

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compulsory dispute settlement, the RUSSIAN FEDERATION proposed, and delegates agreed, to substitute "an FAO Member State" with "Contracting Parties." Noting that this article was largely derived from Article 27 of the Convention on Biological Diversity, the EUROPEAN REGION suggested harmonizing IU Article 21.1, on dispute resolution by negotiation, with CBD Article 27.1, by stating "in the event of a dispute between Contracting Parties concerning the interpretation or application of this Undertaking, the Parties concerned shall seek solutions by negotiation." Article 21 of the Chairman's Simplified Text, and of the legal working group (Appendix I), as amended by the European Region, were bracketed.

**ARTICLE 22 (AMENDMENTS OF THE IU):** Regarding Article 22.1, on proposal of amendments, delegates agreed to delete bracketed language on communication of the amendments to the FAO Director-General or the Secretariat. Article 22.2, on adoption of amendments by the GB and communication to parties, was approved with minor changes. Article 22.3, on voting procedures for amendments, was left pending for consideration by Plenary. The two alternatives include: agreement by consensus and by two-thirds majority as a last resort; and agreement by consensus only.

Article 22.4, on the amendments' coming into force, remained pending for further consideration of the condition of acceptance by two-thirds of the Contracting Parties. In Article 22.5, on deposition of instruments by FAO Member Organizations, reference to FAO was bracketed pending decision on the IU's legal basis.

**ARTICLE 24 (ACCEPTANCE):** Regarding Articles 24.1, on the IU being open to acceptance to FAO Members, and 24.2, on admission of new parties by the GB by a two-thirds majority, the Legal Office said that deletion would not contradict Article XIV of the FAO Constitution and would preserve the IU's autonomy. Discussion then focused on the two existing procedures of acceptance, and of signature and ratification. The Legal Office stressed that any of the procedures could be used. Following a lengthy discussion, he was asked to draft alternative text on signature and ratification.

Regarding Article 24.3, on participation by non-FAO Members to the GB with proportionate share in the Secretariat's expenses, some delegates proposed its deletion. Others opposed, asking for time for consideration. The provision remains bracketed.

Regarding Article 24.4, on deposition of an acceptance instrument with the Director-General of the FAO, BRAZIL suggested deposition with the Secretary-General of the United Nations, but the Legal Office noted inconsistency with an Article XIV Agreement. Delegates bracketed the alternatives.

**ARTICLE 26 (ENTRY INTO FORCE):** Discussion of this article was left pending, to await the Legal Office draft of Article 24 on acceptance. On the required number of instruments for entry into force, the Chair suggested 30. The UK, ARGENTINA and URUGUAY concurred, but the article will be reconsidered for consistency with Article 24 on acceptance.

**ARTICLE 28 (NON-PARTIES):** URUGUAY noted that the existing text discriminates against non-FAO members. BRAZIL suggested retaining brackets pending decision by the "Friends of the Chair" contact group. Chair Montanaro Mifsud concurred and deferred discussion.

**ARTICLE 30 (TERMINATION):** The US, with AUSTRALIA, suggested reference to financial implications in the text, while ARGENTINA, the UK and TANZANIA proposed, and delegates agreed, to reference the proposal in the financial rules.

**ARTICLE 31 (DEPOSITARY):** The UK, with BRAZIL and the RUSSIAN FEDERATION, noted that the functions of the Depositary would be identical to those clearly outlined in the Vienna Convention and covered by CBD Article 41, and proposed deletion of text in 31(a)-(c). TANZANIA agreed, but proposed adding language to Article 30 to clarify the duties of the Depositary. All agreed to delete 31(a)-(c), but the issue of who shall serve as Depositary remains pending.

**ANNEX II, PART I (ARBITRATION):** Regarding outstanding references in the text, the UK called for clarification and consistency in areas referring to "Contracting Parties" and "parties to the dispute." CHILE preferred consistency with CBD

language on "parties to the dispute." The Legal Office noted the need to define Contracting Parties. ARGENTINA suggested a closer look at arbitral tribunal members. Regarding whether to substitute reference to the UN Secretary-General with reference to the FAO Director-General, the group agreed to defer decision on this matter pending resolution of who shall serve as Depositary.

Chair Montanaro Mifsud then called for comments on a Legal Office paper on legal questions relating to FAO Article XIV. The US questioned the appointment of the IU Secretary by the GB. The Legal Office clarified that if the Secretary was to be an FAO staff member, the FAO Director-General must be involved. The EUROPEAN REGION circulated a proposal on monitoring and reporting and on compliance. The proposal on monitoring and reporting states that each Contracting Party shall monitor the implementation of its obligations under the IU, and shall, at intervals to be determined by the GB, report to the GB on measures that it has taken to implement the IU. The proposal on compliance states that the GB shall [at its first session/as soon as practicable] consider and approve operative and effective procedures and institutional mechanisms to promote compliance with the provisions of the IU and to address cases of non-compliance. These procedures and mechanisms shall include provision to offer advice or assistance, where appropriate. This proposal will be discussed in parallel with the G-77/China proposal on compliance, included as Appendix 4 of (CGRFA/Ex-6/01/2).

### INFORMAL CONSULTATIONS

On Wednesday evening, the working group on the list of crops continued discussion. Reservations were expressed on the onion family (*Allium* spp), oil palm (*Elaeis*), soybean (*Glycine*) and tomato (*Lycopersicon*), with some delegates needing more time to consider these crops. Delegates were frustrated at the lack of consensus on crops that some considered to be of critical importance in global food security, prompting some to call for greater regional and inter-regional cooperation and flexibility. It was agreed that discussion might move forward more effectively if regions submit their reservations and lists of additional crops to the Co-Chairs prior to further discussion.

The working group on the use of terms concluded its work on Tuesday evening, 26 June. Agreement was reached on definitions of *in situ* conservation, *ex situ* conservation, genetic material, variety, *ex situ* collection, centre(s) of origin and on centre of crop diversity. The definition of "plant genetic resources for food and agriculture" was left pending, as no agreement has been reached on whether PGRFA include genetic parts or components.

### IN THE CORRIDORS

Negotiations Wednesday began to expose issues under consideration by the "Friends of the Chair" with several deferments, pending this Group's outcome. The "Friends of the Chair" contact group was said to be considering a new proposal that would effectively replace IPR with commercialization as a trigger mechanism for monetary benefit-sharing. Delegates meeting in informal groups exchanged opinions on whether such a change would be accepted, and if so, who would gain or lose. One participant said it felt like watching a side show while waiting for the main event to begin. Meanwhile, the working group debating the list of crops has become embroiled in political posturing over a few major food crops, prompting one participant to declare that delegates were "cooperating to starve each other to death." The possibilities for agreement remain open, but all are aware that time is running out.

### THINGS TO LOOK FOR TODAY

**PLENARY:** The Plenary reconvenes from 9:30 am to 12:30 pm and from 2:30-5:30 pm in the Red Room, and is expected to address Articles 11-13 on coverage, facilitated access and benefit-sharing under the MS.

**COMMITTEE OF THE WHOLE:** The COW will meet from 10:00 am to 12:30 pm and from 2:30-5:30 pm in the Green Room to review the work done, resolve outstanding issues and consider new proposals on compliance and on monitoring and reporting.