



HIGHLIGHTS FROM THE NEGOTIATIONS ON THE INTERNATIONAL UNDERTAKING THURSDAY, 1 NOVEMBER 2001

The Council of the UN Food and Agriculture Organization (FAO) convened this morning at FAO headquarters in Rome to review the progress report from the Open-ended Working Group on the International Undertaking on Plant Genetic Resources for Food and Agriculture (IU). In a morning session, delegates raised concerns on the outstanding issues and the process for forwarding the text to the FAO Conference. Drafting committees met throughout the day to develop the Council's reports. In a late evening/early morning session, the Council met in a closing Plenary to adopt the reports from the Drafting Committee.

FAO COUNCIL

REPORT ON THE DRAFT TREATY: Sjarifudin Baharsjah, Independent Chair of the FAO Council, requested a report on the Working Group's progress. Amb. Fernando Gerbasi (Venezuela), Chair of the Open-ended Working Group, presented a draft text for the International Treaty on Plant Genetic Resources for Food and Agriculture as well as a resolution on the treaty's adoption and interim arrangements for its implementation. He highlighted bracketed text on definitions of plant genetic resources for food and agriculture (PGRFA) and genetic material in Article 2 (Use of Terms) and around a provision on the application of intellectual property rights (IPR) in Article 12 (Facilitated Access). He noted that the comments from the FAO's Committee on Constitutional and Legal Matters had been incorporated and that no new text had been added.

Numerous delegates thanked Chair Gerbasi for his untiring diplomatic efforts and José "Pepe" Esquinas-Alcázar for his work with the Commission on Genetic Resources for Food and Agriculture (CGRFA). Several countries urged adoption of a workable treaty by consensus. CUBA, on behalf of the G-77/CHINA, with a

number of delegations, requested that Chair Gerbasi present the draft treaty to the FAO Conference for adoption. Several delegates requested further discussion to resolve outstanding issues, and BRAZIL highlighted ongoing informal efforts to address them.

The US requested a record of concerns regarding: absence of provisions on essential security and terms of access to crops in Annex I intended for uses beyond the treaty's scope; opposition to text on definitions and IPR in Articles 2 and 13 respectively; and the unacceptability of the list of crops, particularly the absence of soybeans, peanuts and tomatoes.

NORWAY, on behalf of the EUROPEAN REGION, also highlighted the deficiency of the list of crops and requested: inserting bracketed reference in Annex I to the crops in Appendix E of the sixth Extraordinary Session of the CGRFA (ExCGRFA-6) and tropical forages; changing preambular text to recognize that the treaty and other international agreements "are" mutually supportive; and deleting preambular reference to "in any way" regarding nothing in the treaty implying a change in rights and obligations under other international agreements.

ARGENTINA opposed the EU proposal for the preamble and said they could not continue to negotiate this in good faith. BRAZIL, supported by many, opposed suggestions that would require reopening text and noted the paradox that while food is abundant, access to it is restricted. BRAZIL with COLOMBIA, INDIA and IRAN stated that crops on the list represent gifts by countries to the rest of the world and access conditions should be ensured before the list is extended. AUSTRALIA agreed that the EU's attempt to introduce new text was inappropriate, and called for moving forward with good will. ANGOLA assured the Council that with implementation of the treaty, the list of crops could be increased. MEXICO noted the need to expand the list of crops in a balanced manner, specifically highlighting sugarcane and soybeans, and expressed concern over the possible development of parallel mechanisms for exchanging PGRFA. NORWAY objected to statements dividing countries into providers and users of

This issue of the *Earth Negotiations Bulletin* © <enb@iisd.org> is written and edited by Tonya Barnes <tonya@iisd.org> and Stas Burgiel <stas@iisd.org>. The Operations Manager is Marcela Rojo <marcela@iisd.org> and the On-Line Assistant is Diego Noguera <diego@iisd.org>. The Editor is Pamela S. Chasek, Ph.D. <pam@iisd.org> and the Director of IISD Reporting Services is Langston James "Kimo" Goree VI <kimo@iisd.org>. The Sustaining Donors of the *Bulletin* are the Netherlands Ministry of Foreign Affairs, the Government of Canada (through CIDA), the United States (through USAID), the Swiss Agency for Environment, Forests and Landscape (SAEFL), the United Kingdom (through the Department for International Development - DFID, and the Foreign & Commonwealth Office), the European Commission (DG-ENV), the Danish Ministry of Foreign Affairs, and the Government of Germany (through the German Federal Ministry of Environment - BMU, and the German Federal Ministry of Development Cooperation - BMZ). General Support for the *Bulletin* during 2001 is provided by the Ministries of Foreign Affairs and Environment of Finland, the Government of Australia, the Ministry of Environment and the Ministry of Foreign Affairs of Sweden, the Ministry of Foreign Affairs and Trade of New Zealand, the Ministries of Foreign Affairs and Environment of Norway, Swan International, and the Japan Environment Agency (through the Institute for Global Environmental Strategies - IGES). Specific funding for coverage of this meeting has been provided by the UN Food and Agriculture Organization. The *Bulletin* can be contacted by e-mail at <enb@iisd.org> and at tel: +1-212-644-0204; fax: +1-212-644-0206. IISD can be contacted by e-mail at <info@iisd.ca> and at 161 Portage Avenue East, 6th Floor, Winnipeg, Manitoba R3B 0Y4, Canada. The opinions expressed in the *Earth Negotiations Bulletin* are those of the authors and do not necessarily reflect the views of IISD and other funders. Excerpts from the *Earth Negotiations Bulletin* may be used in non-commercial publications only and only with appropriate academic citation. For permission to use this material in commercial publications, contact the Director of IISD Reporting Services. Electronic versions of the *Bulletin* are sent to e-mail distribution lists and can be found on the Linkages WWW server at <http://www.iisd.ca>. The satellite image was taken above Rome ©2001 The Living Earth, Inc. <http://livingearth.com>. For information on the *Earth Negotiations Bulletin* or to arrange coverage of a meeting, conference or workshop, send e-mail to the Director, IISD Reporting Services at <kimo@iisd.org>.



PGRFA, expressed disappointment with the lack of crops on the list and said that food-insecure populations in the poorest countries would be most affected.

AUSTRALIA highlighted the need for resolution or deletion of Article 12.3(d) on IPR-related issues, expansion of the list of crops and a realistic material transfer agreement based on equitable benefit-sharing. CANADA stressed that as many countries as possible must work together to agree to and implement this treaty; expressed concern on the consistency of IPR regimes and on the paucity of crops essential to world food security included in the current list; noted absence in this text of a clear relationship to other international agreements; and opposed reopening text in the preamble. JAPAN expressed concern over the ambiguity of the PGRFA definition and the scope of innovation.

COLOMBIA and IRAN stated that provisions on IPR should not contribute to the depletion or inhibit the exchange of PGRFA under the Multilateral System. IRAN also noted that provisions on IPR are not in line with the treaty's objectives; requested that the Conference consider the treaty's relationship with other international agreements, preferring that it not be subordinate to any other international treaties; and highlighted the contributions of the Near East region to PGRFA. EGYPT stressed support for developing country concerns on IPR, and ETHIOPIA said that IPR and benefit-sharing should be approached with a view to food security. INDIA emphasized the critical balance of access, benefit-sharing and IPR. THAILAND highlighted the case of jasmine rice, which was accessed by US companies, improved upon and patented. COLOMBIA said the text is optimum for none but a compromise for all and highlighted unfair distribution of food crops as the main cause of poverty.

BULGARIA asked the FAO Legal Counsel to clarify the Conference's procedures and possible mechanisms to deal with bracketed language so that the resolution could be adopted by the Conference to accommodate all Member States. FAO Legal Counsel said the Conference must find a way to remove the brackets, adding that in the case of a vote, a two-thirds majority is required to approve a decision.

Chair Baharsjah noted that agreement was close, but that clean text for the Conference would not be possible. He announced that Chair Gerbasi would present the Working Group's report and the Conference would consider it as it is. He thanked Chair Gerbasi and "Pepe" Esquinas-Alcázar again, and concluded discussion on this item.

CLOSING PLENARY: At 1:30 am on 2 November, Chair Baharsjah convened the final Plenary. Nahi Al-Shibani (Syria), Chair of the Drafting Committee, introduced the meeting's report as contained in CL 121/REP/1-10. Document CL 121/REP/10 addresses the Draft International Undertaking on Plant Genetic Resources with seven paragraphs detailing Chair Gerbasi's intro-

duction of the Working Group's results to the Council and its subsequent discussion on the topic. Al-Shibani noted that the results were carefully balanced and had been reached by consensus. Chair Baharsjah requested approval of the reports *en bloc*.

On CL 121/REP/10, the EU questioned a phrase noting that "a concern" was expressed about the omission of some major crops from the list, stating that in fact several countries from several regions had addressed this issue. The EU also noted that no reference was made to the list of crops contained in Appendix E of the ExCGRFA-6 report. Chair Baharsjah said that this concern would be included in the verbatim record. The document, with minor editorial amendments, was adopted *en bloc* with the other reports.

Chair Baharsjah then adjourned the Plenary at approximately 2:00 am.

IN THE CORRIDORS

As the official wheels churned for moving the bracketed text of the treaty through the FAO Council to the Conference, informal discussions continued throughout the day as delegates sought areas for consensus in the 26th hour. The Drafting Committee responsible for generating the report of the morning's Council session became mired in their work, from afternoon through evening as they toiled behind closed doors, reiterating positions and red-bating issues in crafting what was simply to be a record of the Council's discussions.

Meanwhile, in the corridors and in the empty Plenary hall delegates waited, hour after hour, exchanging opinions and wondering if they should—or could—rearrange their scheduled departures and hang on through next week, as discussions in the Conference appear likely. Fatigued and uncertain about when to expect the Council's call to order, a few traded points on the best places to catch some sleep.

Opinions generally suggest that agreement on a review mechanism for examining the list and the treaty's provisions is a definite possibility, while positions on IPR seem intractable. Most acknowledge the IPR issue as the most contentious point remaining, with some conjecturing on the possibilities and implications of deleting the text in Article 12.3(d). Many recognize that this would not resolve the underlying conflict, although it might shift the current impasse into the future debate on the terms of the standard material transfer agreement. Others noted it could start unraveling the whole agreement by bringing the delicate balance on commercial benefit-sharing into question.

THINGS TO LOOK FOR

FAO CONFERENCE: The Conference will convene at 10:00 am in the main conference hall to hear opening statements. It is expected that issues regarding continuation of negotiations on the draft treaty will be raised under discussion on the agenda.