



# Earth Negotiations Bulletin

A Reporting Service for Environment and Development Negotiations

Vol. 9 No. 68 Published by the International Institute for Sustainable Development Monday, 26 May 1997

## SEVENTH SESSION OF THE COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE: 15-23 MAY 1997

The Seventh Session of the Commission on Genetic Resources for Food and Agriculture (CGRFA-7) was held at FAO Headquarters in Rome from 15-23 May 1997. During the meeting, delegates continued negotiations on the revision of the International Undertaking on Plant Genetic Resources in harmony with the Convention on Biological Diversity. The Commission also established the mechanisms that will allow it to carry out its broadened mandate effectively, considered reports from FAO and international organizations, and addressed follow-up to the Fourth International Technical Conference on Plant Genetic Resources (ITCPGR-4), which was held in Leipzig, Germany, from 17-23 June 1996.

Two working groups addressed various aspects of the International Undertaking. The Working Group on Scope and Access worked on the principles and procedures that might underlie systems of access to plant genetic resources for food and agriculture (PGRFA). Progress on this issue since the last negotiating session was most clearly reflected by the fact that a vast majority of the participants agreed, in principle, to establish a multilateral system to facilitate access to PGRFA in an efficient, effective and transparent way. The Working Group on Farmers' Rights clarified positions as countries gained a better understanding of the precise objectives of various groups and the logical limits of those objectives. Given that the negotiations on the International Undertaking took up the bulk of substantive debate, it is not surprising that the Commission agreed to call for another extraordinary session devoted exclusively to the IU as a matter of first priority.

### A BRIEF HISTORY OF THE PROCESS

#### THE FAO GLOBAL SYSTEM

The FAO established the intergovernmental Commission on Plant Genetic Resources (CPGR) in 1983. Renamed the Commission on Genetic Resources for Food and Agriculture (CGRFA) in 1995, the Commission is currently comprised of the 151 member States of the FAO. The CGRFA coordinates, oversees and monitors the development of the Global System for the Conservation and Utilization of Plant Genetic Resources for Food and Agriculture, which is comprised of the Commission itself and the non-binding International Undertaking (IU) on Plant Genetic Resources, the rolling Global Plan of Action and International Fund

for Plant Genetic Resources (PGR), the World Information and Early Warning System (WIEWS), Codes of Conduct and Guidelines for the Collection and Transfer of Germplasm, the International Network of *Ex Situ* Collections under the auspices of the FAO, an international network of *in situ* conservation areas and crop-related networks.

**THE INTERNATIONAL UNDERTAKING:** The International Undertaking, the first comprehensive agreement on PGR, was established in November 1983, by FAO Conference Resolution 9/83. Its objective is to ensure that plant genetic resources — especially species of present or future economic and social importance — are explored, collected, conserved, evaluated, utilized and made available for plant breeding and other scientific purposes. It was originally based on the principle that PGR should be “preserved ... and freely available for use, for the benefit of present and future generations” as part of the common “heritage of mankind.” This principle, however, was subsequently subjected to “the sovereignty of States over their plant genetic resources” (FAO Resolution 3/91).

### IN THIS ISSUE

A Brief History of the Process .....	1
Report of CGRFA-7 .....	2
Revision of the International Undertaking .....	3
Scope and Access .....	3
Farmers' Rights .....	5
Plenary .....	7
Future Work of the Commission .....	7
Report of the International Technical Conference .....	8
Progress Report on the Global System .....	9
FAO's Programme on Genetic Resources for Food and Agriculture .....	9
Reports from International Organizations .....	9
Closing Plenary .....	9
A Brief Analysis of the IU Negotiations .....	10
Things to Look For .....	11

This issue of the *Earth Negotiations Bulletin* <enb@iisd.org> is written and edited by Aarti Gupta <aagupta@minerva.cis.yale.edu>, Désirée McGraw <desm@mindspring.com> and Tiffany Prather <tprather@vermontlaw.edu>. The Editor is Pamela Chasek, Ph.D. <pam@iisd.org> and the Managing Editor is Langston James “Kimo” Goree VI <kimo@iisd.org>. The sustaining donors of the *Bulletin* are the International Institute for Sustainable Development <reception@iisdpost.iisd.ca> and the Netherlands Ministry for Development Cooperation. General support for the *Bulletin* during 1997 is provided by the Overseas Development Administration (ODA) of the United Kingdom, the Ministry of Foreign Affairs of Denmark, the Ministry of Environment of Sweden, the European Commission (DG-XI), the Swiss Federal Office of the Environment and the United Nations Development Programme. The ENB can be contacted at tel: +1-212-644-0204; fax: +1-212-644-0206. IISD can be contacted at 161 Portage Avenue East, 6th Floor, Winnipeg, Manitoba R3B 0Y4, Canada; tel: +1-204-958-7700; fax: +1-204-958-7710. 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 other publications only with appropriate citation. Electronic versions of the *Bulletin* are sent to e-mail distribution lists (ASCII and PDF format) and can be found on the Linkages WWW-server at <http://www.iisd.ca/linkages/>. The satellite image was taken on 1997/04/24 23:06:49 UTC from 100000 km above New York City (40°40' N 73°58' W). Copyright © 1997 The Living Earth, Inc. <http://livingearth.com>. For further information on ways to access, support or contact the *Earth Negotiations Bulletin* send e-mail to <enb@iisd.org>.

Although a non-binding agreement, the IU was not adopted by consensus since eight developed countries formally recorded reservations. Over the years, through a series of additional interpretive resolutions, the IU has achieved wider acceptability. As of May 1997, 111 countries had adhered to the IU, with Brazil, Canada, China, Japan, Malaysia and the US as notable exceptions.

The 13 years since the IU's adoption have seen heightened interest in and awareness of the issue of biodiversity, culminating in the entry into force of the Convention on Biological Diversity (CBD) in 1993. Advances in biotechnology and developments in related matters concerning intellectual property rights have added urgency, and complications, to the need to further develop an international regime relating to the management of PGR. Countries are now looking anew at the IU as a possible vehicle for this purpose.

In April 1993, the Commission considered the implications of the 1992 UN Conference on Environment and Development (UNCED), and the CBD in particular, for the IU. Recognizing that the CBD would play a central role in determining policy on PGR, the Commission agreed that the IU should be revised to be in harmony with the Convention. At its First Extraordinary Session, held in November 1994, the Commission reviewed a First Negotiating Draft, which incorporated the three interpretive annexes into the IU, and provided a more rational structure, grouped into 14 articles.

**SIXTH SESSION OF THE CGRFA:** The Commission on Plant Genetic Resources (CPGR-6) held its sixth regular Session at FAO Headquarters in Rome in June 1995. In addition to its regular agenda, the Commission considered a Second Negotiating Draft, which included the comments made and alternative wording suggested by Commission members to the First Negotiating Draft. At this meeting, the Commission focussed its discussions on Articles 3, 11 and 12 (pertaining to scope, access and Farmers' Rights, respectively), and undertook a first reading of the Preamble. Proposals made by Commission members were integrated into a Third Negotiating Draft. In October 1995, the FAO Conference (Resolution 3/95) agreed to broaden the mandate of the Commission on Plant Genetic Resources to cover all aspects of genetic resources of relevance to food and agriculture, and to change its name to the Commission on Genetic Resources for Food and Agriculture. The implementation of the broadened mandate is on a step-by-step basis starting with animal genetic resources, and should not interfere with the negotiations for the revision of the International Undertaking. The Conference further agreed that the broadened Commission may establish "intergovernmental technical sectoral working groups...., with appropriate geographical balance, to assist [the CGRFA] in the areas of plant, animal forestry and fisheries genetic resources."

**SECOND EXTRAORDINARY SESSION OF THE CGRFA AND THE FOURTH INTERNATIONAL TECHNICAL CONFERENCE ON PGR:** The CGRFA held its Second Extraordinary Session at FAO Headquarters in Rome from 22-27 April 1996 in order to address several issues in preparation for the Fourth International Technical Conference on Plant Genetic Resources (ITCPGR-4) held in Leipzig, Germany, from 17-23 June 1996. ITCPGR-4 agreed on an international programme for the conservation and utilization of plant genetic resources for food and agriculture. Representatives of 148 States adopted the Leipzig Declaration, the Conference's key political statement, and a Global Plan of Action (GPA), the Conference's main substantive output. Contentious issues, including financing and implementation of the GPA, technology transfer, Farmers' Rights and access and benefit-sharing, were the subject of ongoing contact group consultations. Their resolution, adopted as a package by the final plenary, represented a careful compromise of strongly held positions. Delegates were also presented with the first comprehensive Report on the State of the World's Plant Genetic

Resources and a progress report on the revision of the International Undertaking.

**THIRD EXTRAORDINARY SESSION OF THE CGRFA:** The CGRFA held its Third Extraordinary Session at FAO Headquarters in Rome from 9-13 December 1996. During the week-long meeting, delegates focused on Farmers' Rights, scope and access to genetic resources in relation to the revision of the International Undertaking. Building on the results of a two-day meeting of the Commission's standing Working Group, during which several countries put forward proposals, delegates confronted both the political and intellectual complexities as well as time constraints of revising the International Undertaking.

Although the meeting technically constituted the third formal negotiating session for the revision of the IU, CGRFA-EX3 can be characterized as a constructive pre-negotiation exercise. The meeting did not produce any new negotiated text, but it did make progress on difficult and often divisive issues. Many delegations moved beyond political posturing in order to clarify the concerns and interests that underlie their different positions. The G-77, the EU and the US each tabled text on Farmers' Rights to serve as the foundation for the Commission's future deliberations on this issue. CGRFA-EX3 also commissioned a "two-step" study that would set out the various options for scope and access under a revised IU, and assess the viability of these arrangements. Finally, the Commission agreed on arrangements for the continuation of its work on the IU.

## REPORT OF CGRFA-7

The Seventh Session of the Commission on Genetic Resources for Food and Agriculture was officially opened on Thursday, 15 May, by Mr. Abdoulaye Sawadogo, Assistant Director-General of the FAO's Agriculture Department. Welcoming the Commission's 151 member States as well as various UN agencies, IGOs and NGOs, Sawadogo outlined events over the past two years, which he described as the most active and important since the Commission's creation in 1983. In particular, he noted the unanimous adoption of a resolution by the 1995 FAO Conference to broaden the mandate of the Commission to include all sectors of agro-biodiversity as well as the two extraordinary sessions in 1996, the first of which served as a preparatory meeting for the Fourth International Technical Conference, and the second dedicated to negotiations for the revision of the International Undertaking.

**ORGANIZATIONAL MATTERS:** The Commission elected a new Bureau for the next biennium: Mr. Fernando Gerbasi (Venezuela) as Chair; Mr. Tewolde G. Egziabher (Ethiopia), Mr. Eng Siang Lim (Malaysia), Mr. Mohammed Taeb (Iran), Mr. Gert Kleijer (Switzerland), Mr. Andrew Pearson (Australia), and Mr. Thomas Forbord (US), as Vice-Chairs; and Mr. Michel Chauvet (France) as Rapporteur.

In addition, delegates adopted the provisional agenda and timetable (documents CGRFA-7/97/1/Rev.1 and /Add.2), containing the following items: continuation of negotiations for the revision of the IU; future work of the Commission; revision of terms of reference and procedures of the Working Group(s); report of ITCPGR-4; follow-up to ITCPGR-4 and progress report on the FAO Global System; consideration of FAO's programme on genetic resources for food and agriculture; reports from international organizations on their programmes, policies and activities on genetic resources for food and agriculture; date and place of the next session; and adoption of the final report.

**REGIONAL CONSULTATIONS:** Delegates agreed that for the rest of the first day, regional groups would meet to prepare their respective positions for continued negotiations to revise the IU, followed by inter-regional consultations on 16 May. The Chair asked each region to prepare regional positions on the three issues of scope, access and benefit-sharing. The Bureau then met over the



weekend to review and, where possible, consolidate these regional texts, which were translated and available Monday morning. This consolidated text, entitled "Text of Articles 3, 11 and 12 Compiled and Consolidated by the Bureau on Saturday, 17 May 1997" (Bureau's Text), replaced the relevant sections of the Fourth Negotiating Draft of the IU. The Commission also agreed that two *Ad Hoc* Working Groups would meet on 19 and 20 May: one group would consider the first 11 articles of the IU, including Article 3 on scope and Article 11 on access; the other group would consider the remaining articles, including Article 12 on Farmers' Rights.

## REVISION OF THE INTERNATIONAL UNDERTAKING

### SCOPE AND ACCESS

**WORKING GROUP ON SCOPE AND ACCESS:** The Working Group on Scope and Access, chaired by Mr. Fernando Gerbasi (Venezuela), met for three sessions on Monday and Tuesday, 19-20 May 1997, to negotiate Articles 3 (Scope) and 11 (Access). The Working Group used the Bureau's Text as the starting point for its negotiations, as well as a Secretariat paper that synthesized the various conditions of access discussed during the first day of the meeting and/or contained in written regional submissions. The Chair introduced the Bureau's Text and noted that the regional consultations had resulted in a clarification of concepts and movement toward common ground, especially within regions, on key issues such as system(s) and conditions of access to PGRFA. He also noted the continuing inter-regional differences in some of these areas, as reflected in the consolidated text.

The Bureau's Text listed three options for system(s) of access to PGRFA, which included unrestricted access, a multilateral system of access and exchange, and/or bilateral access. The Chair noted that these were not mutually exclusive, which left open the possibility that a combination of access systems could apply to different categories of genetic material. Another area of divergence, reflected in the Bureau's Text, related to the categories of genetic material to which the system(s) of access would apply. Options in the text included a list of major crops, material found in national and/or international collections, and/or material designated voluntarily by countries. The Chair called on delegates to try to achieve consensus on the outstanding issues, instead of reiterating regional positions.

**Article 3:** The Bureau's Text, which stated that "This Undertaking relates to plant genetic resources for food and agriculture" was accepted by all delegates with little debate. BRAZIL, on behalf of the Latin America and Caribbean Group (GRULAC), and ANGOLA, on behalf of the African Group, highlighted that Articles 1 and 2 of the IU on objectives and definitions, respectively, would have an impact on scope as expressed in Article 3. The NETHERLANDS, on behalf of the EU, noted its preference to refer to key objectives of the IU in this article, but concurred with the wording in the Bureau's Text.

**Article 11.1:** Debate on this introductory article on access centered around four key elements included in the formulation in the Bureau's Text: the *sovereign rights* of States over their genetic material, the *facilitation of access* to genetic material, *in accordance with the CBD*, and the role of *national legislation*. Revisions to the text, including some or all of the above elements, were tabled by the African Group, the US and Colombia. While CANADA noted that State sovereignty was a well-accepted principle, and thus did not need repeating in this article, IRAN expressed its preference for the reference to be retained. The US noted that reference to the CBD's provisions may be inappropriate in an article designed explicitly to implement such provisions. CANADA and the EU pointed out that a number of the proposals on the table seemed to make access to PGRFA contingent upon the existence of national legislation, rather than merely subject to already existing national legislation.

In response to the views expressed, the Chair formulated new text for this article that stated that "Parties recognize the sovereign rights of States over their PGRFA, including the authority to determine access to those resources, subject to national legislation, and in accordance with the CBD". INDIA, BOLIVIA, COLOMBIA and the AFRICAN GROUP registered their agreement with this formulation. The EU objected, since the reformulated text did not contain the key idea of "facilitating access," which was as important as the other elements. The Working Group decided to revisit this sub-article at a later session.

**Article 11.2:** Debate on this main article on access, as formulated in the Bureau's Text, revolved around the system(s) of access to PGRFA (unrestricted, multilateral and/or bilateral), options relating to the material to be included within such system(s), the conditions of access to these materials, and whether or not, and in what form, benefit-sharing was to be included within this article.

**System(s) of access:** The G-77, supported by ARGENTINA, the AFRICAN GROUP, COLOMBIA and BOLIVIA, emphasized the need to establish a multilateral system of access and exchange covering designated genetic material. Categories of material falling outside this system would be governed by bilateral agreements, to be entered into by contracting Parties on mutually agreed terms, keeping in mind the provisions of the CBD. The EU noted the need for a combination of an unrestricted and a multilateral system of access to PGRFA, the cornerstone of which would be an International Network, which would include collections of PGRFA at national, regional and international levels. The US reiterated the need for unrestricted access to a specified sub-set of PGRFA.

In the debate that followed, CANADA noted that reference to bilateral arrangements appeared unnecessary, since material falling outside the scope of the multilateral system would be covered under the purview of the CBD. The AFRICAN GROUP noted its preference to retain the reference to bilateral arrangements. In response to queries from the US, BRAZIL and CANADA on the composition and mode of functioning of an International Network, the EU clarified that Parties and various other participants could be included in the Network, which could include International Agricultural Research Centers, as well as designated national collections, whether *ex situ* or *in situ*.

The US noted that a number of well-functioning networks on genetic resources already existed, and pointed out that the aim of the current exercise should be to continue the facilitated open-access regime on genetic resources that the world has benefited from to date, rather than create new institutional arrangements. BRAZIL questioned the EU's suggestion that the Network would consist of "Parties and participants", noting that his understanding was that only States and regional economic integration organizations could be part of the IU, not associations or private enterprises. AUSTRALIA noted that instead of creating new institutional arrangements, a simple list of participating organizations could be created and placed with the FAO. The EU pointed out that since the Network was envisioned to be more than just a simple exchange of germplasm, and would include sharing of information and technology transfer, it seemed unlikely that it could be placed wholly under the FAO, yet it was too early to take that decision.

In response to the Chair's observation that there seemed to be agreement emerging on a multilateral system of access and exchange, whatever the modalities of such a system, the US stated that it agreed to the need for a multilateral arrangement rather than a system and that, with the rapid change in communications, there were various ways in which distributive networks could work quickly and efficiently. One example was the Consultative Group on International Agricultural Research (CGIAR) electronic network of commodity centres, information from which could be accessed from one website.

GERMANY and FRANCE noted that the multilateral system, including the Network, was envisioned as more than an Internet catalogue from which genetic material could be ordered. Instead, it would be an instrument that would generate benefits — both monetary and non-monetary — which would then be shared equitably. FRANCE noted that such a network was already in place in Europe, was functioning very well and could serve as a model for the International Network. MALAYSIA, on behalf of the G-77, supported by the EU, MADAGASCAR, ARGENTINA, MALAWI and IRAN, on behalf of the Middle East, stressed the need for a multilateral system of exchange with mutual benefit-sharing. Further discussion of this issue was taken up in a contact group that met later in the week.

**Material to be included:** A second related issue covered in the debate on Article 11.2 addressed the material for which access was being debated. MALAYSIA, supported by the AFRICAN GROUP, noted that material voluntarily designated by countries, as well as material whose source country was unknown, should be included within the multilateral system of access and exchange. The US emphasized the need for access to the list of major food crops important to world food security, outlined in Annex A in the Bureau's Text. IRAN suggested that important food crops should be covered under a multilateral system, while other crops could be covered by bilateral arrangements. BRAZIL noted that further consultations within his region were necessary regarding the US proposal for a list. He further emphasized that his delegation was unable to accept a proposal for a system wherein countries would volunteer PGRFA, since this might result in one country volunteering another country's germplasm in its possession. A clearer mandate on the material to be covered is required.

JAPAN noted that since the goal of this exercise was to harmonize the IU with the CBD, the distinction in the CBD between countries of origin and countries providing genetic material should be kept in mind. He pointed out that "country of origin" is defined in the CBD as one with the genetic resources in *in situ* conditions at the time of the CBD's entry into force, and emphasized that it would be impossible for his country to accept a retroactive application of the CBD.

Regarding the US proposal for a list to which access would apply, the EU noted its preference for broad networks rather than narrow lists. The US pointed out that the Network proposed by EU would also require a list of institutions and collections, and that lists should be modified in light of new information. AUSTRALIA noted that rather than listing material, a list of institutions and collections that would go beyond the CGIAR might be more useful. The US noted its support for such a list if it included all germplasm relevant to PGRFA.

**Conditions for access:** BRAZIL, supported by COLOMBIA and MALAYSIA, on behalf of the G-77, noted strong opposition to the idea of unrestricted access and preference for the concept of facilitated access. This access would be as quick as possible, with a minimum of bureaucratic delays, and with a declaration that use of acquired PGRFA would be food and agriculture-related. Furthermore, conditions for facilitated access would include cost-sharing for *in situ* collections. MALAYSIA, supported by ANGOLA, pointed out that conditions for access were laid out in detail in the African Group's regional proposal.

JAPAN emphasized that unrestricted access to PGRFA was what generated benefits in the first place. The US noted that they did not intend "unrestricted" to apply to genetic material in landraces or *in situ* farmers' fields; rather they intended it to apply to the sub-set of genetic material, the major food crops, specified in Annex A to Article 11.2 in the Bureau's Text. To make this clearer, the US proposed adding a list of designated institutions that maintained such genetic material to the Annex. CANADA pointed to the need to understand how delegations were using the terms "unrestricted" and "facilitated" access. He noted that facilitated

access seemed to include the idea that access would be quick, used only for food and agricultural purposes, and would include cost-sharing for *in situ* collections. Unrestricted access, on the other hand, seemed to include the above, as well as the notion that: access would not be denied, except in the presence of technical hurdles; access would be provided on the basis of a simple exchange of correspondence; and benefit sharing would not be based upon individual transactions of germplasm exchange.

Following these clarifications, MALAYSIA, supported by COLOMBIA, BOLIVIA, BRAZIL, ARGENTINA and TANZANIA, reiterated that the concept of facilitated access was the only acceptable one. The US concurred with use of the term "facilitated" but proposed using the phrase "facilitated open access". COLOMBIA, BRAZIL and MALAWI questioned the value-added of the term "open".

Following these discussions, a Secretariat Paper that synthesized the various options, and characterized them according to procedural, use, cost and benefit sharing conditions of access, was considered by the Group. BRAZIL, supported by ARGENTINA, called for inclusion, under procedural conditions, of a clause specifying that every individual instance of access should not give rise to a counterpart benefit, but rather that access and exchange should be based upon the principle of broad reciprocity. CANADA noted that to minimize bureaucracy in facilitating access, an option could be to employ a common sales practice whereby upon opening a package, certain obligations were incurred. ECUADOR noted that the condition stating that "access will not be denied once requested" may pose problems for countries with legislation requiring a contract between Parties in order for an exchange to occur, as well as where the authority to deny requests was vested in designated national entities. The Chair noted that national legislation would always take precedence over the IU and, furthermore, that the standing of the IU and its mode of implementation still remained unclear. JAPAN pointed out that technical hurdles could sometimes prevent provision of a sample. INDIA, supported by the EU, TANZANIA and ARGENTINA, voiced its strong support for a clause under procedural conditions stating that access should be facilitated by the provision of adequate information on genetic material.

**Benefit-Sharing:** In discussions on benefit-sharing within the context of Article 11.2, JAPAN noted that the main beneficiaries of unrestricted access to PGR were plant breeders in developed and developing countries, not farmers, and that it was this access that generated benefits in the first place. He reiterated the need, therefore, to consider how the various schemes for access could provide incentives to plant breeders. CANADA, supported by AUSTRALIA, reiterated that access to PGR constituted, in itself, the most important benefit to be shared, and thus should be the main benefit referred to in Article 11.2. He noted that other articles could cover additional benefits such as technology transfer and information exchange. COLOMBIA, supported by the AFRICAN GROUP, reiterated that reference to benefits in addition to the benefit of access — whether monetary or non-monetary — was crucial to the access provisions of the IU and should be included in Article 11.2. While CANADA repeated its willingness to discuss different benefit-sharing categories and mechanisms in appropriate articles of the IU, it also reiterated that benefit sharing should not be linked to individual transactions of germplasm exchange.

**Article 11.4:** As formulated in the Bureau's Text, this article states that Parties acquiring PGRFA under the auspices of the IU, yet utilizing this material for non-agricultural purposes, would be obliged to fairly and equitably share the benefits arising from such use. The EU, supported by the US, AUSTRALIA and CANADA, pointed out that if the use was not food and agriculture-related, it should fall under the purview of the CBD, and this article should be deleted. TANZANIA, supported by CAMEROON, ETHIOPIA, MALAWI, SAMOA and MALI, noted the importance of including this article in the IU, arguing that in its absence PGRFA used in the



pharmaceutical industry, for example, would not be eligible for benefit sharing.

**CONTACT GROUP ON SCOPE AND ACCESS:** Following the debates in three sessions of the Working Group on Scope and Access, a Contact Group was established to continue the negotiations. The Contact Group used the Bureau's Text, as amended by the Working Group, as the basis for its deliberations. The Contact Group was comprised of the US, Canada, Australia, the Netherlands, France, Switzerland, Germany, Norway, Poland, Malaysia, India, China, Japan, Angola, Ethiopia, Tanzania, Malawi, Brazil, Argentina, Colombia, Iran and Morocco. It met for two long sessions on Tuesday and Thursday afternoons under the Chairmanship of Mr. Fernando Gerbasi (Venezuela).

After the first session of the Contact Group, the Chair reported to the Wednesday morning plenary on the status of negotiations, which were reflected in the document entitled "Text considered in the Working Group meeting on 19 and 20 May". The Chair noted that substantial progress had been made. Article 3 on Scope remained consensus text, as agreed to in the Working Group. In addition, Article 11.1 was now consensus text, and included reference to the key elements of sovereign rights of States over their PGRFA, the authority to determine access to these resources subject to national legislation, and the need to facilitate access to such resources in accordance with the CBD.

The Chair then noted that the first part of Article 11.2, on system(s) of access was now consensus text. It reads: "Parties agree to establish a multilateral system, which is efficient, effective and transparent, to facilitate access to PGRFA." A second sentence in this article, dealing with benefit-sharing within this multilateral system, was in brackets because negotiations on its wording remained incomplete.

Given agreement to establish a multilateral system of access, conditions for such access were now included in a new Article 11.3. The first part of this article included bracketed options calling for access to be free of charge, with a modest handling fee, or at the lowest charge possible. The second part noted that recipients of material must be informed and/or must formally agree that material received could be used for research, breeding or training in food and agriculture. A reference to other use of this material being subject to different conditions, including a reference to the CBD, remained in brackets. The Chair noted that the Working Group should continue its deliberations as a contact group to consolidate progress made to date.

Following a second meeting of the Contact Group on Thursday, a document entitled "Text Considered in Meetings on May 22nd" was distributed in plenary on Friday morning. In presenting this document, the Chair emphasized that progress had been made, despite the fact that brackets now appear around text that had been previously been agreed to. He noted that while Article 3 on scope remained unchanged, Articles 11.1 and Article 11.2 were now bracketed. Noting that the text would have to remain as it currently stood, and in order to accurately reflect the progress made on this issue, the Chair proposed deleting brackets around sub-articles, and placing one set of square brackets around Article 11 in its entirety, to signal that negotiations on the contents of the article as a whole were still underway. Delegates supported the Chair's suggestion, and endorsed the fact that progress had indeed been made.

### **FARMERS' RIGHTS**

The Working Group on Farmers' Rights met for five sessions from 19-22 May 1997, under the chairmanship of Mr. Gert Kleijer (Switzerland), using Article 12 of the Bureau's text as the basis for discussion. At the outset, the Chair noted that the all textual revisions were provisional and must be considered in light of the entire IU.

**Article 12.1:** The Working Group began its deliberations with a discussion of Article 12.1, which recognizes the contribution that

farmers of all regions of the world — in particular those in the centres of origin and crop plant diversity — have made to the conservation and development of PGR, which constitute the basis of food and agriculture production throughout the world. ZAMBIA, on behalf of the African Group, requested the insertion of language that recognized the contribution of farmers as forming the basis for "Farmers' Rights" (FR).

Although noting its willingness to pursue the objectives of Farmers' Rights, CANADA acknowledged the seriousness of enshrining a new international right in a legally-binding treaty and expressed its reservation over adding a specific reference to FR, a term that at present is still only vaguely defined. This opinion was echoed by AUSTRALIA, the US, SWITZERLAND and the EU. The latter suggested including a definition of FR in Article 2 and, in the meantime, referring to the definition provided by Chapter 32 of Agenda 21. AUSTRALIA, supported by CANADA, requested that brackets be placed around "Farmers' Rights" in the title of Article 12 and proposed further amendments in order to highlight the fact that the Working Group had not fundamentally agreed upon a definition for FR.

The EU stated that while it could accept reference to FR, the Working Group should go further and recognize the "rights of farmers." However, CANADA and the US were unwilling to recognize the contributions of farmers as the basis for recognizing either the "rights of farmers" or "FR," as it considered the rights conferred to be too broad in scope.

At its fourth session, the Working Group continued discussion of Article 12.1. The EU announced that it had worked with the African Group on a text and could now accept "FR as elaborated in Article 12.3." CANADA, supported by ARGENTINA, AUSTRALIA and SENEGAL, expressed doubt that Article 12.3 constituted an elaboration of rights, but rather a number of measures to be taken by States to implement Articles 12.1 and 12.2.

The US could not agree with the EU text and reiterated its firm position that FR should be addressed nationally, given that the rights that extend to its citizens are encoded in the US Constitution. The US, supported by AUSTRALIA, said it would be difficult to accept "Farmers' Rights" or "farmers rights" since it is not specific enough to be recognized as a right in the same sense as a right to free speech, to association or as expressed in human rights law. While the US indicated its willingness to establish measures to assist and encourage farmers, it had difficulty with elevating in a legal document something that was defined as a concept in FAO Resolution 5/89 to the status of right, such as the right to be free from torture. JAPAN stated the need for a clear definition of FR before it could agree to Article 12.1 since it also viewed FR as a concept rather than a set of substantive rights.

ETHIOPIA commented that "the decisions of the US, the most influential country in the world, affect everyone: 'When elephants fight the grass suffers. We are the grass that is being trod upon.'" ETHIOPIA expressed its disappointment that unlike the EU, which had demonstrated a desire to enter into serious negotiations, the US revealed a desire to go backward. NORWAY noted that while it was impossible to go backward because the concept of FR has been recognized by the international community, at the same time FR could not be given a legal definition without further discussion.

Based on the numerous amendments proposed, NORWAY suggested that a Contact Group be created to work on Article 12.1. The Contact Group, comprised of Colombia, Egypt, Ethiopia, India, the Netherlands and the US, met Tuesday and Wednesday and presented its compromise text of Article 12.1, the whole of which was in brackets, to the Working Group at its fifth session. The Working Group did not negotiate the text but only discussed whether the text could be used as another option under Article 12.1.



CANADA commented that the Contact Group's compromise text was virtually identical to the negotiating text and that the former was not acceptable because of the references to FR as elaborated in Article 12.3 and to FAO Resolution 5/89, both of which were too vague. Nonetheless, the majority of countries approved of the text as a supplementary option.

**Article 12.2:** The Chair noted the impossibility of consolidating the three separate text proposals for Article 12.2, which recognizes the need to realize FR. The first option, which addresses the responsibility of national governments and the international community to realize FR, was favored by the AFRICAN GROUP, EGYPT and BRAZIL, who added that national governments and the international community were equally important and responsible for ensuring the rights of farmers since both are the recipients of PGR. The EU, SWITZERLAND and CANADA preferred the second option, which calls on Parties to recognize the need to strengthen the role of farmers in conservation and sustainable use of PGRFA and to ensure fair and equitable sharing of benefits. The EU added that it was also willing to work on the first option.

The US and AUSTRALIA preferred the third alternative, which calls on Parties to recognize the need to promote the efforts of their farmers to conserve and sustainably use PGRFA, and suggested adding at the end, "and the need for the international community to assist in such efforts, including support for the conservation and sustainable use initiatives that directly benefit farmers." The EU was unable to work on the basis of the third option and could not accept the US text. COLOMBIA also rejected the US proposal, adding that the purpose of Article 12.2 was to support initiatives, not only in the interests of farmers but of the entire international community.

Registering a strong reservation with the broad and undefined principles underlying the first option, AUSTRALIA noted that its position was directly counter to that of the EU, and that it did not want to accept the responsibility of recognizing FR at national or international levels.

The Chair directed the Working Group to use the first option as the basis for its work. INDONESIA stated that the full responsibility should be implemented at the national level since each government understands what rights must be given to farmers to improve their living. CANADA, supported by the US, noted that the implementation of a right is just as complex at the international level as it is nationally and questioned whether there was precedent for such a distinction between the two.

The US stressed that the realization of rights is a matter of national sovereignty and suggested the following text for the first option: "Parties recognize that the responsibility for realizing the rights of farmers, as defined by FAO Resolution 5/89 individually and collectively, where recognized by national law, rests with the national government." The US added that it could drop reference to the FAO Resolution if "their" was added in front of "farmers" so that the phrase would read: "Parties recognize that the responsibility for realizing rights of their farmers, as they relate to PGRFA..."

The EU supported the US proposal, but with the amendment: "the rights of their farmers, as elaborated in Article 12.3". CANADA commented that it did not view Article 12.3 as an elaboration of rights but a means by which governments will act upon a recognition of the rights of farmers.

During the Working Group's fifth session, AUSTRALIA withdrew its reservation on Article 12.2, provided that the third option in the Bureau's compiled text of Article 12.2 be reinserted into the Working Group's amended Article 12.2 as another option.

**Article 12.3:** During the Working Group's discussion of the chapeau of Article 12.3, which suggests measures for implementing FR, AUSTRALIA, seconded by CANADA, requested the removal of treaty language given that no decision has been made about

elevating the IU to treaty status. The EU suggested amending Article 12.3(a), which calls on Parties to assist farmers in the conservation and sustainable use of PGRFA. COLOMBIA noted that since both Article 12.2 of the IU and Article 8(j) of the CBD made reference to "indigenous and local communities," Article 12.3 should continue in a similar vein.

Addressing Article 12.3(a)(i), regarding national germplasm, AUSTRALIA suggested wording that reflects that fact that a number of countries do not have a recognizable framework regarding the accumulation of germplasm. AUSTRALIA also suggested merging Article 12.3(a)(i) with Article 12.3(a)(ii) (preserving native germplasm) and Article 12.3(a)(v) (regional programmes). In its fourth session the Working Group agreed that Article 12.3(a)(ii) was unnecessary and could be deleted, as could Article 12.3(a)(iv), "[activities that help to [prevent environmental degradation/control the erosion] of arable land]," since most delegations were unwilling to accept a text that was so broad in scope.

Addressing Article 12.3(b), which concerns the use of international programmes to benefit farmers, the AFRICAN GROUP suggested language indicating that it was necessary to reorient international programmes to assist in furthering farmers' activities in PGR. Furthermore, the Working Group should not operate under the false assumption that programmes were already working in this area. AUSTRALIA proposed the elimination of references to international programmes, because the narrowing of such programmes to directly benefit farmers, combined with the suggestion that all international programmes must benefit farmers, is not a feasible way of helping farmers. BRAZIL proposed amendments that would ensure that international programmes did not conflict with national legislation.

In Article 12.3(c), which suggests measures to be taken to implement national commitments that benefits farmers, MEXICO, supported by COLOMBIA and VENEZUELA, suggested that the language of Article 8(j) of the CBD — "indigenous and local communities" — should be used. AUSTRALIA, supported by the US, stated that since the issue of benefit sharing was problematic, the entire paragraph should be deleted or placed in brackets.

In Article 12.3(d), regarding support measures for research, training and institutional capacity building activities at the local level, the US, supported by AUSTRALIA, noted that the sub-article was very detailed and better suited to a document at the level of the Global Plan of Action. The AFRICAN GROUP preferred the text in its current form, noting that it was necessary to elaborate what needed to be done to remove the financial and market barriers and other constraints that operate against farmers and their livelihoods, in particular, the need for measures for training, credit facilities and institutional capacity with the participation of local countries, which is important for ability to participate in benefit sharing.

In Article 12.3(e), which concerns the integration of farmers' knowledge, AUSTRALIA noted that "traditional farmers' knowledge" is an unclear term. In addition, the US suggested the substitution of "adaptation of" with "integration of," the logic being that what needs to take place is the integration of two types of technologies — traditional and modern.

In Article 12.3(f), regarding the promotion of national and international scientific and technological research, the Working Group agreed to the consolidated text proposed by the US, "Promote national and international scientific and technological agricultural research that supports and enhances, as appropriate, farmer-based knowledge systems related to PGRFA."

The Working Group could not agree on any of the three options under Article 12.3(g), concerning the Farmers' Privilege. The Chair directed the US, ARGENTINA and the EU to form an informal group to draft compromise text. The outcome of this discussion was a fourth option: "Protect, consistent with national



and international legislation, as appropriate, the ability of farmers and their communities to keep, use, exchange, share and market seed and other plant reproductive materials of their farmers' varieties/landraces." ETHIOPIA commented that it did not understand what international legislation would mean in this context and that the text falls short of what it wanted in terms of the Farmers' Privilege. NORWAY agreed that the compromise text was a weakening of the Farmers' Privilege as compared to the International Convention for the Protection of New Varieties of Plants (UPOV Convention) of 1978.

In Article 12.3(h), the EU, seconded by AUSTRALIA, noted that since this sub-article addressed financial resources it should be included in Article 14, which addresses financing for the entire IU. Furthermore, of the two options for Article 12.3(h), the EU preferred the second, which calls for appropriate efforts to mobilize financial resources to support farmers, but with the deletion of the language, "without restricting or distorting trade." The AFRICAN GROUP, supported by EGYPT, CAMEROON, INDONESIA, on behalf of the developing countries of Asia, and COLOMBIA, preferred the first option, which calls for the establishment and implementation of an international fund. EGYPT, supported by ZAMBIA and SUDAN, argued that FR and providing financial resources affects access to genetic resources and that unless FR is linked to the fund, there can be no FR, access or IU. Since there was no consensus on either option, the Working Group agreed that the text should remain in brackets.

The Working Group was also unable to agree on compromise text for Article 12.3(i), which concerns the transfer of technology. Amendments suggested by the US were rejected by ETHIOPIA, COLOMBIA, KENYA and BRAZIL because they were completely devoid of provisions for the transfer of technology as well as access to the results of research and development from the improved use of PGR through modern scientific methods as well as from their commercial use. These countries reiterated the position that access, scope and FR are one package — if there is no agreement on one then there is none on the others.

After a lengthy and general debate on the similarities of Articles 12.3(j), (k) and (l), which are concerned with legislation and legal protection systems for indigenous knowledge, innovations, materials and practices, it was agreed that Articles 12.3(j) and (k) would be deleted and (l) modified.

Two options were established for Article 12.3(m), which concerned legal protection systems to render effective the rights of farmers and the fair and equitable sharing of benefits arising out of PGRFA. The EU suggested: "Elaborate and establish systems (including *sui generis* systems), as appropriate, pertaining to the fair and equitable sharing of the benefits arising out of the utilization of plant genetic resources with their farmers." CANADA, indicated its support for the EU text provided that "food and agriculture" was added to "plant genetic resources." SWITZERLAND also supported the EU text, provided that the language "on a national level" was added to reflect that the paragraph referred to national systems. ARGENTINA suggested the amendments, "Study the possibility of developing juridical or legal protection systems or systems of legal protection in order to render effective the rights of farmers and the fair and equitable sharing of the benefits arising out of the utilization of PGRFA." BRAZIL, seconded by COLOMBIA, supported the Argentine text, provided stronger language was used in the introduction such as "endeavor to," and added that *sui generis* systems may not be applicable to national systems. ARGENTINA agreed to use the word "promote" instead.

NORWAY supported the EU text, noting that *sui generis* language was important and that it should be developed at the national, and not the international, level. SENEGAL said that the legal repercussions dictate that regulation should be left to the discretion of national governments. INDIA, supported by BRAZIL,

stated the need for a system at both the national and international levels.

The Working Group ended its fifth session with further discussion of Article 12.3(m), which became Article 12.3(k) in the text submitted to the plenary due to the earlier deletion of two sub-articles. BRAZIL was amenable to either option provided that it was on a national level because Article 12.3(n)[1] addressed the international level and they viewed the two sub-articles as completely different concepts. BRAZIL, supported by ARGENTINA, proposed language for the first option that would indicate that not only legal systems but other mechanisms would be promoted to effectuate the rights of farmers, as well as language for the second option, "to ensure" the fair and equitable sharing of benefits.

The US supported the second option, but unlike BRAZIL inserted "promote" rather than "ensure." JAPAN favored the second option, but did not have a clear understanding of the meaning of *sui generis* systems on a national level and called for its replacement with the language, "on the national level."

The EU, US and AUSTRALIA then requested the deletion of Article 12.3(n)[1], which addressed international *sui generis* systems. However, the AFRICAN GROUP requested that the article remain. Although the US also requested the deletion of Article 12.3(o)[m], which calls on farmers and farming communities to fully participate in the definition and implementation legislation on FR and the IU at national and international levels, the EU disagreed. EGYPT requested that specific reference be made to an international fund.

The document produced in discussion by the Working Group was adopted in plenary without discussion.

## PLENARY

The Commission met in plenary on Thursday, 21 May, to consider the other items on its agenda.

### **FUTURE WORK OF THE COMMISSION (AGENDA ITEM 9) AND WORKING GROUPS (AGENDA ITEM 3)**

The Commission considered Agenda Items 3 and 9 together. The Secretariat introduced these items and explained that, pursuant to the FAO Resolution to broaden the mandate of the Commission, the FAO Council adopted interim statutes for the Commission in November 1995, which provided that "the CGRFA may establish intergovernmental technical sectoral working groups, with appropriate geographical balance, to assist it in the areas of plant, animal, forestry and fisheries genetic resources", taking into account financial and administrative implications. As a basis for deliberations on this issue, delegates referred to the document, "Establishment and Terms of Reference of Intergovernmental Technical Sectoral Working Groups of the Commission" (CGRFA-7/97/2), in particular, Annex 2, "Proposed Statutes of the Working Group", which was agreed at CGRFA-6. Although there was general agreement on the establishment of an intergovernmental technical working group on animal genetic resources (AGR) and the transformation of the standing Working Group of the Commission into an intergovernmental technical working group (ITWG) on plant genetic resources, the Commission devoted two sessions to debating the terms of reference, including the mandate and composition of the working group(s), timing and frequency of sessions, and election of officers.

**SECTORS:** CANADA noted that forestry genetic resources (FGR) could be brought into future sessions of the CGRFA, in line with the gradual broadening of its mandate, but that it would be premature to create an ITWG-FGR at this time. The US expressed support for the continuation of the Panel of Experts on Forests and proposed that FGR be the subject of the next ITWG established by the Commission. SIERRA LEONE underscored the urgent need to establish an ITWG on forest genetic resources.

SAMOA called on the Commission to address fisheries and forestry genetic resources, both priorities for small island developing States. CAPE VERDE called for an ITWG to be established for fisheries genetic resources.

**TERMS OF REFERENCE/MANDATE:** The US and AUSTRALIA proposed that any new ITWG should examine specific questions assigned to it by the Commission. EGYPT took issue with the US contention that the statutes for both ITWGs be identical, and stated that progress should be reviewed every biennium by the Commission. MEXICO called for a specific mandate for each ITWG, taking into account progress made.

The EU recommended that the ITWG-AGR elaborate and develop strategies from the already formulated Global Strategy for the Management of Farm Animal Genetic Resources (GS-FAGR) as a follow-up to the relevant CBD COP-3 decision on ongoing loss of genetic diversity in farm animals. ARGENTINA, JAPAN and PAKISTAN specified that the ITWG-AGR should focus on GS-FAGR.

MALAWI and BANGLADESH both noted that the ITWG-AGR should consider adequate funding for developing countries to stem the great loss of AGR at the national level. Underscoring the problem of producing sufficient animal protein in most developing countries, INDONESIA expressed support for a ITWG-AGR, but cautioned that it would be "meaningless" without the resolution of PGR issues. COLOMBIA noted its preference to continue addressing PGR within the Commission itself. SOUTH AFRICA recommended that the ITWG-PGR not be established until negotiations on the revision of the IU were concluded, unless it be assigned a special task, such as facilitating the implementation of the GPA. POLAND stated that the primary task of a ITWG-PGR should be to assist the Commission in completing the IU revision.

**TIMING AND FREQUENCY OF SESSIONS:** CANADA, supported by the US, noted a contradiction between the Commission's draft statutes (which specify that meetings shall be held at least once a year) and FAO Council's statutes (which specify meetings no more than once a year). The EU, AUSTRALIA, VENEZUELA, ETHIOPIA, CHINA and UGANDA recommended that the ITWG-AGR should exist for a limited, well-defined period of time. MADAGASCAR proposed that the meetings of the two ITWGs be held concurrently to avoid the costs of "excessive sectoralization".

**COMPOSITION:** CHINA, the EU, GRULAC and the AFRICAN GROUP supported the draft statutes that provide that the ITWG be comprised of 23 Member-States as follows: five from Africa; five from Europe; four from Asia; four from Latin America and the Caribbean; three from the Near East; one from North America; and one from Southwest Pacific.

CANADA proposed a reduced ITWG membership of 17 as follows: North America and Southwest Pacific would each retain one representative but the remaining regions would be reduced to three. The US expressed its preference for two representatives per region but indicated its willingness to consider three representatives for other regions who so preferred. AUSTRALIA proposed two representatives for each of North America and the South Pacific, and three for the other regions. SAMOA requested that the Southwest Pacific regional representation be extended from one to two and that the mega-diverse region be designated "Pacific" so as to incorporate more small island developing States.

**ELECTION OF OFFICERS:** While the US and EGYPT recommended that the election of officers be vested with the ITWG itself, ARGENTINA, CUBA, MALAWI, MEXICO and BANGLADESH stated that the ITWG Chair should be elected by the body that confers the mandate and in which country representation is greatest, i.e., the Commission. Moreover, while the EU and CANADA recommended that the ITWG report to the FAO Commission on Agriculture (COAG) until IU negotiations are concluded, BRAZIL, the US, EGYPT, ARGENTINA, CUBA,

MEXICO and UGANDA proposed that the ITWG-AGR report directly to the Commission.

**FINANCIAL AND ADMINISTRATIVE ISSUES:** JAPAN underscored that the activities of the ITWG should be covered within the budget and programme of the FAO. NORWAY and SWEDEN underscored that an extraordinary session of the CGRFA should not require extra-budgetary resources. The EU underscored that no engagement could be entered into until financial implications had been considered. The EU stated that the first priority must be the IU.

AUSTRALIA questioned the appropriateness of establishing these Working Groups at this time given the Commission's crucial responsibility to complete the revision of the IU. The US noted that without financial assurances from the FAO Director-General, it was difficult to see how meetings of the Working Groups would not interfere with IU revision. In response to requests by CANADA and the US regarding the financial and administrative implications of ITWG meeting(s) over the next biennium, the Secretariat explained that the availability of funds will depend on whether the "zero growth" proposed by the FAO Director-General is real or nominal.

**BUREAU STATUTES:** On the basis of the above interventions, the Bureau revised the draft statutes. The following statutes were adopted by the Commission, with two minor amendments made in the final plenary.

The Commission will assign specific tasks to the ITWGs so that they can carry out its mandate to review issues related to agro-biodiversity in the areas of PGRFA/AGRFA and advise the Commission on these matters; consider progress made in implementing the Commission's programme of work on PGRFA/AGRFA as well as any other matters referred to it by the Commission; and report to the Commission on its activities. The timing and duration of each ITWG session, which cannot be held more than once a year, will be decided by Commission. The ITWGs will be composed of 27 representatives: five each from Africa, Asia, Latin America and the Caribbean, and Europe; three from the Near East; and two each from North America and the Southwest Pacific. The ITWGs will elect their own officers, including a Chair and one or more Vice-Chairs from among its own members at the beginning of each session.

The Bureau proposed that the first task assigned to the ITWG-AGR will be to develop and facilitate the implementation of the GS-FAGR. Noting that the ITWG-PGR may not be the appropriate mechanism for active and effective participation of all countries in revising the IU, the Bureau further recommended that rather than holding a meeting of ITWG-PGR during this biennium, a one-week extraordinary session of the Commission should be convened in order to continue and, if possible, conclude negotiations on the IU. The Secretariat confirmed that although they would request funds for an extraordinary session, they could not guarantee their delivery, and invited countries to defend this proposal in the appropriate FAO fora.

After lengthy debate on terminology, delegates agreed that the statutes should refer to plant genetic resources for food and agriculture and animal genetic resources for food and agriculture.

#### **REPORT OF THE INTERNATIONAL TECHNICAL CONFERENCE AND FOLLOW-UP (AGENDA ITEMS 4 AND 5)**

The Secretariat presented the Report of the Fourth International Technical Conference (ITCPGR/96/REP) as well as documentation relevant to its follow-up: the Progress Report on the Follow-up to the International Technical Conference on PGR (CGRFA-7/97/4); Revision of Cost Estimates for the Global Plan of Action (CGRFA-7/97/4 Annex); Monitoring of the Rolling Global Plan of Action (CGRFA-7/97/5); and Current Expenditures on PGR (CGRFA-7/97/6).



## **PROGRESS REPORT ON THE GLOBAL SYSTEM (AGENDA ITEM 5)**

The Secretariat presented the Progress Report on the Global System for the Conservation and Sustainable Utilization of PGRFA (CGRFA-7/97/3) and called on the Commission to provide guidance in the following areas:

- cooperation between the CGRFA/FAO and the CBD and United Nations Commission on Sustainable Development (CSD) in the area of agro-biodiversity;
- the implications of its broadened mandate for various components of the Global System, in particular the scope of the World Information and Early Warning System;
- review and monitoring of the implementation of the Global Plan of Action (GPA) for the Conservation and Sustainable Utilization of PGRFA (including funding and/or financing mechanisms);
- periodic updating of the State of the World Report on PGRFA; and
- codes of conduct and guidelines for germplasm collecting and transfer, the extension of existing agreements with the 12 CGIAR Centres in the context of the international network of *ex situ* collections under the auspices of FAO, and the role of crop-related and regional PGRFA networks in promoting the GPA.

## **CONSIDERATION OF FAO'S PROGRAMME ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE (AGENDA ITEM 7)**

Introducing this item, the Secretariat explained that in light of the FAO Conference's decision to broaden the Commission's mandate in a step-by-step process, the FAO's usual report on PGR (CGRFA-7/97/8.1) was complemented by a report on other fields of agricultural biodiversity, with special emphasis on animal genetic resources (CGRFA-7/97/8.2).

In a formal statement to the Commission, Dr. Louisa Fresco, Assistant Director of FAO's Sustainable Development Department, underscored the need to develop an integrated approach to biodiversity. Regarding plant genetic resources, Fresco noted the success of the Leipzig meeting and the challenge of implementing its outputs. Regarding forest genetic resources, she highlighted the importance of regional activities in developing a more comprehensive GPA. Regarding animal genetic resources, Fresco underscored the development of a Global Strategy for which a country-based network could serve as an implementing structure. She added that the FAO has not yet established a formal structure to address fish genetic resources. Finally, the CBD and FAO, with support from the Netherlands and involvement of the International Plant Genetic Resources Institute (IPGRI) and UNESCO, will convene a meeting to develop a joint work programme for implementing the CBD COP-3 decision on agro-biodiversity.

CANADA, supported by the US, deplored the document's arrival only one week prior to the Commission meeting, which "crippled" delegates' ability to advise the FAO on its programme. Nonetheless, he underscored the document's consideration of the economic valuation of genetic resources as well as a study of the interaction between biodiversity and trade.

## **REPORTS FROM INTERNATIONAL ORGANIZATIONS (AGENDA ITEM 6)**

Introducing the item, the Secretariat noted that previous sessions of the Commission have received reports from international governmental and non-governmental organizations on their programmes, policies and activities on PGRFA. Following the broadening of the Commission's mandate, the Secretariat invited a wide range of relevant organizations to report on all aspects of agricultural biodiversity. Reports that were received in time for

printing are contained in document CGRFA-7/97/7. Reports were received from the following organizations:

- **UN AND IGOS:** Asian Development Bank; Commonwealth Secretariat; Convention on Biological Diversity; Global Environment Facility; Inter-American Institute for Cooperation in Agriculture; International Atomic Energy Agency; International Centre for Agriculture and Biosciences; International Fund for Agricultural Development; International Office of Epizootics; UNEP; UNIDO; UNESCO; and the World Bank.
- **INTERNATIONAL AGRICULTURAL RESEARCH CENTRES OF THE CGIAR:** El Centro Internacional de Agricultura Tropical; International Centre for Agricultural Research in Dry Areas; International Crop Research Institute for the Semi-Arid Tropics; International Centre for Living Aquatic Resources Management; International Institute of Tropical Agriculture; International Service for National Agricultural Research; and West African Rice Development Association. In its capacity as the convening Centre of the CGIAR's System-wide Genetic Resources Programme, IPGRI consolidated these individual reports into a joint report.
- **INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS:** International Association of Plant Breeders (ASSINSEL); European Association for Animal Production; International Centre for Underutilized Crops; International Union of Forestry Research Organizations; International Committee for Animal Recording; Rare Breeds International; and Rural Advancement Foundation International (RAFI).

After the Secretariat's presentation of the documentation, representatives from the CBD Secretariat, ASSINSEL, IPGRI, RAFI and UPOV made statements.

## **CLOSING PLENARY**

Delegates gathered on Friday evening for the final plenary in order to consider the draft report of the meeting, as presented by the Rapporteur. The Commission agreed to hold its eighth session during the second half of April 1999, and approved the following draft agenda: revision of the IU; report of the ITWG-AGRFA on the development of the GS-FAGR; progress report on the Global System and the GPA; consideration of FAO's policies, programmes and activities on GRFA; international cooperation in the field of GRFA and cooperation with the CBD; and future work of the Commission and its ITWGs. The Secretariat requested that those regions that have yet to nominate their representatives to the ITWGs do so no later than 30 June 1997.

With reference to the future work of the Commission and the establishment of its ITWGs, SAMOA and CAPE VERDE requested that the report record that some delegations stressed the importance of fisheries genetic resources. INDIA and NORWAY supported their legal right to insist that these views, aired during plenary discussion, be recorded. ARGENTINA objected to the inclusion of this statement and proposed instead, "Some delegations felt that without prejudging the decisions of other FAO bodies, there are priorities set out by the Commission in dealing with various topics." In the end, the report juxtaposed the views of Samoa and Cape Verde with a note that "one delegation objected to fisheries being a priority" in the future work of the Commission.

Finally, regarding a paragraph noting the significant progress achieved at the meeting on negotiations for the revision of the IU, debate centered on two issues. First, the US pointed out that he could not recall the reference in which the Commission "stressed the need for high-level governmental involvement in the negotiating process," and called for its deletion. The NETHERLANDS insisted that, in his closing remarks on behalf of the EU regarding this agenda item, he had highlighted the need for high-level political involvement. The US, supported by



AUSTRALIA, suggested that the final report reflect the fact that this was the position of a few delegations, rather than the Commission. This suggestion was ultimately rejected and the reference to high-level political involvement was retained.

Second, MALAYSIA, supported by COLOMBIA, suggested adding “and the equitable sharing of benefits arising from their utilization” to a sentence highlighting the importance of the conservation and sustainable utilization of PGRFA for global food security. The US noted that introduction of this new text constituted an attempt to reopen negotiations. AUSTRALIA suggested substituting “a large number of countries recognized” rather than “the Commission recognized” in this sentence. A Secretariat reformulation of this paragraph, which contained the new text, was ultimately adopted.

The Commission concluded its meeting with the adoption of the report at 11:00 pm.

## A BRIEF ANALYSIS OF THE IU NEGOTIATIONS

Most delegates agreed that CGRFA-7 marked the beginning of real negotiations toward revising the IU. However, the level and seriousness of the negotiations were not consistent across issue areas: while deliberations on Farmers’ Rights remained largely rooted in rhetoric, scope and access were the subject of intelligent and detailed discussion.

**SCOPE AND ACCESS:** While a working group was constituted to negotiate both scope and access, the scope issue, which was the focus of much attention at CGRFA-EX-3 in December, was almost absent from the discussions. While considering the article on scope in the Working Group, delegates quickly accepted a Bureau formulation, arising out of regional group submissions, which stated that “the IU relates to PGRFA”. Some delegates attributed this formulation to an informal agreement — reached during regional consultations — not to add qualifiers to PGRFA, which would include or exclude particular categories of PGR such as forest or medicinal resources, or pre- or post-CBD collections of genetic material. A developing country delegate noted that, with the definition of “plant genetic resources” still at large, this agreement signaled a decision to defer these discussions until later, when both PGR and PGRFA would have to be defined under Article 2 of the IU. This strategy allowed delegates to focus their full attention on access issues, where debate centered around the system(s) and conditions of access, and benefit sharing within an access regime.

A clear marker of progress within the access discussions was the agreement among a vast majority of the delegations — most notably the EU and the G-77 — on the need for a multilateral system of access and exchange, which is efficient, effective and transparent, to facilitate access to PGRFA. The modalities for such a multilateral system remained nebulous, and questions about how it would function were raised throughout the week. Nonetheless, a number of delegates noted that even an agreement in principle on the need for a multilateral system was a crucial first step. This was the case, noted one delegate, because in order for a multilateral system to be “efficient, effective and transparent” it would have to include benefit-sharing provisions that were acceptable to all Parties. This provided the much-needed meeting ground from wherein to debate the operationalization and modalities of such a system. A further conceptual advance was the understanding, among a number of countries, that a multilateral system of access and exchange should constitute more than just a set-up for exchange of germplasm, but rather that it should generate benefits, whether monetary or non-monetary, through its very existence and functioning.

Notwithstanding this progress, deliberations during the meeting seemed to encounter an almost unavoidable chicken-and-egg problem, whereby discussions and decisions on one issue appeared

to be contingent upon another. Delegates noted, for example, that without discussing conditions of access to PGRFA, it would be inopportune or even impossible to designate the material to which the access system would pertain. At the same time, without knowing the material to which access was sought, conditions of access would be difficult to specify. A number of delegates noted that if one had to choose, a focus on conditions of access, along with benefit-sharing, would be a logical place to begin, since decisions in these areas would allow countries to decide whether or not their best germplasm would be available through the multilateral system.

Discussions on benefit-sharing also reflected the complexity of the issues. While not debated in any detail, the brief references to the distinctions between the country of origin versus the provider country, in the sharing and exchange of PGRFA, hinted at the fact that this will be a key area of contention in future deliberations.

Another point of confusion related to whether benefit-sharing pertained to every single transaction or exchange of germplasm. Delegates noted that this would be a logistical nightmare, in addition to being inefficient and costly. While a number of countries — both North and South — emphasized that a link between benefit-sharing and individual transactions was emphatically not what they desired, it remained unclear whether that was the general understanding. One delegate clarified that only in the event of commercialization of a product developed from PGRFA, made available through the multilateral system, that benefit-sharing provisions would take effect, rather than applying to routine exchanges for research or breeding. In general, however, benefit-sharing would relate to access to the PGRFA, technology transfer, sharing of information, and research and training activities relevant to conservation and sustainable use of PGRFA.

It is noteworthy that while discussions on scope and access provided a good foundation for future deliberations, consensus text was not adopted, largely as a result of the wariness on the part of a few delegations about making an explicit link between the access and benefit-sharing provisions of the IU. Some delegates also indicated their reluctance to enshrine recognition of the “sovereign rights of States over their PGRFA” as a potential future legal principle. The fact that these constituted minority views was evident in the closing plenary when delegates applauded to signal their approval of a clause on benefit-sharing in the meeting’s final report.

**FARMERS’ RIGHTS:** The Commission also entered into negotiations on Farmers’ Rights (FR) as it began to seek a better understanding of the objectives of various regional groups and the boundaries of those objectives, aided in part by a consolidated text that assisted in delineating the parameters of the debate. This was also the first time discussions on FR went beyond the entrenched positions of OECD and G-77 blocks.

In particular, there has been a convergence of positions between a number of EU countries and most of the G-77 countries, in that both recognize FR as more than a concept. Consequently, several non-European OECD countries have found themselves increasingly isolated on this issue. Although they have not formally constituted themselves as such, several delegates anticipate the establishment of the JUSCANZ Group (Japan, US, Canada, Australia and New Zealand — with the exception of Norway) within the IU negotiations.

While the debate remains largely rhetorical and a precise definition of FR remains elusive, some delegates consider that it may be possible to reach a common understanding of the meaning of FR by specifying who recognizes such rights, where, and under what circumstances, and whether their realization requires the creation of an international fund.

Nonetheless, the Working Group on Farmers’ Rights current *modus operandi* has been unproductive. To date, any progress made through informal consultations has been quickly undermined



in formal working group negotiations. One factor that has limited the effectiveness of the Working Group is its inability to agree on the meaning of basic entities such as farmers, traditional, indigenous and local farming communities. Another important area of ambiguity is whether the rights to be defined are national or international in scope. Indeed, many delegates expressed concern that it will be much more difficult to achieve consensus on an international right because the answers to questions such as "What is a farmer?" vary in each country. Such questions underscore the challenge inherent in forging common understandings when there are divergent frames of reference.

Given the difficulties outlined above, some delegates have privately cautioned against attempts to force a consensus on Farmers' Rights at this stage of the negotiations. Still, several delegates have pointed to the rapprochement of the African Group and the EU as a possible way forward.

**CONCLUSION:** In starting negotiations on the most complex and contentious aspects, the Commission may have underestimated the difficulties inherent in revising the IU. Numerous delegates expressed concern that focusing exclusively on the toughest aspects of revising the IU is a high-risk strategy — one that may backfire in later stages of the negotiations.

With actual negotiations underway, several delegates have commented that more thought should be given to a proper negotiating structure. For example, the Commission could establish one or more parallel working groups to address other aspects of the IU, such as the relationship with other legal instruments, international cooperation, role of international organizations and information exchange. Reaching agreement on these less contentious provisions within the IU would serve as a confidence-building exercise among delegations.

Nonetheless, the decision to devote the first two days of the meeting to regional consultations signals an effort to better structure the negotiating process. There was general acknowledgment that the negotiations on both scope and access, and Farmers' Rights had resulted in an understanding of regional and inter-regional positions on these highly contentious issues. Delegates saw this as an important advance from consideration of these issues only six months earlier at CGRFA-EX3.

The formal outputs of the IU negotiations at this meeting — heavily bracketed texts on access and Farmers' Rights — cannot capture the progress made during CGRFA-7. The meeting resulted in the clarification of issues, further formulation of interests and consolidation of positions — key ingredients for the effective completion of negotiations for the revision of the IU. The Commission's designation of the IU negotiations as its uppermost priority for the next biennium should provide ample opportunity to build on the progress made at this meeting.

## THINGS TO LOOK FOR

**CONSULTATIVE GROUP ON INTERNATIONAL AGRICULTURAL RESEARCH (CGIAR) MID-TERM MEETING:** This meeting will take place from 26-30 May 1997 in Cairo, Egypt. For more information, please contact the IPGRI Regional Office for Europe, Via delle Sette Chiese 142, 00145 Rome, Italy; fax: +39-6-5750309. Also visit their home page at <http://www.cgiar.org/ipgri>.

**FIRST INTERNATIONAL CONFERENCE ON INTELLECTUAL PROPERTY OF INDIGENOUS PEOPLES FOR THE NEW MILLENNIUM:** This conference, entitled "Conferencia Internacional: La Propiedad Intelectual de los Pueblos Indigenas ante el Nuevo Milenio," is scheduled for 2-6 June 1997, and will be hosted by WATU/Accion Indigena and Secretaria de Estado para la Cooperacion Internacional y para Iberoamerica. For information contact: Margrieth Nazareth Cortes,

WATU/Accion Indigena, P. de la Chopera, Semisotano, 28045 Madrid, Spain; tel: +34 1 473 3031; fax: +34 1 473 2501; e-mail: [watu@mad.servicom.es](mailto:watu@mad.servicom.es).

**INTELLECTUAL PROPERTY RIGHTS III:** This conference, entitled "Intellectual Property Rights III - Global Genetic Resources: Access and Property Rights Workshop," will be held at the Holiday Inn Capitol, 550 C Street, SW, Washington DC, USA from 4-6 June 1997. The conference will review factors affecting global access to plant genetic resources and the effect of intellectual property rights on the exchange of these materials. For further information contact: American Society of Agronomy, 677 South Segoe Road, Madison, WI 53711, USA. To register via the Internet try <http://www.agronomy.org/ipr/>.

**SPECIAL SESSION OF THE UN GENERAL ASSEMBLY:** The Special Session of the UN General Assembly is scheduled for 23-27 June 1997. The session, which will be preceded by a week of informal consultations, will conduct an overall review and appraisal of progress in implementing the UNCED agreements since the 1992 Earth Summit. For more information, contact: Andrey Vasilyev, UN Division for Sustainable Development, tel: +1-212-963-5949, fax: +1-212-963-4260, e-mail: [vasilyev@un.org](mailto:vasilyev@un.org). Also visit the Home Page for the Special Session at <http://www.un.org/DPCSD/earthsummit/>.

**CONFERENCE ON THE FUTURE FOREST POLICY IN EUROPE:** This conference will take place from 15-18 July 1997 in Joensuu, Finland. For more information, contact: Brita Pajari, tel: +358-13-252-223; fax: +358-13-124-393; e-mail: [pajari@efi.joensuu.fi](mailto:pajari@efi.joensuu.fi).

**CONVENTION ON BIOLOGICAL DIVERSITY:** The third meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (SBSTA-3) will be held in Montreal from 1-5 September 1997. The third meeting of the *Ad Hoc* Group on Biosafety (BSWG-3) is scheduled for 13-17 October 1997 in Montreal. The Fourth Meeting of the Conference of the Parties (COP-4) will be held in Bratislava, Slovakia, from 4-15 May 1998. For more information, contact the CBD Secretariat, 393 Saint Jacques St., Office 300, Montreal, Quebec, H2Y 1N9, Canada; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: [biodiv@mtl.net](mailto:biodiv@mtl.net).

**OTHER CBD-RELATED MEETINGS:** A meeting of the Liaison Group on Forest Biological Diversity will be held in Helsinki, Finland, from 25-28 May 1997. A Latin American and Caribbean regional meeting on the Clearinghouse Mechanism is tentatively scheduled for July in Colombia. A workshop on the implementation of Article 8(j) (traditional knowledge) is tentatively scheduled from 10-14 November 1997 in a venue to be determined. For more information, contact the CBD Secretariat.

**INTERNATIONAL CONFERENCE ON MEDICINAL PLANTS CONSERVATION, UTILIZATION, TRADE AND BIOCULTURES:** This meeting is scheduled from 16-20 February 1998 at the National Institute of Advanced Studies, Indian Institute of Science Campus, Bangalore, India. The meeting will focus on the issue of medicinal plants for survival. For further information contact the Foundation for Revitalisation of Local Health Traditions (FRLHT), No. 50, 2nd Stage, MSH Layout, Anandnagar, Bangalore 560 024, India; tel: +91 80 333 6909/0348; fax: +91 80 333 4167; e-mail: [root@frlht.ernet.in](mailto:root@frlht.ernet.in).

**EIGHTH SESSION OF THE COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE:** The next session of the CGRFA will take place during the second half of April, 1999. For more information, contact FAO, Viale delle Terme di Caracalla, 00100 Rome, Italy; tel: +39(6) 52251; fax: +39(6) 52253152; Internet: <http://www.fao.org> or <http://web.icppgr.fao.org>.