



# Earth Negotiations Bulletin

A Reporting Service for Environment and Development Negotiations

Vol. 9 No. 76

Published by the International Institute for Sustainable Development

Monday, 8 December 1997

## FOURTH EXTRAORDINARY SESSION OF THE COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE: 1-5 DECEMBER 1997

The Fourth Extraordinary Session of the Commission on Genetic Resources for Food and Agriculture (CGRFA-Ex4) was held at FAO Headquarters in Rome from 1-5 December 1997. During the week-long meeting, delegates continued negotiations on the revision of the International Undertaking (IU) on Plant Genetic Resources in harmony with the Convention on Biological Diversity. The work was divided between an *ad hoc* working group and an *ad hoc* contact group. The Working Group addressed the revision and consolidation of IU text on: objectives; relationship of the IU with other international agreements; conservation, exploration, collection, characterization, evaluation and documentation of plant genetic resources for food and agriculture (PGRFA); sustainable use of PGRFA; the Global Plan of Action; global information systems on PGRFA; international cooperation; the international network of PGRFA; and Farmers' Rights. The Working Group was able to produce consolidated text on all of these issues, moving negotiations on the IU beyond discussion of the controversial agenda items on Farmers' Rights and scope and access. Concurrently, the Contact Group continued discussions on issues related to access and benefit sharing. Unlike previous sessions, which were, for all intents and purposes, exploratory exercises, many delegates left this meeting with a clearer vision of the revised IU, particularly on access.

### A BRIEF HISTORY OF THE PROCESS

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 174 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 FAO, and the 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 PGR – 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). 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 develop further 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

### IN THIS ISSUE

A Brief History of the Process . . . . .	1
Report of CGRFA-Ex4 . . . . .	2
Organizational Matters . . . . .	2
Working Group . . . . .	2
Contact Group . . . . .	5
Closing Plenary . . . . .	9
A Brief Analysis of CGRFA-Ex4 . . . . .	9
Things to Look For . . . . .	10

This issue of the *Earth Negotiations Bulletin*© <enb@iisd.org> is written and edited by Charlotte de Fontaubert <fontaubert@igc.org>, Laura Ivers <laurai@iisd.org>, Nabiha Z.Z. Megateli <nmegateli@igc.apc.org> and Tiffany Prather <tprather@iisd.org>. 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 Netherlands Ministry for Development Cooperation, the Government of Canada and the United States of America (through USAID). General support during 1997 is provided by the Department for International Development (DfID) of the United Kingdom, the Ministry of Foreign Affairs of Denmark, the European Community (DG-XI), the German Ministry of Environment, Nature Conservation and Nuclear Safety, the Ministries of Environment and Foreign Affairs of Austria, the Ministry of Environment of Sweden, the Swiss Federal Office of the Environment, the Ministry of the Environment of Finland and UNDP. The *Bulletin* 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 non-commercial publications only and with appropriate academic citation. For permission to use this material in commercial publications, contact the Managing Editor. 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/linkages/>. The satellite image was taken on 1997/06/01 14:34:10 <P8>UTC from 100000 km above Geneva (46°14 N 6°04 E), 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>.



Commission reviewed a First Negotiating Draft, which incorporated the three interpretative 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) 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 focused 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.

**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 IU.

**THIRD EXTRAORDINARY SESSION OF THE CGRFA:** The CGRFA held its Third Extraordinary Session at FAO Headquarters in Rome from 9-13 December 1996. Delegates focused on Farmers' Rights, and scope and access to genetic resources in relation to the revision of the IU. 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 IU. The meeting did not produce any new negotiated text, but it did make progress on difficult and often divisive issues. The G-77, the European region 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.

**SEVENTH SESSION OF THE CGRFA:** 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 IU in two working groups. The Working Group on Scope and Access addressed the principles and procedures that might underline systems of access to PGRFA, while the Working Group on Farmers' Rights clarified positions by revealing the precise objectives of various groups and the logical limits of those objectives. In addition, the Commission established the mechanisms that will allow it to effec-

tively carry out its broadened mandate, considered reports from FAO and international organizations, and addressed follow-up to the Fourth International Technical Conference on Plant Genetic Resources. It also designated the IU negotiations as its utmost priority for the next biennium.

While the formal outputs of the negotiations were heavily bracketed texts, the outcomes that advanced the process the most came from the discussions on benefit sharing, scope, access and Farmers' Rights. Several conceptual advances were achieved, including general agreement on the need for an efficient, effective and transparent multilateral system of access to and exchange of PGRFA and acknowledgment of the benefits to be generated by such a system.

## REPORT OF CGRFA-EX4

The Fourth Extraordinary Session of the Commission on Genetic Resources for Food and Agriculture was officially opened on Monday, 1 December 1997, by Chair Fernando Gerbasi (Venezuela). On behalf of FAO Director-General Jaques Diouf, Aboulaie Sawadago, Assistant Director-General of the FAO Agriculture Department, stressed the importance of achieving sustainable agriculture and food security by reaching a multilateral agreement on access to genetic resources and Farmers' Rights. Gerald Moore, FAO Legal Counsel, introduced the following documents for negotiations:

- Fourth Negotiating Draft of the Revision of the International Undertaking on Plant Genetic Resources for Food and Agriculture (CGRFA/IUND/4 Rev.1);
- Negotiated Text and Consolidated Text on Articles 3 (Scope), 11 (Access) and 12 (Farmers' Rights) (CGRFA/IUND/4/ Rev.1/ Add.1); and
- Regional Positions Presented during the Seventh Session of the CGRFA (CGRFA-Ex4/97/Inf. 1).

## ORGANIZATIONAL MATTERS

The Commission Bureau was comprised of: Mr. Fernando Gerbasi (Venezuela) as Chair; Mr. Twolde G. Egziabher (Ethiopia), Mr. Eng Siang Lim (Malaysia), Mr. Mohammed Taeb (Iran), Mr. Gert Kleijer (Switzerland), Mr. Andre Pearson (Australia) and Ms. Laurie Tracy (US) as Vice-Chairs; and Mr. Michel Chauvet (France) as Rapporteur. Chair Gerbasi highlighted progress made at the Commission's Seventh Session (15-23 May 1997) on the issue of scope (Article 3), and said the focus of this session should be on access (Article 11) and Farmers' Rights (Article 12). The Plenary adopted the provisional agenda (CGRFA-Ex4/97/1) and the work was divided between two *ad hoc* groups; a Contact Group for furthering discussion on access, Farmers' Rights and financial security (Article 14), and a Working Group charged with addressing the remaining issues. The Chair proposed and the delegates agreed that for the rest of the first day, regional meetings would be held in the morning and inter-regional meetings would convene in the afternoon.

## WORKING GROUP

The Working Group, chaired by Mr. Gert Kleijer (Switzerland), met for seven sessions from 2-5 December. During the first two days of meetings, delegates synthesized and consolidated the submitted texts to be used for future negotiations. The Working Group based its negotiations on text submitted by the Africa, Asia, Europe, Latin America and the Caribbean, Near East and North America regional groups and the G-77 Consolidated Position (CGRFA-Ex4/97/Inf.1). The African, North American and European regional groups were the primary suppliers of text for the articles addressed in the Working Group. In sessions on Wednesday evening and Thursday and Friday mornings, delegates considered draft consolidated text on Article 1 (objectives), Article 4 (relationship of the IU with other international agreements), Article 5 (conservation, exploration, collection, characterization, eval-



uation and documentation of PGRFA), Article 6 *bis* (sustainable use of PGR), Article 8 *bis* (the Global Plan of Action), Article 10 (global information systems on PGRFA), Article 7 (international cooperation) and Article 9 (the international network of PGRFA). The consolidated text of these articles (CGRFA-Ex4/97/2) was presented to the Closing Plenary. The Working Group also discussed creating consolidated text for Article 8 (role of international organizations), Article 13 (monitoring of activities) and Article 14 (financial security), but determined that such attempts were premature and opted to wait for more clarification on certain aspects of the IU.

On Wednesday evening, ETHIOPIA asked the Working Group to take on the issue of Farmers' Rights (Article 12), given that the Contact Group would not be able to address it due to time constraints. Some delegates rejected the idea either for procedural reasons or because they thought the issue should be discussed in the Contact Group, as previously decided. The Chair indicated that the decision would be up to the Bureau and the Chairs of the Contact and Working Groups. On Thursday afternoon, the Working Group was permitted to address Farmers' Rights. Delegates negotiated on consolidated text from CGRFA-7 (CGRFA/IUND/4/Rev.1/Add.1), focusing on: Article 12.1, which acknowledges the contributions that farmers of all regions of the world have made to the conservation and development of PGR; Article 12.2, which recognizes the need for Farmers' Rights; and Article 12.3, on implementing Farmers' Rights.

In summarizing the results of the Working Group, the Chair highlighted that it successfully consolidated text for eight articles and congratulated the delegates on their positive attitude. He lamented the limited amount of progress made on the issue of Farmers' Rights, but highlighted the drafting of consolidated text for Article 12.1 and the removal of some brackets.

The following is a summary of the status of the articles considered by the Working Group.

**ARTICLE 1 (OBJECTIVES):** The African and European regional texts proposed for this article on the IU objectives were congruent aside from points on Farmers' Rights and prior informed consent (PIC). LIBYA, on behalf of the Near East region, supported the African region's text, while COLOMBIA and TOGO supported merging the texts. The US urged inclusion of global food security in the consolidated text and CHINA stressed the importance of reflecting sovereign rights over genetic resources. The NETHERLANDS, on behalf of the European region, felt the African text referred to the means through which the objectives could be achieved, and that the article should deal with only the objectives themselves. ZAMBIA remarked that these were actually important elements and they were retained in brackets. MEXICO indicated he did not feel that the three texts could be merged due to the reference to unrestricted access in the North American version. The African and European texts were merged, with a number of provisions still in brackets. The Chair subsequently designated a drafting group to merge this text with the North American version. The consolidated text remained in brackets.

**ARTICLE 4 (RELATIONSHIP OF THE IU WITH OTHER INTERNATIONAL AGREEMENTS):** During negotiation on this article, the NETHERLANDS, on behalf of the European region, suggested asking for legal advice from the Secretariat on the use of language from other conventions. The Legal Counsel of the FAO presented consolidated text similar to provisions in other conventions. The NETHERLANDS asked the representative of the African region why it had included a reference to non-ratifying Parties. ETHIOPIA responded that it was designed to mark the strong links with the obligations under the CBD. URUGUAY suggested an amendment that refers to the consequences of actions that "can be shown to cause serious damage or threat to plant genetic resources." The reference to "other" existing agreements was deleted, and AUSTRALIA suggested that a specific reference to resources "for food and agriculture" be added at

the end of the article. COLOMBIA insisted that this amendment remain in brackets. The title was slightly modified and now reads Relationship of the [Undertaking] with other international agreements.

**ARTICLE 5 (CONSERVATION, EXPLORATION, COLLECTION, CHARACTERIZATION, EVALUATION AND DOCUMENTATION OF PGRFA):** The delegates based their discussions on concurrent texts submitted by the African region and the North American region. The African text was much more detailed than the North American and included a series of measures that could improve exploration, collection and conservation of genetic resources. The Chair asked delegates to accept the African region's text for Article 5 and opened the floor for discussion. CANADA suggested that the simpler North American text be retained to avoid extracting from the lengthy African text. The NETHERLANDS, on behalf of the European region, accepted the African text, but questioned the value of specific reference to the CBD and agro-chemicals. LIBYA, on behalf of the Near East region, as well as MEXICO and BRAZIL, supported the African text and stressed that it included many important points. JAPAN asked if delegates could accept the system and added that he was not prepared to contribute to writing text. AUSTRALIA, supported by CHILE, MEXICO and GERMANY, proposed modifying the African text and adding the North American text to it with some modifications.

A separate Article 6, which the North American region had proposed and that also included some of the measures to be adopted by the Parties to ensure conservation, was added to Article 5 in brackets. The NETHERLANDS tabled an amendment on 1(c) and 1(d) and the Chair suggested that an informal contact group should be convened to integrate this amendment and Article 6 of the North American text in the new Article 5. Delegates debated between two options for consolidated text paragraphs. ZAMBIA proposed merging the text to create a paragraph that combined the African region's intent to include a reference to the CBD. MALAYSIA recommended keeping the preamble short. The NETHERLANDS underlined the value of keeping the introductory paragraph. Few brackets remained in the consolidated text, which contains a significant list of measures to be adopted by the Parties.

**ARTICLE 6 *bis* (SUSTAINABLE USE OF PGR):** The delegates agreed to retain Article 6 *bis* as a basis for negotiation. However, a number of items emerged as problematic. The NETHERLANDS, on behalf of the European region, and supported by MEXICO, remarked that in 2(b), the reference to smallholder farmers was restrictive, as was the reference in 2(c) to areas that are not of high potential for the particular crop. ETHIOPIA highlighted the usefulness of this new article for introducing the concept of sustainability and bringing the text into conformity with the CBD. He explained that concerns about 2(c) were of a socio-political nature and aimed to ensure that no areas would be neglected. KENYA emphasized that smallholders are the ones who conserve the resources and should be encouraged to enhance biodiversity. AUSTRALIA remarked that both texts were prescriptive in nature and that these were issues of national priority for the Parties. Supported by CANADA, he also expressed some concerns with paragraph 4 of the article, which calls on the Parties to take precautionary measures to control the risks associated with living modified organisms (LMOs). CANADA submitted an amendment to replace paragraphs 2 and 3.

The consolidated text illustrated differences in approach among the delegates. AUSTRALIA, supported by CANADA, indicated his preference for a framework article that would refer in general terms to sustainable use with details to be included in an annex. The US indicated that the approach taken in the second, shorter draft should be acceptable because the provisions in the longer drafts were not included in Article 8 *bis* on the Global Plan of Action. MALAYSIA, supported by the NETHERLANDS, suggested that the shorter version





be retained, but incorporate some of the key provisions of the other draft. CAMEROON, supported by ZAMBIA, highlighted the key elements that needed to be retained in paragraph 3. An informal group was convened to merge the two versions of paragraph 2 and incorporate the key elements of paragraph 3. MEXICO and ZAMBIA insisted that paragraph 4 be retained and it remained bracketed.

In reviewing a second draft of the consolidated text, the NETHERLANDS suggested an amendment that reproduces language from the CBD on LMOs. ETHIOPIA, supported by ZAMBIA, agreed that this was an acceptable amendment but asked that references to biodiversity be replaced with PGRFA and that the text not be restricted to resources that "are" LMOs. The NETHERLANDS disagreed and the provision remained bracketed. BRAZIL, supported by CHILE, asked that the reference to biodiversity be retained. AUSTRALIA expressed doubts on the need to reproduce provisions of the CBD and suggested that a reference to the relevant article be included instead.

**ARTICLE 7 (INTERNATIONAL COOPERATION):** In the discussion of this article, SENEGAL and the NETHERLANDS, on behalf of the European region, indicated that 2(b), encouraging international activities, was the text of the North American proposal. They suggested that their respective regional texts were better structured and should be substituted. JAPAN asked why the reference to "general" international cooperation had been omitted and CHILE, supported by COLOMBIA and ARGENTINA, noted that the previous references to technology transfer and sharing were deleted. The NETHERLANDS, supported by AUSTRALIA and the US, remarked that references to funding mechanisms should be moved to Article 14 (financial security). SENEGAL, ZAMBIA and SUDAN felt that the provision should be retained. The NETHERLANDS, supported by MEXICO and MALAYSIA, noted that transfer of technology was a very important issue that had been included in the European text and deserved a separate article. ETHIOPIA and CHILE suggested that such a reference be added at the end of 2(b). The US asked that 2(c) on maintaining and strengthening institutional arrangements be placed in brackets. SUDAN remarked that the goal of the negotiators at this stage should be to delete rather than add brackets.

**ARTICLE 8 (ROLE OF INTERNATIONAL ORGANIZATIONS):** The US recommended that this article be deleted and CANADA suggested including it in Article 13 on monitoring of activities. The NETHERLANDS, on behalf of the European region, said discussion was premature because of uncertainty surrounding the IU and which institutions will be involved. The Chair, in agreement with the Netherlands, deferred discussion on this article.

**ARTICLE 8 bis (GLOBAL PLAN OF ACTION):** During the review of this article on the Global Action Plan for the Conservation and Sustainable Use of PGRFA adopted at Leipzig, the NETHERLANDS, on behalf of the European region, suggested a number of amendments that refer to: national priorities; the 1996 Leipzig Technical Conference on Plant and Genetic Resources; and implementation through national actions. He asked that the reference to Article 14 (financial security) be deleted. ETHIOPIA, on behalf of the African region, agreed on some of these amendments but did not approve of the reference to national actions, and, supported by Mexico, asked that the reference to Article 14 be retained. The US asked that the reference to Articles 5 and 6 and the reference to Farmers' Rights be deleted. These varying views were reflected in brackets in the consolidated text.

**ARTICLE 9 (INTERNATIONAL NETWORK OF PGRFA):** The Chair proposed using the European text for this article on an international network to promote conservation, exchange and utilization of PGRFA. The US and CHINA remarked that this article overlaps with the Contact Group's work and that discussing it was premature. ETHIOPIA requested that Article 8.3 of the African text on institutional arrangements be included. COLOMBIA expressed concern about harmonizing governing norms and standards for existing networks.

ZAMBIA and EQUATORIAL GUINEA supported the European text on Article 9, but wondered who would run and have access to the network. The NETHERLANDS underscored that exchanging PGR and not just information sharing was the aim of this article, and recommended revisiting the topic after the Contact Group's outcomes on access were available. The North American region and European region's versions were placed in brackets and retained as options for future negotiations.

**ARTICLE 10 (GLOBAL INFORMATION SYSTEMS ON PGRFA):** Delegates noted that the European and African texts for Article 10 proposed establishing new networks while the North American text suggested use of existing networks, and that both the North American and African proposals provided early warning plans. The NETHERLANDS, MEXICO and FRANCE stressed that the network's objectives should first be decided before the system is determined. The Chair designated a drafting group to create consolidated text. When the delegates reviewed the new consolidated text, the US indicated that her reference to the institution designated in Article 13 (monitoring of activities) could be deleted and the NETHERLANDS suggested an amendment that would call for periodic assessments of the state of the world's PGR.

**ARTICLE 13 (MONITORING OF ACTIVITIES):** The NETHERLANDS, the US and ETHIOPIA suggested postponing discussion on Article 13 until the scope of the IU had been resolved.

#### **FARMERS' RIGHTS**

**ARTICLE 12.1:** Two alternatives remained in the consolidated text of this article, which aims to highlight the enormous contribution of farmers to the conservation and development of PGR. The delegates attempted to merge the two versions. The differences between the two texts were on: whether to include a FAO Resolution that recognizes these rights, or merely to refer to Article 12.3; the nature of the measures to be taken at the national level to address the contributions of farmers; the non-discriminatory and non trade-distorting nature of the measures; and whether a reference on the national capacities and needs of the Parties should be included.

In 12.1(b), which deals with recognition of Farmers' Rights at the national level, the US asked that references to "farmers' rights" be kept in lower case while ETHIOPIA wanted to keep the reference capitalized. COLOMBIA, BRAZIL, NORWAY and the PHILIPPINES remarked that the reference to Farmers' Rights is capitalized in Agenda 21 and should remain that way. The other brackets in the text remained and on a number of issues, different wording was proposed. The debate led to some confusion and the Secretariat presented a written version compiling all the suggested amendments. COLOMBIA also asked that the reference to the "concept" of Farmers' Rights be placed in brackets. To clarify the debate on the capitalization of Farmers' Rights, the Secretariat said that it varies with each language and cited its capitalization in past agreements. JAPAN proposed including [concept of f/ Farmers r/Rights]. COLOMBIA said Farmers' Rights would be acceptable with the removal of "concept of". AUSTRALIA called for another set of brackets around the whole paragraph. The Chair proposed inserting these brackets after the first sentence, but AUSTRALIA insisted on bracketing the whole paragraph, as the resolution of the bracketed text in the paragraph could render the first sentence undesirable. MEXICO suggested maintaining the paragraph in the provisional consolidated draft, without the brackets suggested by Australia. The final consolidated text divided the paragraph into two parallel texts, 12.1(a), on the contribution of farmers, without brackets, and 12.1(b), on national measures, bracketed.

**ARTICLE 12.2 (RECOGNIZING THE NEED FOR FARMERS' RIGHTS):** The Chair requested that delegates consolidate the two alternative texts, one stating that Parties recognize responsibility for realizing Farmers' Rights and the other the need to promote Farmers' Rights, previously negotiated by the Commission. ETHIOPIA

OPIA, supported by MEXICO and COLOMBIA, proposed an integrated version of the two texts. The NETHERLANDS, on behalf of the European region, said the Ethiopian version would modify the meaning rather than consolidate the text. ETHIOPIA said it did not mind leaving the second option out and felt that its consolidation served its purposes. AUSTRALIA requested that the second alternative remain intact and opposed further modifications. In light of these opposing views, the Chair said no progress would be achieved.

**ARTICLE 12.3 (NATIONAL PROGRAMMES FOR FARMERS' RIGHTS):** The delegates attempted to remove brackets from the chapeau of Article 12.3, which calls upon countries to take national measures for Farmers' Rights.

**Article 12.3(a) (Facilitation of Farmer Participation in PGRFA):** AUSTRALIA suggested replacing "assist" with "promote" before farmers and farming communities. The PHILIPPINES, supported by EQUATORIAL GUINEA and ETHIOPIA, supported keeping "assist" because of the paternalistic tone of "promote". ETHIOPIA proposed deletion of 12.3(a)(i) and (ii), which clarify assistance. AUSTRALIA proposed adding a clause explaining that assist would be in a non-discriminatory or trade-distorting manner, and, supported by the US, requested that 12.3(a)(i) and (ii) remain bracketed because they are critical to linking farmers and local communities to germplasm programmes. ZAMBIA, supported by CAMEROON, supported deleting 12.3(a)(i) and (ii). ZAMBIA remarked that there is a provision that addresses the concerns over trade distortion. The final text read, "Assist their farmers," and retained the text on non-distortions and 12.3(a)(i) and (ii). ETHIOPIA supported reinserting "Parties" in the chapeau. The US said that if Parties were to be reinserted, [their respective priorities] would also need to be retained. After discussion on Article 12.3(a) ended in a gridlock, delegates decided to revert to the original text for the chapeau and retain 12.3(a) from CGRFA-7. The NETHERLANDS and the US expressed disappointment at the lack of progress on the text. COLOMBIA supported the Chair's proposal to keep 12.3 and 12.3(a) unchanged.

The delegates then considered consolidated text for sub-articles of 12.3 prepared but not reviewed at CGRFA-7.

**Article 12.3(n) (Sui Generis System):** This sub-article, all in brackets, contains a proposal to set up a *sui generis* system that provides for the recognition, protection and compensation of the knowledge, innovations and practices of farmers and traditional communities. CANADA and NORWAY were unclear as to the meaning of the paragraph. BRAZIL and COLOMBIA explained that it was modeled after the provisions of an agreement among the Andean countries and that it aims to ensure the recognition of the rights of different communities. AUSTRALIA, supported by JAPAN and the NETHERLANDS, on behalf of the European region, expressed concern over the adoption of a system and its compatibility with the TRIPs agreement. COLOMBIA explained that the system could bring the IU in conformity with the CBD. SAMOA, BOLIVIA, CAMEROON and INDIA favored the retention of this provision. Two NGOs, Rural Advancement Fund International (RAFI) and GAIA Foundation, expressed their concern that the rights of indigenous peoples be respected. The Legal Counsels of the International Union for the Protection of new Varieties of Plants (UPOV) and the FAO both indicated that there was no incompatibility between the paragraph and the provisions of the TRIPs agreement. The paragraph remained in brackets and COLOMBIA asked that a footnote be added containing the legal opinions of the Legal Counsels and the points made by NGOs.

**Article 12.3(o) (Participation of Farmers):** Delegates' positions were quite divergent on this sub-article, which aims to ensure the participation of farmers and farming communities in the definition and implementation of measures for Farmers' Rights. AUSTRALIA highlighted that the paragraph suggested that national governments do not

already consult their own farmers. The US also had concerns on the form of the process and JAPAN indicated that more certainty was necessary on the content of the measures before addressing the issue of participation. ETHIOPIA, supported by TOGO, MALI, BOLIVIA, COLOMBIA and BRAZIL, indicated that the paragraph was necessary to ensure the protection of Farmers' Rights. The US submitted an amendment, and ETHIOPIA and the NETHERLANDS, on behalf of the European region, suggested changes to this amendment. The NETHERLANDS also proposed a definition for "farmers" and "farming communities" that was judged unacceptable by INDIA. The Chair indicated that the amended text was more confusing than the original and that, consequently, the latter would remain in brackets.

**Article 12.3(p) (Prior Informed Consent):** On this sub-article on PIC from farmers and local communities for plant resource collection, the US proposed leaving the text bracketed because either all or none of the proposals should be taken. The NETHERLANDS, on behalf of the European region, said that if it were not included here, he would reopen the PIC issue when Article 12 was revisited.

**Article 12.3(q) (IPR and Land Tenure):** On this sub-article, regarding the review assessment and modification of Intellectual Property Rights (IPR) and land tenure, AUSTRALIA said the language referring to the modification of property rights and land tenure systems was inappropriate. INDIA said the reference was not required. ETHIOPIA, supported by the PHILIPPINES, underscored the importance of IPR, land ownership and seed laws to securing Farmers' Rights. The paragraph was left in brackets.

## CONTACT GROUP

The Contact Group on scope, access, Farmers' Rights and financial security met for nine sessions under the chairmanship of Fernando Gerbasi (Venezuela). Delegates from Angola, Argentina, Australia, Brazil, Canada, China, Cuba, Ethiopia, France, Germany, India, Japan, Republic of Korea, Libya, Malaysia, Malawi, Malta, Mexico, Morocco, New Zealand, the Netherlands, Norway, the Philippines, Poland, Romania, South Africa, Switzerland, the United Kingdom and the United States participated. The Contact Group was originally to meet from 2-3 December, but due to the number of topics to be addressed, the Group met for two additional days on 4-5 December.

On 3 December, delegates had an evening discussion with Geoffrey Hawtin, Director-General of IPGRI/CGIAR, who remained available throughout the Contact Group's deliberations. Hawtin emphasized his institutions' anticipation of the outcomes of the negotiations and expected the external review to be completed by 1998. He addressed delegates' questions on: species versus genera for domesticated and wild cultivars; difficulties in tracing countries of origin; CGIAR capacity in biotechnology and nascent approach to IPR; and the feasibility of CGIAR acting as the IU's financial mechanism, with IPGRI as its subsidiary scientific body.

Discussions in the Contact Group were based on the Negotiated Text and Consolidated Text of Articles 3 (Scope), 11 (Access), and 12 (Farmers' Rights), Resulting from Negotiations During the Seventh Regular Session (CGRFA/IUND/4/ Rev.1/Add.1). Negotiated text reflects agreements reached in CGRFA-7, while consolidated text refers to text compiled by the Bureau. Delegates focused their negotiations on access, particularly facilitated access through a multilateral system that could ensure benefit sharing. Farmers' Rights was handed over to the Working Group and discussions on financial security were postponed. The Contact Group consolidated text on Article 11 and compiled proposals on benefit sharing submitted by the African region, European region and Malaysia.





## ACCESS

**ARTICLE 11.1 (SOVEREIGN RIGHTS OF STATES OVER PGRFA):** Delegates agreed to remove brackets in the negotiated text for Article 11.1 on sovereign rights of States over their PGRFA with the reservation of one country.

**ARTICLE 11.2 (OPTIONS FOR SYSTEMS OF ACCESS):** The Contact Group based their negotiation on options for systems of access to PGRFA on CGRFA-7 negotiated and consolidated texts as well as a number of new proposals by delegates, the Secretariat and the FAO Legal Counsel on, *inter alia*, systems of access, particularly the multilateral option, the role of participants in the IU and designated national collections.

**Multilateral System:** The Contact Group began with consideration of the Commission's negotiated text on Article 11.2, which aims to establish a multilateral system for facilitating access to and sharing benefits from the use of PGRFA. A few delegates indicated they could only agree to such a system if they had a better understanding of its components and function, while other delegates supported it. Most also agreed that the multilateral system should promote expedient, easy and broad access to PGRFA. The participants disagreed on how to harmonize the system with the objectives of the CBD and over which CBD articles would best serve as points of departure. Some developing countries insisted on linking access to benefit sharing and said the system should "provide fair and equitable benefit sharing...including the transfer of technology, capacity-building, exchange of information and funding."

Several delegates further insisted on the necessity of prior informed consent, and associating access with both benefit sharing and Farmers' Rights. Some developing countries questioned the need to discuss benefit sharing in the debate on terms of access. One developed country proposed implementing the Global Plan of Action with benefit sharing options, raising revenue within a multilateral system, using existing financial mechanisms, and possibly additional funding. Intellectual Property Rights legislation was considered as providing the best possible access to poor, developing countries dependent on agriculture. Some delegates expressed concern over efforts to restrict access to genetic resources, noting a discrepancy between sovereign rights under the CBD and IPR. They felt that demands by other delegates to facilitate access to genetic resources were in contradiction with the provisions of the CBD that call for reciprocating facilitated access.

After debating the negotiated text, the Contact Group debated at length the Bureau's consolidated text on Article 11.2, 1\*, 2\* and 3\* and a previous Secretariat non-paper prepared by the FAO Legal Counsel (CGRFA/Ex3/96/Rep.), both of which consider options for systems of access. The consolidated Bureau's text presented three options, which could be construed as alternative regimes or as components of a single regime. The first option called for unrestricted access to PGRFA whereby countries could designate material to be included in the international system. The second option called for a multilateral system of access and exchange of all categories of PGRFA. The third option called for conditions of bilateral access and benefit sharing, to be determined on mutually agreed terms and in conformity with the CBD.

The Secretariat non-paper suggested several categories of access and benefit sharing on: a multilateral basis only; a purely bilateral basis on mutually agreed terms; a combined multilateral/bilateral basis; and the establishment of a mechanism for movement between these three categories. The FAO Legal Counsel noted two provisions for facilitating access to PGRFA: a multilateral system with a specified list of PGR, such as crop species, genera, and/or institutional groupings, to be in Annex I, and, alternatively, a bilateral system in accordance with the CBD and contracting parties.

**Criteria for Lists, Time Frames and Institutions for the Multilateral System:** The Contact Group generally agreed with the option for a multilateral system of facilitated access. Remaining discussion focused on what this multilateral system would entail. A vast majority of delegates expressed a preference for a single, multilateral system that would include all categories of PGR. Although many did not feel a need to discuss provisions for a bilateral system, given the focus on a multilateral system of access, a few delegates hinted at being flexible enough not to eliminate the bilateral option. Several countries did not want access to be limited to a list of species that may or may not be revised, and favored a broad multilateral system covering all materials, addressing not only global food security but also sustainable agriculture. One delegate noted that the multilateral system could serve as an umbrella system that embraces the advantages of bilateral or other systems.

A few countries preferred the use of a list under a multilateral system. One delegate said that rather than developing a complex system that might not work, a list would serve as a minimum starting point from which everyone could agree, envisaging a review of the list on a periodic basis. A number of delegates noted that the foundation of the IU must be global food security, but differed as to whether a list should comprise major crops, minor food crops of small farmers, or as many crops as possible.

Delegates also discussed the issue of CBD retroactivity. While several countries did not want the CBD to apply retroactively, another country stated that pre-CBD collections and the CGIAR should be part of the multilateral system. Another country noted that one of the advantages of a restricted list is that there would be no distinction between materials acquired after or before the CBD entered into force.

In a spirit of compromise, the Contact Group agreed that the scope for facilitated access in the multilateral system should actually be a list. Some delegates expressed concern that a list might subsequently be proposed for narrowing the scope of benefit sharing. Some delegates were also unsure as to which institution would be responsible for granting access and for periodically reviewing the list. Language in support of enhancing the list through periodic reviews and "with a view to increasing its scope with the aim of covering all PGRFA" was agreed to by most delegates, but objected to by one. The re-drafted text prepared by the Secretariat grants access to PGRFA through a multilateral system by means of a specific list located in Annex I, and for those PGRFA not listed in the Annex, through a bilateral system on mutually agreed terms in accordance with the CBD, with the Governing Body being responsible for the transfer of bilateral mechanisms to the multilateral system.

One region requested that reference to Annex I in the Secretariat draft text(A)(a) be bracketed, noting that it wanted to examine the list, which had not yet been formulated, in light of the entire IU. The region also submitted alternative text for Secretariat draft text (B), which extended the scope of the multilateral system to "all plant species needed for world food security and sustainable agriculture." One delegate strongly opposed the bracketing of text as well as the new proposal, which he said introduced new concepts, in particular, the linkage of scope to species and food security instead of PGRFA. He criticized the region for what he saw as an attempt to step backwards. Another delegate said the new wording would introduce rigidity into the process and opposed language suggesting an ongoing review. However, a number of delegates said the new proposal did not signal a change in climate in the negotiations, as the proposal did not reflect new ideas or a departure from the regions' position that the IU should have as wide a scope as possible.

After a number of textual amendments were proposed, the FAO Legal Counsel suggested the following compromise language for Secretariat draft(B): "the [Governing Body] shall keep Annex I under review with a view to extending its scope and ultimately achieving a



more complete coverage of PGRFA." This language was agreed to by the Contact Group, provided that Secretariat draft text(A), (A)(a and b) remain unchanged. This text was renumbered in the CGRFA-Ex4 consolidated negotiating text as Article 11.3.4(a) and (b) to replace (A) and(A)(a and b), and Article 11.3.5 to replace (B).

The Chair refocused discussion on criteria for establishing a list for Annex I. Delegates generally agreed on interdependence and global food security as the criteria to be used in drafting the list to be contained in this annex. Sustainable agriculture was also suggested as a criterion. Two lists with biological criteria from past Commission sessions were re-tabled. One region proposed a list of specific crops essential to global food security and unspecified forages. A list of commodities and crops at regional and world levels was suggested by one delegate, who later shared a possible list of specific forages. One delegate insisted on adding cotton, oil palm and sunflower. Delegates were not sure of whether to specify the genera, species or crops held in the CGIAR collections, given that these categories overlap, differ and must be seen in light of the definition to be agreed upon for PGR. A proposal by the IPGRI/CGIAR representative to provide the Commission with technical advice on the primary, secondary and/or tertiary gene pools for each crop, to be designated in an annexed list, was welcomed.

A drafting group consolidated a proposal for an indicative list of crops to be made accessible through the multilateral system. The list included major crops and forages of significance to global and regional food security and several additional commodity crops. The Contact Group agreed to bracket this tentative crop list for Annex I, pending reaction from countries before the next session. A request for IPGRI/CGIAR to prepare a technical study on aspects of the list was proposed by a number of delegations, with some suggesting that the study enumerate CGIAR crop and forage collections and/or detail crop gene-pools. The Contact Group tabled additional criteria for the list, including time frames and institutional issues, such as collections and designation.

Although delegates generally agreed on placing the CGIAR collections into a multilateral system for facilitated access, disagreements emerged. A few delegates noted that International Agricultural Resource Centres (IARC) would be more inclusive than the CGIAR, although the CGIAR may cover many more minor crops not listed in the indicative Annex I. The majority view of placing all pre- and post-CBD collections of the CGIAR, regardless of collection time, into the multilateral system was challenged on the grounds that it was irrelevant to apply as an inflection point the CBD's entry into force.

An alternative view proposed by two delegations was that the CGIAR system and national designated centers be included, but only after entry into force of the revised IU. There should be no measures to restrict access to CGIAR collections prior to entry into force of the IU, except for those restrictions established upon collecting. Access to national collections would be governed by the tentative crop list only upon entry into force of the IU. One region threatened not to cooperate if all pre-CBD collections would be excluded. He added that painful repatriation, mostly from industrialized country genebanks, might be necessary rather than the hoped for commitments to make all national and international *ex situ* collections and *in situ* materials on farms accessible to all IU Parties. One delegate asserted that it would be impossible for his country to place the private property of *in situ* farm materials into the multilateral system. While some delegates wanted inclusion of national collections, a few others cautioned that they may be under private rather than national jurisdiction. The importance of maintaining existing or past restrictions or terms of access on collections was pointed out by two delegations. Alternative viewpoints detailed the very different context of developing country farmers who use *in situ* materials without ever thinking of private property. One delegate raised his concern over possible "leakages" from the multilat-

eral system out to individuals, non-Parties and/or institutions who were not members of the multilateral system. Another noted how these "leakages" are related to IPR, the most restrictive form of legislation possible.

**Participants in the IU:** During the discussion on the multilateral system under Article 11.2 of the Bureau's consolidated text, the Contact Group explored possible roles for participants, namely non-State entities, and the ways they might be linked with IU Parties. A number of delegations wanted the issue of participants to be addressed in a separate annex under Article 9 (International Network of PGRFA). One delegate feared that if governments were to designate participants, a situation could arise where a Party who had invited a participant could absolve itself of responsibility by claiming non-jurisdiction if the participant did not fulfill its obligations. One region tabled a new, alternative wording with three sub-paragraphs, suggesting that Parties could invite institutions within their jurisdiction to be participants, governed by applicable domestic law and required by the Party not to act in violation of the Party's IU obligations. A third clause states that Parties take no measures to restrict access to germplasm in the collections of any IARC. Several delegations raised objections, particularly with respect to the first and third sub-paragraphs. Given that the CGIAR is comprised of national centers, one delegate questioned the ability to distinguish terms of access of designated national collections from those of IARCs. Two delegations unsuccessfully attempted to amend the sub-paragraphs on inviting participants and national collections to take appropriate measures to, as in Article 15.7 of the CBD, "share in a fair and equitable way the results of research and development and the benefits arising from commercial and other utilisation of genetic resources with the contracting Party." Although a number of delegates noted the autonomous governance of the CGIAR and the legal personality of its national centres, two delegations remarked that because the CGIAR collections do not as a whole have one legal personality and are held in trust, the CGIAR is under the auspices of the Commission. The Contact Group adopted this bracketed language on participants in the IU, which became Article 11.3.5 of the CGRFA-Ex4 consolidated negotiated text.

**Designated National Collections:** The Contact Group discussed a new proposal by one delegation that would make Parties place designated national collections into the multilateral system, as listed in Annex I; for those materials not in Annex I acquired prior to the entry into force of the IU, access to such materials would be subject to specific conditions. He explained that access is open to everything in the designated national collections, irrespective of whether they are pre- or post-CBD. For the post-CBD period, the collection must be listed; for pre-CBD, there should be open access, free of charge, unless they are held in private hands under specific arrangements. Several delegates objected to limiting facilitated access to post-CBD collections. Further debate centered around the private/public interface and the idea of what a designated collection would be.

In response to a question regarding the meaning of "collections designated by their national government," it was noted that some countries do not have national collection centers and would need to designate a participant that was within its borders. In an attempt to clarify the role of institutions as participants, one region proposed text granting Parties the authority to invite institutions within their jurisdiction to participate in the multilateral system.

The issue of national centers also raised several questions concerning restricted access to private property, which was objected to by the majority of delegates. While the Chair agreed that governments cannot compel private institutions to participate in the multilateral system, he suggested they could adopt measures that would encourage such participation. One delegate was concerned about the bureaucracy and "leakages" that might arise with movement between designated and non-designated collections. One delegate said the privatization



issue is ultimately a test of willingness to agree on the IU. Noting the tendency in Europe, North America and increasingly in Africa towards privatization, he feared the Commission may be negotiating an empty framework and said the IU will fail unless there is access to the private sector. One delegate reiterated his good faith in coming to some future agreement, but highlighted that his country had privatized national collections. The Contact Group adopted this bracketed language on designated national collections, which became Article 11.3.3 of the CGRFA-Ex4 consolidated negotiated text.

**ARTICLE 11.3.1 (COST IMPOSED FOR ACCESS):** The Contact Group addressed Article 11.3.1 of the negotiated text, which addresses the level of cost to be imposed for access. Several delegates agreed that the last sentence on formal requests for access was redundant as it was addressed in Article 11.2 on facilitated access within the multilateral system. Discussion centered on the level of cost to be imposed. Among the various proposals, the concept of "handling fees" versus "administrative costs" generated the most discussion. A number of delegates objected to the term "handling fee" since they choose to offer access free of charge. Several developing countries noted that the concept of "handling fee" does not translate into Spanish and suggested the use of the term "administrative costs" instead. Several countries said the term "administrative costs" had wider applicability than "handling fee."

As a compromise, one delegate suggested using the term "minimal administrative costs" instead, noting that, as access to genetic resources is the major benefit of a multilateral system, it is necessary to enforce that this benefit will not be subject to excessive costs. Delegates eventually agreed that access to material in the multilateral system shall be provided free of charge or, where a fee is charged, this shall not exceed the minimal costs involved. Throughout, many delegates stressed the distinction between *ex situ* and *in situ* collections, the latter of which may require other, additional costs, and limited the applicability of such "minimal costs" to *ex situ* collections. In closing the session, one developing country delegate reminded the Contact Group that access is linked to Farmers' Rights and benefit sharing. With a multilateral system agreed to in principal, benefit sharing must be revisited within this context.

**ARTICLE 11.3.2 (OBLIGATIONS OF RECIPIENTS OF GENETIC MATERIAL):** The Contact Group reconsidered Article 11.3.2 of the Commission's negotiated text on the obligations of recipients of genetic material. Two new proposals were presented, each with provisions on access conditions, including, *inter alia*: exclusivity of purposes of material use; other uses and the CBD; donor PIC; and/or exchange of information and technology.

Starting with the chapeau, the Contact Group proceeded step-by-step through the provisions. There was disagreement on whether the chapeau should begin with the recipients "accept" or "be informed that by acceptance" they must fulfill certain obligations. Two regions requested instead that Parties ensure that recipients do not violate the conditions for facilitated access and related benefit sharing. However, the appropriateness of Parties policing recipients or overturning IPRs, as was done in the case of turmeric, was questioned by one delegate. The Contact Group agreed to a formulation that recipients "be informed that they are committed" to certain obligations.

The first provision on recipient obligation to using genetic materials exclusively for research, breeding and training was debated along with the second provision on "other uses," which would relate to the CBD. Two delegates preferred PGR to "genetic material." while another preferred PGRFA. "Other uses" were generally agreed to refer to non-food and agricultural uses. One delegate opposed the suggestion to expand utilization purposes to include: activities for conserving PGRFA; commercial uses; and uses not for food and agriculture, such as chemical, medical, pharmaceutical or industrial purposes. A proposal by a number of developing countries to add language from

CBD Article 15.7 on fair and equitable sharing of the results of research and breeding and the benefits arising from commercial and other uses was similarly opposed. Several delegations found this suggestion confusing, implying an unacceptable "bilateralization" — that is bilateral exchanges between contracting Parties into the multilateral system. One delegate also pointed out that: Article 5 already addressed conservation; commercial use, unlike research or breeding uses, should be the only one subjected to the CBD; and neither the FAO nor the CBD have mandated the Commission to consider PGRFA uses for non-food and agricultural purposes. One delegate sought clarification on how benefits would be shared with the country of origin. In addition, the question of other non-food and agricultural uses was raised as a major concern even if the multilateral system is intended only for PGRFA. One region said that any mention of commercialization would have to be consistent with IPR and CBD Article 16.2.

A region responded to these objections and stressed that the multilateral system should be used for more than breeding and research alone. There is a continuum from research towards commercialization, starting with PGR in farmers' fields. In agreement, one delegate noted that it is a small step from research to commercial use. He added that with respect to benefit sharing, the IU need not necessarily refer to the CBD since it stands alone and has its own legal force.

A region proposed new language requiring that genetic material received for food and agricultural purposes, and later utilized for other non-food and agricultural purposes, be subjected to fair and equitable benefit sharing arrangements. One region and a delegate rejected this amendment. A delegate expressed frustration about the many proposals blurring elements that are in and out of the multilateral system list. The Contact Group agreed to consolidate all proposed provisions for the draft report.

### **BENEFIT SHARING**

Deliberations shifted focus after a few delegations requested that the Contact Group explicitly address benefit sharing as a separate topic. The Chair invited exploratory first impressions and two regions presented lengthy, related non-papers containing guiding thoughts in an attempt to consolidate similar views. One region enumerated the many benefits to be shared and the necessity of elaborating on the relationship between the proposed multilateral system and any bilateral or other system. No contradictions were seen by the other region, which stressed that bilateral arrangements, commercialization and IPR must work in equitable ways to "get benefits into and out of the multilateral system to those that deserve them," particularly in countries of origin.

One delegate suggested that facilitated access means renouncing monetary benefits; however, commercial contracts could have benefit sharing provisions. He called for distinguishing patents to protect investments in innovation on materials from the many unpatented products in commercial uses, both of which could involve benefit sharing with supplying countries. He added that for non-commercial uses, benefits to be shared include scientific information and technologies derived from research and development.

Another delegate reflected that assuming the multilateral system allowed for intellectual property protection, derived benefits would have to address processes, such as drought tolerance or insect resistance, related to listed crop materials and any extracts derived thereof. He considered this option of claiming royalties impossible to implement and undermining the idea of a simple, transparent, efficient, non-bureaucratic system of equitable, facilitated access. As an alternative, he took up one regional suggestion that Parties undertake to establish an International Fund into which they would contribute annually a percent value of crops listed in their territory and under intellectual property protection under their national legislation.





Several delegations found the International Fund idea compelling. A couple of delegations approved of the possibility of using royalties and avoiding possible "bilateralization" within the multilateral system. Two delegations called for benefit sharing arrangements to encompass the GPA. Noting that benefit sharing should not be restricted to facilitated access, a delegate proposed that the International Fund be linked to the conservation and sustainable use of PGRFA. A number of delegates agreed that the relationships between commercialization, IPR and participants would have to be clarified in future discussions of benefit sharing.

Delegations expressed satisfaction with the opportunity to exchange views on benefit sharing for the first time. However, all progress on access was considered tentative by one region who reminded the Contact Group of the intimate linkage between access, benefit sharing and Farmers' Rights. The group agreed to consolidate proposals from the two regions and on the International Fund into an appendix to the draft report.

### CLOSING PLENARY

Delegates gathered on Friday evening for the closing Plenary to consider the Draft Report of the CGRFA-Ex4 (CGRFA-Ex4/97/DRAFT REPORT), presented by the Rapporteur, Mr. Michel Chauvet. The Chair, Fernando Gerbasi, indicated that much progress had been achieved in the course of the week, both in the Contact Group and in the Working Group, and that these strides were reflected in the new Consolidated Negotiating Text (CGRFA-Ex4/97/2). In addition, the Chair introduced an Appendix to the Draft Report: Proposals on Benefit Sharing Submitted by the African Region, the European Region and Malaysia (CGRFA-Ex4/97/2/Add.1), which the Contact Group had decided should be addressed during the next negotiating session.

The delegates debated the dates of the next extraordinary sessions of the Commission. Many highlighted the budgetary constraints of the FAO and it was agreed that another extraordinary session would not be held until the Director-General of the FAO was able to certify that the necessary resources were available. The Chair insisted that two sessions would be necessary if the Commission is to conclude its negotiation of the IU. The delegates agreed on language that calls on the Chair of the Commission, the Secretariat and the Director-General of the FAO to coordinate their efforts and, if possible, convene two sessions, tentatively scheduled for June and any time between September and December 1998. The Chairs of the Working Group and the Contact Group then presented reports on the activities of their groups, highlighting the progress achieved on the different articles. The delegates took note of the new consolidated text as well as translation errors and omissions. The NETHERLANDS reinserted a footnote on the definition of farmers and farming communities. INDIA warned against the incorporation of definitions offered by countries or groups of countries.

When he introduced the draft final report, the Rapporteur indicated that the new consolidated text would be appended to it and he highlighted a number of corrections that needed to be made. Delegates highlighted minor edits and debated paragraph 7, which deals with the "tentative list" of crops annexed to Article 1. BRAZIL highlighted that only two criteria, interdependence and global food security, should be taken into consideration by the drafting group. The NETHERLANDS requested inclusion of two more criteria that the Contact Group had discussed: time frames and institutions. ETHIOPIA, ANGOLA, BRAZIL and COLOMBIA wanted to see only the two criteria retained and compromise language was suggested by CANADA and MALAYSIA. The agreed text states that the NETHERLANDS, on behalf of the European region, asked "that in the future other criteria be used." AUSTRALIA remarked that the reference to the opinion of the Legal Counsel and the interventions of NGOs had not been requested

by the Working Group. The Plenary adopted the report and the Chair concluded by thanking the Governments of France, Finland, Germany, the Netherlands and Norway for providing extra-budgetary funds to allow for the convening of this session, the Secretariat and all the Chairs before he gave the meeting to a close at 9:00 pm.

### A BRIEF ANALYSIS OF THE IU NEGOTIATIONS

While CGRFA-7 marked the beginning of negotiations to revise the International Undertaking on Plant Genetic Resources for Food and Agriculture in harmony with the Convention on Biological Diversity, the majority of delegates characterized this session as the start of serious, substantive negotiations that moved beyond political posturing. Unlike previous sessions, which for all intents and purposes were exploratory exercises, some delegates left this meeting with a clearer vision, particularly on access. One observer noted that the IU process is beginning to mature and "bear fruit." The issues on which difficulties are likely to arise have crystallized, providing a gauge for the outcome of future negotiations. While the most significant progress was achieved on the consolidation of text for less controversial articles, the provisions that had been the subject of the two working groups at CGRFA-7 remain the most controversial: scope, access and Farmers' Rights. The difficult issue of financial arrangements has still not been discussed due to lack of time, but will need to be tackled soon.

The difficulties encountered by the negotiators are all too familiar and can be likened to those encountered in other efforts to codify non-legally binding texts in international legal instruments. The negotiations on an International Legally Binding Instrument for the Application of the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, which were last held at the FAO a little more than a month ago, ran into the same obstacles and, in both cases, one is left to wonder whether the negotiators are keen to achieve a new regime or if they are satisfied with the status quo. In the CGRFA, however, the mood is slowly shifting and delegates appear to be more willing to tackle real questions with real solutions in a more honest and open way.

The Contact Group on access issues, assisted by a strong Chair, helped unlock the debate on access and an apparent breakthrough has resulted. A multilateral system to facilitate access to PGRFA through a list of major crops yet to be determined is taking shape. On a smaller scale, the first exchange of views on benefit sharing was revealing and showed good will from all participants to continue to clarify this sensitive issue. The Contact Group acknowledged the complexity associated with tackling the private/public sector interface and balancing IPR interests with a multilateral system. Furthermore, the introduction of the concept of an International Fund to facilitate benefit sharing marked a willingness to consider innovative approaches.

Some delegations appear to be willing to compromise and this was exemplified in the course of the debate on Farmers' Rights when a number of members of the European region appeared to support strong language from the African region. Consensus of this issue, however, is still far from being achieved. One of the main remaining problems is that some of the regional group positions remain quite polarized. The commitments on the part of the negotiating Parties have remained limited and, after agreement is reached on the less controversial issues (such as the ones that were negotiated by the Working Group before it took on the issue of Farmers' Rights), more flexibility will be required if agreement is to be reached.

Ironically, all the IU negotiations so far have been on the consolidation of negotiating text and the Chairs are in the position of asking delegates to *accept* bracketed text, knowing full well that in a few months they will ask them to *remove* the brackets. Many other negotiations that have taken place in the wake of the UN Conference on Environment and Development (UNCED) have taken a more direct



approach, negotiating directly from texts submitted by the respective Chairs or Secretariats, based on submissions from countries and regional groups. The approach taken by CGRFA differs since the various regional groups submitted parallel and concurrent versions of the texts that they would like to see discussed. While this approach has the merit of ensuring that all points of view are taken into account on most of the issues, it has also added considerably to the length of the negotiation process. This, however, may well be a necessary step in light of the fact that the process is already constrained by its aims to adapt a pre-existing text.

The negotiations are also complicated by uncertainty as to the relationship between the new IU and the CBD. The CBD, like other treaties dealing with natural resource management issues, is partly self-implementing and partly a framework convention. It can thus be the subject of protocols and other implementing agreements, and the new IU will need to fit within the evolution of this important international legal instrument.

The negotiation tactics appear to have evolved since the last session, and this is in part attributable to the new strategy adopted by the Secretariat. The delegates had expressed some skepticism about the lack of progress achieved when the two working groups had tackled some of the most difficult issues (scope and access on the one hand and Farmers' Rights on the other) at CGRFA-7. In this session, to the contrary, the Working Group was devoted to the less controversial issues, resulting in visible progress. It was significant, however, that representatives of the African region intervened to add Farmers' Rights to the agenda of the Working Group. This intervention embodied the urgency attached to this issue. While the progress achieved on the topic was limited, the shift in the schedule indicated the realization by some of the dangers of postponing the more controversial issues. The Secretariat and the Chairs of the two groups showed great flexibility with the agenda, although some delegations opposed it, and it marked an interesting compromise between the need to achieve significant progress on some points and the need to address the more burning issues. The African countries may have felt that some of the delegations dragging their feet in the Contact Group were content not to address Farmers' Rights. If the same approach is taken at the next round of negotiations, regional groups should ensure before the agenda is adopted that specific time limits will be assigned to each issue, to ensure that all the issues of interest are discussed.

A final element that may have influenced the level of progress achieved was the concurrent holding of the third Conference of the Parties to the Framework Convention on Climate Change in Kyoto. By the admission of some of the delegates, it was clear that some of most senior diplomats who normally deal with plant genetic resources issues were in Kyoto and not available able to assist in the process.

It remains unclear whether the IU negotiations will be concluded as scheduled by the end of 1998. At this point, two more negotiating sessions are planned for next year, and the delegates are required to finish their work by May 1999. In the closing Plenary the Chairs, the Secretariat, and a number of delegates reiterated their commitment to the process, which bodes well for the final outcome.

## THINGS TO LOOK FOR

**THE FIFTH AND SIXTH EXTRAORDINARY SESSIONS OF THE COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE:** The next extraordinary sessions for the revision of the International Undertaking are tentatively scheduled to be held in Rome in June and September 1998. For date confirmation and more details, please contact 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>.

**THIRD CONGRESS ON THE CONSERVATION OF CARIBBEAN BIODIVERSITY:** This conference will be held from 14-17 January 1998 in Santo Domingo, Dominican Republic. For information, contact the Univeridad Autonoma de Santo Domingo, DR; tel: +1-809-686-3348; fax: +1-809-687-5766.

**PREPARATORY MEETINGS FOR CBD COP-4:** The Asian Preparatory Meeting is tentatively scheduled for January 1998 in Beijing, China. The African Preparatory Meeting is tentatively scheduled for February 1998 in Morocco. The Latin American and Caribbean Preparatory Meeting is tentatively scheduled for February/March in a venue to be determined. The Preparatory Meeting for countries with economies in transition is scheduled for March 1998 in Almaty, Kazakstan. For more information, contact the CBD Secretariat, World Trade Centre, 393 St. Jacques Street, Montreal, Quebec, Canada H2Y 1N9; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: [chm@biodiv.org](mailto:chm@biodiv.org); Internet: <http://www.biodiv.org>.

**INTERNATIONAL CONFERENCE ON DIVERSITY AS A RESOURCE:** This conference will take place from 2-5 February 1998 in Rome, Italy. For information, contact COBASE, Via Vitorchiano 23, 00189 Rome, Italy; Tel: +39-6-3330078; Fax: +39-6-3330081; E-mail: [anna.borioni@inet.it](mailto:anna.borioni@inet.it).

**WORKING GROUP ON BIOSAFETY:** The fourth session of the Open-ended *Ad Hoc* Working Group on Biosafety will take place in Montreal from 9-18 February 1998. Delegates agreed that the fifth session should be held during the last two weeks of July and that the final meeting of the Working Group and adoption ceremony should be held in early December. For 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@firlht.ernet.in](mailto:root@firlht.ernet.in).

**FOURTH CONFERENCE OF THE PARTIES TO THE CONVENTION ON BIOLOGICAL DIVERSITY:** COP-4 is scheduled for 4-15 May 1998 in Bratislava, Slovakia. For information, contact the CBD Secretariat.

**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>.