



SIXTH INTER-SESSIONAL CONTACT GROUP MEETING ON THE REVISION OF THE INTERNATIONAL UNDERTAKING ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE, IN HARMONY WITH THE CBD: 23-28 APRIL 2001

The Sixth Inter-sessional Contact Group Meeting on the Revision of the International Undertaking on Plant Genetic Resources for Food and Agriculture (IU), in harmony with the Convention on Biological Diversity (CBD), was held in Spoleto, Italy, from 23-28 April 2001. Ninety-six participants from 37 countries, one regional economic integration organization, and intergovernmental, non-governmental and industry organizations attended the meeting. Delegates discussed a range of outstanding items on the basis of a Chair's Simplified Text, including Articles 11 (Coverage of the MS), 12 (Facilitated Access), 13 (Benefit-sharing), 14 (Global Plan of Action), 15 (*Ex Situ* Collections of the International Agricultural Research Centres of the Consultative Group on International Agricultural Research and Other International Institutions), 16 (International Plant Genetic Resources Networks), 17 (Global Information System on PGRFA) and 18 (Financial Resources). Additionally, three technical groups were convened to consider definitions, legal matters and the list of crops.

The debates generally revisited those held during previous Contact Group meetings, and delegates often expressed frustration at being unable to move beyond entrenched positions. Despite the Contact Group's inability to compromise on these issues, the principles underlying the various positions were clarified, which many saw as an essential step in moving the process forward. One of the major accomplishments at this meeting was the agreement in a technical group on a list of 30 crop genera to be covered under the IU, with 17 more pending. The Contact Group agreed to hold an Extraordinary Session of the Commission on Genetic Resources for Food and Agriculture (CGRFA) to conclude the negotiations from 24-30 June 2001, at FAO headquarters in Rome, Italy.

A BRIEF HISTORY OF THE PROCESS

THE FAO GLOBAL SYSTEM: The FAO established the inter-governmental Commission on Plant Genetic Resources in 1983. Renamed the Commission on Genetic Resources for Food and Agriculture (CGRFA) in 1995, the Commission is currently comprised of 160 countries and the European Community. 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 IU, the rolling Global Plan of Action (GPA), the International Fund for Plant Genetic Resources, the World Information and Early Warning System, 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 IU, the first comprehensive instrument on plant genetic resources for food and agriculture (PGRFA), was established in November 1983 by FAO

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Conference Resolution 9/83. Its objective is to ensure that PGRFA are explored, collected, conserved, evaluated, utilized and made available for plant breeding and other scientific purposes. It was originally based on the principle that PGRFA 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, as eight developed countries formally recorded reservations. To date, 113 countries have adhered to the IU, with Brazil, Canada, China, Japan, Malaysia and the US as notable exceptions. In April 1993, the Commission considered the implications of the 1992 UN Conference on Environment and Development, and the Convention on Biological Diversity (CBD) in particular, for the IU. Recognizing that the CBD would play a central role in determining policy on PGRFA, 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 three interpretative annexes into the IU, and provided a more rational structure, grouped into 14 articles.

SIXTH SESSION OF THE CGRFA: The CGRFA held its sixth session at FAO headquarters in Rome in June 1995. In addition to its regular agenda, the Commission considered a Second Negotiating Draft. At this meeting, the Commission focused its discussions on provisions for scope, access, farmers' rights and the preamble.

THIRD EXTRAORDINARY SESSION OF THE CGRFA: The CGRFA held its third extraordinary session in Rome in December 1996. Delegates considered a Third Negotiating Draft and returned to discussions on scope, access and farmers' rights. Although the meeting did not produce any new negotiated text, it did make progress on difficult and often divisive issues.

SEVENTH SESSION OF THE CGRFA: The CGRFA held its seventh session in Rome in May 1997. Delegates continued negotiations on the revision of the IU in two working groups, addressing scope, access and farmers' rights. The meeting's most notable achievements were conceptual advances regarding farmers' rights and the establishment of a Multilateral System (MS) to facilitate access to PGRFA.

FOURTH EXTRAORDINARY SESSION OF THE CGRFA: The CGRFA held its fourth extraordinary session in Rome in December 1997. Delegates considered a Fourth Negotiating Draft in one working group and one contact group. The working group produced consolidated text on: objectives; relationship of the IU with other international agreements; conservation, exploration, collection, characterization, evaluation and documentation of PGRFA; sustainable use of PGRFA; international cooperation; the GPA; the international network of PGRFA; global information systems on PGRFA; and farmers' rights. The contact group continued discussions on issues related to access and benefit-sharing, and made progress as proposals began to take shape for a MS to facilitate access to PGRFA through a list of major crops. The first exchange of views on benefit-sharing was insightful, and the complexities of tackling the private/public sector interface and balancing intellectual property right (IPR) interests were acknowledged.

FIFTH EXTRAORDINARY SESSION OF THE CGRFA: The CGRFA held its fifth extraordinary session in Rome in June 1998. Delegates continued discussions in an open-ended working group and

a Chair's contact group. The working group reviewed the provision on farmers' rights. The contact group reviewed elements of an article on access to PGRFA and introduced new text on benefit-sharing and financial arrangements. Overall, the working group made little progress on the issue of farmers' rights, as fundamental differences divided key regional groups, particularly on ascribing legal rights for farmers. The contact group made some progress on access, however the relationship between facilitated multilateral access and IPR continued to be problematic.

115TH FAO COUNCIL: The FAO Council held its 115th session in Rome in November 1998. The Council recognized progress made to date and supported convening an informal meeting of experts to address benefit-sharing, farmers' rights, the financial mechanism, the legal status of the revised IU, and other issues.

MONTREUX EXPERTS' MEETING: The meeting of experts was held in Montreux, Switzerland, in January 1999. Participants attended in their personal capacity to discuss the IU's legal status, its structure, the MS, farmers' rights and financial resources. Based on the discussions, Chair Fernando Gerbasi (Venezuela) drafted a series of "Chairman's Elements" reflecting areas of broad consensus as a basis for continuing the negotiations. There was general consensus that the IU should take the form of a legally binding instrument and that its structure should be dynamic. The Chairman's Elements address: scope; objectives; national commitments, programmes and rural development policies; the MS, including components for facilitated access and benefit-sharing; farmers' rights; financial resources; a legally-binding instrument; and provisions for amending the IU and its annexes.

EIGHTH SESSION OF THE CGRFA: The CGRFA's eighth session was held in Rome in April 1999. The Commission decided to continue negotiations on the IU's revision using a Composite Draft Text, and authorized the Chair to convene a Contact Group to advance negotiations, using the Chairman's Elements derived from the Montreux meeting. The Contact Group consists of 41 countries selected according to regional representation and was formed to address the most contentious issues under debate. The Commission also authorized an extraordinary session of the CGRFA to adopt the final text, when appropriate, so that the results could be submitted to the 119th Session of the FAO Council in November 2000. Negotiations proceeded on Articles 11 (Multilateral System of Access and Benefit-sharing), 12 (Coverage of the MS) and 15 (Farmers' Rights) of the Composite Draft Text. Significant progress was made on farmers' rights with the adoption of agreed text.

FIRST INTER-SESSIONAL CONTACT GROUP MEETING: The first meeting of the Contact Group took place in Rome from 20-24 September 1999. The group focused on Article 14 (Benefit-sharing) of the Composite Draft Text, on the basis of a submission by developing countries, addressing sub-articles on: exchange of information; access to and transfer of technology; capacity building; and the sharing of monetary benefits of commercialization. Consensus was reached on text for exchange of information, while text on access to and transfer of technology and its implications for IPR remained bracketed. On commercial benefit-sharing, the group recognized the link between the income derived from the commercial use of PGRFA and benefit-sharing, but there was insufficient time for review.



SECOND INTER-SESSIONAL CONTACT GROUP

MEETING: The second meeting of the Contact Group took place in Rome from 3-7 April 2000. The group continued a general discussion on Articles 13 (Facilitated Access), 14 (Benefit-sharing) and 16 (Financial Resources) of the Composite Draft Text, and made some progress on clarifying positions and agreeing on text.

THIRD INTER-SESSIONAL CONTACT GROUP

MEETING: The third meeting of the Contact Group was held in Tehran, Iran, from 26-31 August 2000. The Contact Group continued negotiations on Articles 13, 14 and 16 of the Composite Draft Text. The group made significant progress with a provisional package agreement on IPR and commercial benefit-sharing, which was subject to review by a few developed countries. Regions also submitted lists of crops for consideration under Annex I (List of Crops) with numbers ranging from nine to 287 crops.

FOURTH INTER-SESSIONAL CONTACT GROUP

MEETING: The fourth meeting of the Contact Group was held in Neuchâtel, Switzerland, from 12-17 November 2000. Significant time was devoted to discussion of Article 16 of the Composite Draft Text, where agreement was reached on most provisions. Provisional progress made on IPR and commercial benefit-sharing at the third Contact Group meeting was called into question as four countries stated, based on consultations with their capitals, that the proposed compromise package was unacceptable. Delegates also engaged in extended discussions and considered input from external experts regarding intellectual property issues as related to the IU, CBD and the World Trade Organization's Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPs).

119TH FAO COUNCIL: The FAO held its 119th Council meeting in Rome from 20-25 November 2000, where it reviewed Chair Gerbasi's report, detailing obstacles and areas of progress within the negotiations. The Council requested Chair Gerbasi to convene further sessions of the Contact Group, as required, and a meeting of the CGRFA to finalize the IU's revision for submission to the 31st FAO Conference in November 2001.

FIFTH INTER-SESSIONAL CONTACT GROUP

MEETING: The fifth meeting of the Contact Group was held at FAO headquarters in Rome, Italy, from 5-10 February 2001. Delegates continued discussions on Articles 12, 17 (Governing Body), 18 (Secretariat), 20 (Amendments of the Undertaking) and 21 (Amendments of Annexes) of the Composite Draft Text, as well as a proposed article on supporting components of the MS. Delegates held general discussions on the IU's legal basis in relation to the FAO and the CBD, and addressed the terms for including *ex situ* collections held by Centres under the Consultative Group on International Agricultural Research (CGIAR) and other international institutions. A technical group was also formed to list and define terms used within the text of the IU.

REPORT OF THE CONTACT GROUP

On Monday, 23 April 2001, Amb. Fernando Gerbasi (Venezuela), Chair of the CGRFA, opened the sixth meeting of the Contact Group for the revision of the IU in harmony with the CBD. Massimo Brunini, Mayor of Spoleto, welcomed participants to the city and recalled its deep cultural roots in history, agriculture, art and religion. He highlighted the region's notion of identity defined by these cultural factors and stated that the world economy stems from such local diversity. He concluded by wishing delegates success in their endeavors.

Louise Fresco, FAO Assistant Director General for Agriculture, thanked the Government of Italy for hosting the meeting, as well as the Governments of Japan, the Netherlands, Norway and Switzerland for their financial support. She recalled the request of the 119th FAO Council for submission of the revised IU to the 31st FAO Conference in November 2001, noting that an extraordinary session of the CGRFA to adopt the IU could be convened in June 2001. She further highlighted the need to conclude negotiations on the IU before they are pre-empted by discussions in other relevant fora.

Alfonso Pecoraro Scanio, Italian Minister of Agricultural and Forestry Policy, highlighted the importance of PGRFA and the need to develop clear rules to ensure rights regarding the world's genetic heritage. He noted that genetic engineering and patentability of genetic resources have become highly visible issues on the international agenda and require international organizations to provide clear rules for legal certainty.

Chair Gerbasi drew attention to his "Chairman's Proposal for a Simplified Text," which was developed in consultation with the Bureau and made available with other background documents prior to the meeting. The Chair's Simplified Text provides a suggested revised structure of the articles, includes proper legal terminology, provides a single text without brackets where consensus might be possible and assumes that the IU will be an agreement for the implementation of the CBD under Article 14 of the FAO Constitution. Chair Gerbasi noted agreement expressed in the Bureau to use the Chair's Simplified Text as the basis for plenary discussions, while employing the Composite Draft Text (CGRFA/CG-6/01/2) for purposes of cross-referencing. He also announced the decision by the Bureau to convene three technical groups during the week addressing definitions, legal matters and the list of crops.

The Contact Group generally met in morning and afternoon sessions throughout the week, and conducted negotiations on Articles 11-18. The three technical groups on definitions, legal matters and the list of crops met during the evenings from 24-27 June, with occasional afternoon or morning sessions. The following summary reviews the articles discussed in their numerical rather than chronological order.

For purposes of clarity, the articles below are numbered according to the finalized discussions on the Chair's Simplified Text. Where relevant, numbering from the original version of the Chair's Simplified Text (CST) and the Composite Draft Text (CDT) are also cited. Both background documents are available on the CGRFA web site at <http://www.fao.org/ag/cgrfa/docscg6.htm>.

Editor's Note: As a matter of policy, the Earth Negotiations Bulletin does not directly attribute statements made by governments in informal negotiations when requested to do so.

ARTICLE 11: COVERAGE OF THE MULTILATERAL SYSTEM (FORMERLY CDT ARTICLE 12)

On Saturday, 28 April, regarding Article 11 on the MS's coverage, a developed country, supported by three other developed countries, introduced a proposal for a new provision on Article 11 that had been tabled at the fifth Contact Group meeting. The proposal encourages Parties to include PGRFA from diverse holdings within their territory listed in Annex I, while at minimum providing access to PGRFA under the management and control of a Party's national government. Those supporting the proposal noted: problems with providing access to resources not under government control; linkages to the application of Article 13.2(d)(ii) on commercial benefit-sharing; relevance to the



original industry proposal on commercial benefit-sharing; and questions whether access to one's own material would be subject to the terms of facilitated access and benefit-sharing. Developing countries opposed the proposal, noting that it would allow countries to designate which collections would be in or outside of the MS. They continued to support inclusion of all collections.

A developed country also noted that the Chair's Simplified Text omits reference to international institutions other than the CGIAR International Agricultural Research Centres (IARCs), highlighting related text in Article 15.4 on establishing agreements with other international institutions. The text remains unchanged and in brackets.

ARTICLE 12: FACILITATED ACCESS (FORMERLY CDT ARTICLE 13)

ARTICLE 12.1 (formerly CDT Article 13.1): On Wednesday, 25 April, delegates addressed Article 12.1, which states that Contracting Parties agree that facilitated access shall be in accordance with the IU's provisions. The Contact Group agreed to a proposal to reference Article 11. The final text states that the Contracting Parties agree that facilitated access to PGRFA under the MS, as defined in Article 11, shall be in accordance with the IU's provisions.

ARTICLE 12.2 (formerly CDT Article 13.2): On Wednesday, 25 April, delegates addressed the chapeau of Article 12.2, which states that the Contracting Parties agree to provide access to other Contracting Parties in accordance with the conditions set in a number of sub-provisions. A regional group of developed countries wished to specify that access should also be given to private entities and proposed, with support from several countries, deletion of reference to "other Contracting Parties." Some developing countries said the reference to "other Contracting Parties" should be retained to ensure enforcement of obligations and emphasize that this is an agreement among States. Developed countries said restricting access to State governments would be inefficient for some States, and that access for scientists and private entities should be included.

After extensive debate and some informal consultations, delegates generally agreed to reference Contracting Parties or their natural or legal persons, while debating language on providing access following procedures set out by national legislation. A small group was convened to further refine the text.

On Thursday, 26 April, the small group reported on compromise text reading "The Contracting Parties agree to take the necessary legal or other appropriate measures to provide such access, through the MS. A Contracting Party may decide that the PGRFA may be provided either to it or to any natural or legal person under its jurisdiction." It was proposed that a new provision, Article 12.3, would be added following this text to note that such access shall be provided in accordance with the conditions detailed within Article 12.3's sub-provisions.

After some discussion, Chair Gerbasi proposed reference to PGRFA covered in Article 11 and suggested that access be provided to other Contracting Parties through the MS. A delegation involved in the small group noted that addition of "to other Contracting Parties" raised the original problem regarding forcing transactions to go through governments. A developing country said that the Chair's formulation accommodated access for non-State actors. After further discussion, a developed country proposed amending language in the second sentence to "Unless a receiving Contracting Party otherwise decides,

such access shall be provided also to natural and legal persons under the jurisdiction of the receiving Contracting Party." Delegates requested time to consider the various proposals.

On Friday, 27 April, delegates reviewed the Chair's amended compromise text for the first sentence and the developed country's proposal for the second sentence. Regarding the first sentence, a developing country expressed support for the compromise text, as amended by Chair Gerbasi. A regional group of developed countries proposed adding reference to "such access for use in other Contracting Parties," to avoid implying the need for transactions. Several developing countries and one developed country opposed, stating that the text should convey who is going to access materials, not who is going to provide them. The regional group of developed countries said they would withdraw their suggestion with the understanding that governments could inform the Secretariat on how access is handled.

A developing country opposed the developed country proposal for the second sentence, and debated whether and how the text should focus on providing or receiving access. With no progress, Chair Gerbasi deferred further debate, and the text remains bracketed.

The bracketed text states that, "The Contracting Parties agree to take the necessary legal or other appropriate measures to provide such access to other Contracting Parties through the MS. The Contracting Parties may decide that the PGRFA covered in Article 11 may be provided to it or to any natural or legal person under its jurisdiction."

ARTICLE 12.3 (formerly CST Article 12.2; CDT Article 13.2): The agreed text of this provision states that such access shall be provided in accordance with the conditions below (as defined in Articles 12.3(a)-(h)).

ARTICLE 12.3(a) (formerly CST Article 12.2(a); CDT Article 13.2(a)): On Wednesday, 25 April, delegates discussed this provision, which notes the appropriate purposes of facilitated access. Delegates agreed on the article with a minor editorial change.

The final text states that access shall be provided solely for the purposes of conservation and utilization in research, breeding and training for food and agriculture, provided that such purposes do not include chemical, pharmaceutical and non-food/non-feed industrial uses. In the case of multiple-use crops, (food and non-food), their importance for food security should be the determinant for their inclusion in the MS and availability for facilitated access.

ARTICLE 12.3(a) bis (proposed): On Wednesday, 25 April, during discussions on Article 12, developing countries noted omission of proposals from previous meetings in the Chair's Simplified Text, and therefore proposed including a provision stating that if accessed PGRFA are later used for chemical, pharmaceutical, and/or other non-food/non-feed industrial uses, the user would have to pay a fair and equitable share of the commercial benefits into the IU's funding mechanism. Where the country of origin of these PGRFA is known, payment would be negotiated directly on bilateral terms. Chair Gerbasi suggested that this text be included as a new paragraph to follow Article 12.3(a).

Delegates discussed whether the provision was most relevant for discussions on facilitated access, benefit-sharing or compliance. Some questioned whether this would entail establishing a detailed compliance mechanism. Developing countries explained the provision's original intent to penalize uses other than those detailed in Article 12.3(a). A developed country said that the IU should not detail provisions for uses that are not part of the MS, calling for reference to applicable



conditions under the CBD at most. A developing country explained that the proposal embodies CBD language without specifically mentioning the Convention.

On Thursday, 26 April, a developing country suggested placing the provision in an article on non-compliance. A developed country questioned how such a provision would be implemented, who would determine how materials are being used, and how fair payment would be determined. She proposed that cases of non-compliance be pursued through Article 21 (Settlement of Disputes). Other developed and developing countries agreed, and referred the issue to the legal group. The report of the legal group stated only that this provision should be included in an article on compliance, and the text remains pending.

ARTICLE 12.3(c) bis (proposed): On Wednesday, 25 April, a developed country proposed new Article 12.3(c) *bis*, to replace a proposal by developing countries for Article 15.1(b)(i), on reporting distribution of PGRFA. The new text would state, "Parties should take measures to encourage providers of PGRFA participating in the MS to keep a record of all recipients to whom they have provided samples of PGRFA, and to share this information with the donor of the sample on request in order to enhance contacts among users." He said that placement in Article 12 would effectively bind IARCs to such a provision and allow any donor to follow exchanges and access without creating a tracking system.

A developing country questioned why such a provision should be included in an article on access, observing that this mixed conditions of supply with conditions of access. Several other developing countries supported the principle of a provider informing a donor Contracting Party on material transfers, but opposed moving such a provision from Article 15 to 12. The developed country argued that Articles 12.3(b), (c) and (e) are also obligations on providers, noted that Article 15.1(b)(i) calls for IARCs to report on germplasm transfers and said that this should apply to all Parties. Chair Gerbasi noted that defining who "donors" in the MS actually are might require assistance from the definitions group. With several developing countries preferring to consider this text under Article 15, the developed country withdrew his proposal and said he would insist on deleting this provision in Article 15. Further debate was deferred, and the proposed text and its placement remain pending.

ARTICLE 12.3(d) (formerly CST Article 12.2(d); CDT Article 13.2(d)): On Wednesday, 25 April, delegates discussed Article 12.3(d), which restricts IPR limiting facilitated access to PGRFA, or their genetic parts or components, in the form received from the MS. Developing countries supported, while several developed countries opposed, deleting language specifying "in the form." A group of developed countries noted that such language was necessary for clarity when referring to genetic parts or components. A few developed countries supported deletion of "genetic parts or components," which many developing countries opposed. A group of developed countries and two other developed countries supported the existing text, recognizing it as a compromise between divergent positions.

Those supporting deletion of "genetic parts or components" argued that: IPR serve as an incentive for private companies and those with technology to improve upon PGRFA; the existing text could conflict with the existing international IPR regime and national legislation; patents reveal valuable knowledge for use by others; and patents cannot be granted for something that already exists in nature or that is prior art. One developed country argued that IPR should be used to provide incentives for innovation and not appropriation. A developing

country and others objected to the possibility of patenting gene sequences or components without modification as that would compromise facilitated access and efforts to promote food security.

Delegates highlighted different interpretations over whether isolated or purified genetic components could be considered for patenting. One developed country noted that its national legislation considers such components patentable since the isolated component is different than the source material. Numerous others argued that such isolation of genetic components does not make them any different than the original material. Several developing and developed countries noted their acceptance of IPR, but not their restriction of access to PGRFA under the MS.

Three developed countries noted the confusion over the provision's interpretation, and one proposed deleting it, which numerous delegations opposed. Two stated that this body does not have the competence to address whether and how IPR apply to genetic parts and components, noting other international agreements responsible for such issues. A group of developed countries highlighted emerging discussions on these matters within the World Intellectual Property Organization (WIPO) and other fora, arguing that this body needs to present its view on IPR and PGRFA. A developed country argued that such a provision has no relation to other international instruments, since it provides rules for recipients of resources and not for IPR themselves.

Highlighting two cases of patenting unmodified PGRFA, an observer noted that the actual operation of IPR systems is often different than their formulation on paper, which is a legitimate cause for concern. A developed country said that her national patent system has a means for redress allowing for challenges to patents, to which a developing country noted the costs involved in mounting such challenges.

After several requests by Chair Gerbasi for agreement on the existing compromise text, delegates debated whether the text could be bracketed or accepted with a footnote highlighting the disagreement of some countries. Upon a specific question by Chair Gerbasi regarding identification of those objecting to his compromise text, four developed countries registered their disagreement. Chair Gerbasi noted that many had compromised to agree on the existing text and implored the countries in disagreement to compromise as well. After a break, a developed country noted that it could not accept the existing text as it infringed on his country's domestic IPR legislation. Another developed country in disagreement with the text noted that he needed to consult with his capital.

On Thursday, 26 April, delegates agreed to adopt the paragraph with brackets around references to "genetic parts or components" and "in the form."

The final text states, "recipients shall not claim any intellectual property or other rights that limit the facilitated access to the PGRFA, [or their genetic parts or components,] [in the form] received from the MS."

ARTICLE 12.3(f) (formerly CST Article 12.2(f); CDT Article 13.2(f)): On Wednesday, 25 April, delegates discussed Article 12.3(f), on access to PGRFA protected by IPR being consistent with international agreements and subject to national legislation. A developed country suggested replacing reference to "subject to national legislation" with "national law relating to such rights," to clarify the language. Two developing countries supported simply replacing



“legislation” with “laws.” After a brief debate on avoiding loopholes by using overly general language, delegates agreed to refer to “relevant national laws,” and the text was agreed.

A developing country then asked the FAO Legal Counsel how Article 12.3(f) would relate to 12.2(d), and which one would prevail in a case of conflicting legislation. The FAO Legal Counsel responded that Parties should ensure consistency in principle and in application of national laws. A developed country observed that Article 12.2(f) places an obligation on providers and Article 12.3(d) places an obligation on recipients, stating that the two provisions should be complementary and not in conflict.

The final text states that access to PGRFA protected by intellectual and other property rights shall be consistent with relevant international agreements, and with relevant national laws.

ARTICLE 12.4 (formerly CDT Article 13.5): On Thursday, 26 April, a developed country noted that Article 12.4, on providing access to non-Parties, remained pending, and highlighted that international agreements generally do not bind non-Parties to agreements. Thus, access to non-Parties under this agreement would be subject to terms and conditions set by Parties, making the reference to a standardized material transfer agreement (MTA) inappropriate. She noted the existence of more appropriate language in Article 28 (Non-Parties) and suggested, with support from all, that the provision be deleted.

ARTICLE 13: BENEFIT-SHARING IN THE MS (FORMERLY CDT ARTICLE 14)

ARTICLE 13.2 (formerly CDT Article 14.2): On Thursday, 26 April, in Article 13.2 (Benefit-sharing in the MS), a developed country proposed a new sub-paragraph stating “Parties recognize that by providing PGRFA in accord with this article they are giving prior informed consent for such access.” He explained that such language would ensure harmony with the CBD. A number of developing and developed countries said that this provision was unnecessary. They noted that by signing the IU Parties would be giving prior informed consent and highlighted other articles of both the IU and CBD implying prior informed consent. With no support, the proposal was withdrawn.

The text of Article 13.2 remains unchanged.

ARTICLE 13.2(d) (formerly CDT Article 14.2(d)): On Monday, 23 April, the Contact Group discussed Article 13.2(d), on sharing the monetary benefits of commercialization. The Chair’s Simplified Text deletes Composite Draft Text Articles 14.2(d)(i) and (ii), on payments according to a percentage of the value of cultivated crops protected by national IPR and to the UN Scale of Assessments. The Chair’s Simplified Text also divides former Article 14.2(d)(iv) into three separate provisions (Articles 13.2(d)(ii), (iii) and (iv)).

Delegates addressed a footnote stating that four countries do not agree to the text of Articles 13.2(d)(ii), (iii) and (iv). One of the four countries in disagreement with the current text noted its acceptance of the provision’s principle that those profiting from commercialization of material accessed through the MS should give back to the system through provision of the improved material and/or financial contributions. She emphasized the role that IPR play in providing incentives, and asked the group to consider a new alternative text for 13.2(d)(ii), (iii) and (iv). A regional group of developed countries proposed that this new text be relegated to informal discussions rather than tabled as a formal proposal. Developing countries generally stated that they were not prepared to re-open negotiations on Article 13.2(d), although

they indicated a willingness to consider informally proposals improving implementation of the existing principles on monetary benefit-sharing. The developed country wishing to propose the new text called for flexibility in addressing the issue, noting that if none was shown their government might have to withdraw from the negotiations.

Another developed country in disagreement with the existing text noted that a provision linking access, benefit-sharing and IPR is unprecedented, recalled that the connection between access and benefit-sharing and IPR, as originally proposed, was based on a contractual approach, and said that implementation and enforcement of such arrangements would overburden the responsible institution, whether national or international. He also recommended exclusion of trade secrets from IPR restricting further access. Yet another of the dissenting four, with support from the others, stressed that the issue was one of practical implementation without changing existing legislation and domestic policy.

The developed country then outlined the proposal, which would recognize the importance of IPR for crop improvement and encourage those deriving commercial profit from PGRFA in the MS to make such improved materials available through the MS, and/or contribute financially. Developing countries stated that the proposal was unacceptable, highlighting the need for mandatory benefit-sharing. Developing countries also argued, *inter alia*, that: the present negotiations are intended to move from a voluntary to a binding agreement; the MS requires a reliable system of funding; and symmetry has to be maintained between mandatory obligations for facilitated access and mandatory obligations for benefit-sharing.

The developed country proposing the text noted the difficulties of developing an extensive monitoring system to ensure compliance under a mandatory system, and stated that such a system would not generate significant financial returns. A group of developed countries argued that implementation of such a system does not necessarily require detailed control and monitoring, stating that an honor-based system would be acceptable. The developed country noted that this could be interpreted as a voluntary compliance system, while also highlighting the mandatory nature of benefit-sharing for facilitated access, information-sharing, capacity building and technology transfer.

A developing country said that mandatory administrative and legal measures would require creation of provisions in national access laws, adding that States have to implement as necessary the mandated provisions under the MS. A developed country called for de-linking the issues of implementation and mandatory obligations, noting that international agreements often require further work on implementation. A group of developed countries suggested referring the question of implementation to the Governing Body’s first meeting.

A developed country said that facilitated access depends on good will at all stages, so rules that cannot be implemented should be avoided. He questioned how countries with breeding programmes planned to inform others when a payment is required for a product protected by trade secrets, and how the rights of indigenous people developing products protected by trade secrets would be respected. A group of developed countries responded that governments are required and able to inform those affected when a new law or regulation is in effect, noting extensive regulation of the agricultural industry. Chair Gerbasi added that stakeholders are naturally inclined to be informed about new legislation relevant to their interests.



An observer, supported by a developed country, suggested studying the modalities of implementing the existing proposal on commercial benefit-sharing and restrictive IPR. A developing country noted that Article 12.3(a) also requires monitoring and enforcement and suggested addressing such implementation issues together. Two delegates proposed that other means of mandatory benefit-sharing be explored, including those previously suggested such as contributions according to the UN Scale of Assessments.

An observer highlighted a letter signed by over 270 civil society organizations, addressing three main points: the list of crops should include at least 30 genera; IPR should not be permitted on PGRFA under the IU; and farmers' rights should be re-opened given their critical importance.

At the close of the discussion, Chair Gerbasi stated that the text and footnote would remain pending further discussion.

On Tuesday, 24 April, the developed country making the new proposal stressed her continued commitment to reaching agreement despite disappointment over certain countries' refusal to engage in political bridge-building, and called on governments to be prepared to resume discussion on such difficult issues in the future with more willingness to negotiate.

The text of Article 13.2(d) remains unchanged.

ARTICLE 14: GLOBAL PLAN OF ACTION (FORMERLY CDT ARTICLE 8)

On Friday, 27 April, delegates opened discussion on Article 14, which highlights the importance of the Global Plan of Action and its implementation for PGRFA. Several developing countries supported the Chair's Simplified Text. A developed country highlighted a legal problem with committing Contracting Parties to implement a non-binding agreement, and proposed that Contracting Parties "should" promote the GPA's implementation. Noting that legally the Contracting Parties would not be able to instruct the CGRFA, the developed country suggested deleting language on the Contracting Parties monitoring and guiding the GPA's implementation through the CGRFA. Another developed country requested, and all supported, deletion of reference to Articles 5 (Conservation, Exploration, Collection, Characterization, Evaluation and Documentation of PGRFA) and 6 (Sustainable Use of Plant Genetic Resources).

The final text recognizes that the rolling GPA is important for the IU, and states that Contracting Parties should promote its effective implementation, including through national actions and international cooperation to provide a coherent framework, *inter alia*, for capacity-building, technology transfer and exchange of information, taking into account the provisions of Article 13.

ARTICLE 15: EX SITU COLLECTIONS OF THE CGRFA-IARCS AND OTHER INTERNATIONAL INSTITUTIONS (FORMERLY CDT ARTICLE 8 BIS)

On Tuesday, 24 April, Chair Gerbasi opened a general discussion on substantive issues under Article 15, which establishes the conditions for provision of PGRFA held by the IARCs of the CGIAR and other international institutions. Article 15, as included in the Chair's Simplified Text, differentiates among the conditions with regard to:

- IARC materials included in the list of crops under Annex I subject to the terms of the IU contained in Part IV (The MS of Access and Benefit-sharing);
- non-Annex I material acquired by IARCs prior to the IU's entry into force subject to conditions of a standardized MTA to be

developed by the Governing Body, taking into account the sovereign rights of the country of origin; and

- non-Annex I material acquired after the IU's entry into force subject to mutually agreed terms (MAT) decided in agreement with the country where the material was collected.

A regional group of developed countries, supported by a number of other developed and developing countries, underscored the importance of the CGIAR Centres to developing countries, particularly with regard to germplasm restoration and food security in impoverished regions; urged that all CGIAR materials be included in the MS; and called for a smooth transition from existing FAO agreements to new agreements under the IU without limiting existing levels of access. Two countries noted the need to address outstanding issues of differentiation between materials acquired before and after entry into force of the IU, and coverage of crops not included on the list.

A number of developed countries emphasized that: the IU create conditions to facilitate access without imposing restrictions; access to material held in trust by the IARCs should remain unrestricted; and multi-tier systems for access would create obstacles. A developing country said that access restrictions would apply in some countries as per prior existing MTAs, preferred that the list of crops be agreed upon before inclusion of CGIAR materials is discussed, and stated that research on the situation of donor and recipient countries was under debate.

A developed country stated that the status of material within IARCs acquired under specific conditions should not be changed, and noted that such conditions could denote a special status for some materials. She added that cumbersome access regimes, including MTAs, would impede the MS. The developing country supported this view, agreed that access should not be limited, reiterated that special conditions for crops not on the list would not entail additional restrictions but simply provide different conditions for access, and said that ownership of material should rest with the country of origin. Noting historical lack of sufficient passport data on country of origin for significant portions of *ex situ* collections, an observer argued that the Governing Body should be granted legal ownership over IARC collections. A developing country disagreed, stating that lack of information should not be a reason for not identifying country ownership over genetic resources. Another developing country stated that the IU should not address the question of country ownership. A developed country noted that any special rules for CGIAR crops should be based solely on their status of being held in trust.

A developed country requested clarification regarding how a differentiated system of Annex I and CGIAR crops would affect research under the CGIAR, to which an observer responded that the answer depends on the specific conditions for handling of Annex I and IARC crops. Another developed country responded that research would be constrained if the Annex I list includes fewer crops than are covered under the CGIAR, whereas research might be promoted if Annex I were more inclusive.

A developing country noted that a system where the Governing Body defines crops for the list under Annex I and the IARCs define their own mandated crops, would effectively allow for two authorities on including crops in the MS. A developed country said that under such a system IARCs and the Governing Body would have to be cognizant of the impact of their decisions on each other. The developing



country replied that the IU must provide clear instructions for any material in the CGIAR collections not on the list or that the IARCs might collect in the future.

On Saturday, 28 April, developing countries introduced a new proposal for Article 15, specifically including changes for Articles 15.1, 15.1(a), 15.1(b), 15.1(b)(i), 15.1(b)(ii), 15.1(b)(iii), 15.1(b)(iv), 15.3 and 15.5. A developed country agreed to negotiate on the basis of this text with the understanding that these provisions might be better placed in Article 11 (Coverage of the MS). A number of developed countries expressed general support for the text as a way forward.

ARTICLE 15.1 (formerly CST Article 15.1; CDT Article 8 bis.1): On Thursday, 26 April, regarding chapeau language in Article 15.1, addressing collections held by IARCs, developing countries proposed replacing language inviting the IARCs to sign agreements with the Governing Body with text stating that the IARCs shall sign such agreements. An observer, supported by a developed country, noted that it would be legally improper to impose such an obligation on an independent third party. Others recalled that this matter had been debated extensively during the fifth Contact Group meeting. A developing country stressed a preference for stronger language to ensure that the IARCs would abide by the IU's terms. Another developing country stated that the IARCs are already mandated to abide by the FAO Agreements and that this provision would simply reinforce them. A group of developed countries noted that the FAO Agreements are distinct from the IU.

A developed country proposed language stating that the Contracting Parties recognize the importance to this IU of the *ex situ* collections of PGRFA held in trust by the IARCs of the CGIAR and invite the IARCs to sign agreements with the Governing Body. A developing country suggested text calling upon the IARCs to sign such agreements. Delegates agreed to combine the two proposals and the text for the chapeau was agreed.

On Saturday, 28 April, the proposal tabled by developing countries contained alternate language for this provision. Several developed countries raised a point of order, stating that text had already been agreed. After some debate, the previously agreed language was accepted.

The final text states that the Contracting Parties will recognize the importance to the Undertaking of the *ex situ* collections of PGRFA held in trust by the IARCs of the CGIAR. It also states that the Contracting Parties call on IARCs to sign agreements with the Governing Body in accordance with the terms and conditions outlined in the article.

ARTICLE 15.2 (formerly CST Article 15.1(a); CDT Article 8 bis.1(a)): On Tuesday, 24 April, delegates began discussion of this provision on PGRFA in Annex I and held by the IARCs, which would be subject to the provisions of Part IV of the IU. A group of developed countries proposed referring to PGRFA held "in trust" by the IARCs under their Agreements with the FAO. Several developed countries supported moving the provision with its chapeau to Article 11 and deleting reference to Annex I with regard to IARC collections, which would thereby create a single system to deal with IARC collections. Several developing countries opposed deleting reference to Annex I since the text would then simply repeat the chapeau language in Article 15.2.

Two developing countries requested clarification on the relation between materials designated by the IARCs and those held in trust, with specific concern over the situation of non-designated material. An

observer noted that non-designated materials include those under development, those that may not be held for the long-term and those acquired under specific terms with the providing country. He added that the present process of designation refers to the system developed under the FAO Agreements and will not necessarily apply under the renegotiated IU. A group of developing countries noted their understanding that PGRFA held "in trust" refers to all material within the CGIAR collections. Delegates then agreed to bracket the entire provision as well as contentious references to Annex I, "in trust" and Part IV.

On Saturday, 28 April, developing countries proposed that PGRFA listed in Annex I and held by IARCs should be provided in accordance with the provisions set out in Part IV of this Undertaking. A developing country reiterated a previous proposal to replace reference to "provided" with reference to "made available." Delegates accepted this amendment, and the text was agreed.

The final text states that PGRFA listed in Annex I and held by IARCs shall be made available in accordance with the provisions set out in Part IV of this Undertaking.

Editor's Note: The numbering of the final revised text omitted an Article 15.2(a). Thus, Article 15.2(b) will presumably become Article 15.2(a).

ARTICLE 15.2(b) (formerly CST Article 15.1(b); CDT Article 8 bis.1(b)): On Tuesday, 24 April, delegates discussed Article 15.2(b), which states that non-Annex I IARC material collected before the IU's entry into force shall be provided according to a standardized MTA developed by the Governing Body, taking into account the sovereign right of the country of origin over those PGRFA. A developed country requested clarification of: the reason for distinguishing between pre- and post-IU material; the case for MTAs; a rationale for why MTAs, if necessary, would be handled by the Governing Body; and the nature of sovereign rights of countries of origin.

A developing country responded that the MS is designed for a specific list of crops and should not be extended to materials outside the system, and that MTAs would reflect the special system of IARCs without imposing new conditions or practices. On the question of sovereign rights, he highlighted similarities with CBD text recognizing the sovereignty of States over their genetic resources.

A group of developed countries called for clear views on the positions of all countries and a willingness to make concessions, remarked on repetitive political debates, and noted that disagreements might need to be addressed as part of a final package. Recalling that the IU is between States and not IARCs, a developed country emphasized a perceived "terrorism" of IARCs and called proposed changes to Article 15 (apart from the agreed chapeau) "attempted mutilation" in the interests of non-States. (On Wednesday, 25 April, the delegate clarified his choice of language to underscore the use of IARCs to justify certain criteria and to pressure certain delegations. He noted that the IARCs have no legal responsibility or forum to discuss disputes under the IU, while stressing his ultimate respect for the IARCs and their activities.)

Chair Gerbasi stated that despite attempts to find workable solutions, the dialogue had degenerated and he could foresee no further progress unless delegates were willing to make concessions. He raised the possibility of freezing this process altogether and said he was tired of hearing the same arguments that have existed for years.



A developing country said that the Contact Group agreed to support the Chair's Simplified Text as a framework for discussion, and appealed to all to support the proposed structure of Article 15, noting that details on the three categories of material could be debated after agreement on a general framework.

A regional group of developed countries proposed language stating that non-Annex I PGRFA held in trust by IARCs shall be provided in accordance with a standardized MTA developed under the Governing Body by consensus and in accordance with relevant provisions of Articles 10.1, 12 and 13. He noted that the reference to Article 10.1 eliminated the need for further language on sovereign rights of the country of origin.

A developing country asked for clarification on deletion of reference to material collected before entry into force of the IU, noting that this would exclude some IARCs. The regional group responded that this would avoid separation of pre- and post-IU IARC materials. Developing countries then asked what conditions would govern determination of the MTA if no consensus could be reached and whether material would continue to circulate freely. Chair Gerbasi noted that consensus is needed for development of the standardized MTA and that the CGRFA could restrict access if no prior MTA existed. A developing country said it would not be possible for the IU or the Commission to enforce such a decision. The group of developed countries noted their preference to include all material, but expressed willingness to entertain other options if they were provided.

On Saturday, 28 April, developing countries proposed that non-Annex I PGRFA collected before the IU's entry into force held by the IARCs shall be provided in accordance with a standardized MTA, and that at its first meeting the Governing Body will determine the conditions for the MTA in accordance with relevant provisions of the IU, especially of Articles 12 and 13, including on property rights, and under the conditions set out in 15.2(b)(i), (ii), (iii) and (iv).

A developed country noted that an MTA negotiated between the IARCs and the FAO already exists, and wondered how a new one would be negotiated. The FAO Legal Counsel recalled that the existing MTA had been discussed by the Commission before being approved by the FAO. A developed country wondered about availability of material if the Governing Body does not decide the conditions for an MTA at its first meeting, and proposed: alternate text stating that these materials shall be provided in accord with the existing standardized MTA; that the language for the existing MTA be placed in an annex; and that the Governing Body would review this MTA at its first meeting. Two developing countries stressed setting a time limit so that a new MTA would be decided by the first meeting of the Governing Body. Chair Gerbasi suggested that the Governing Body determine conditions in a standardized MTA in conformity with the current MTA at its first meeting. Another developing country noted that if IARCs do not agree to the provisions of the IU, then current MTAs continue to be in effect.

A developed country proposed a new formulation for the provision to incorporate concerns over consulting IARCs on a new MTA and its adoption by consensus. She proposed text stating that non-Annex I PGRFA collected before the IU's entry into force and held by IARCs shall be made available on the same terms applying to Annex I PGRFA and in accordance with the provisions of the MTA currently in use, pursuant to agreements between the IARCs and the FAO. The MTA could be amended by consensus agreement of the Governing Body in consultation with the IARCs. She said that this would ensure access

until the Governing Body could make a decision on the MTA, and would guard against a period where no agreement would exist. A number of developed and developing countries questioned this language, said it was inconsistent with the current discussion, noted its indication that all materials would be treated as Annex I materials, opposed subordinating decisions made by States to the views of IARCs, and supported the changes proposed by Chair Gerbasi on a time limit.

The developed country agreed to delete reference to availability on the same terms that apply to Annex I PGRFA. A developed country inquired about the time it took to develop the original standardized MTA, and an observer noted that it had taken about four years, noting that with this experience to redesign a new MTA should not take as long. After additional debate over a reasonable time frame, delegates agreed to the Governing Body's second regular session.

The final text states that "PGRFA other than those listed in Annex I of this Undertaking and collected before its entry into force that are held by IARCs shall be made available in accordance with the provisions of the MTA currently in use pursuant to agreements between the IARCs and the FAO. This MTA shall be amended by consensus agreement by the Governing Body no later than its second regular session, in consultation with the IARCs, in accordance with the relevant provisions of this Undertaking, especially Articles 12 and 13, and under the following conditions:"

ARTICLE 15.2(b)(i) (formerly CST Article 15.1(b)(i); CDT Article 8 bis.1(b)(i)): On Saturday, 28 April, developing countries provided alternative text in their proposal for Article 15, which states the IARCs shall periodically inform the Governing Body about the MTA entered into, according to a schedule to be established by the Governing Body. The provision was adopted without discussion.

ARTICLE 15.2(b)(ii) (formerly CST Article 15.1(b)(ii); CDT Article 8 bis.1(b)(ii)): On Saturday, 28 April, developing countries provided alternative text in their proposal for Article 15, which states that the Contracting Parties in whose territory the PGRFA were collected from *in situ* conditions shall be provided with samples of them upon request. A developed country highlighted that the term "*in situ* conditions" has not been defined. A developing country requested that samples be provided without the need for an MTA, which an observer noted is currently standard practice under the CGIAR. With this amendment, the provision was adopted.

The final text states "the Contracting Parties in whose territory the PGRFA were collected from *in situ* conditions shall be provided with samples of such PGRFA on demand without any MTA."

ARTICLE 15.2(b)(iii) (formerly CST Article 15.1(b)(iii); CDT Article 8 bis.1(b)(iii)): On Saturday, 28 April, developing countries provided alternative text in their proposal for Article 15, which states that the benefits accruing to the funding mechanism shall be applied to the conservation and sustainable use of the crops in question, particularly in national and regional programmes in developing countries, especially in centers of diversity and the Least Developed Countries. A group of developed countries proposed inserting reference to countries with economies in transition, which generated some debate. Responding to questions about the reference to benefits, developing countries clarified that they would be those arising from the provisions in MTAs signed between the IARC and another institution for non-Annex I crops. They then proposed reference to any monetary benefits arising from provisions in the MTA. A developed country highlighted that the terms of the MTA have yet to be defined, and suggested



inserting a bracketed reference qualifying any monetary benefits as those in accordance with Article 13.2(d). With discussion over whether to refer to crops or PGRFA, delegates suggested bracketing both terms.

Due to lack of time, delegates agreed to bracket the original text of the proposal and to append it to the revised Chair's Simplified Text with the rest of the developing country proposal on Article 15 (including text for Articles 15.2(b)(iv) and 15.5, along with a request to delete Article 15.3).

ARTICLE 15.2(b)(iv) (formerly CST Article 15.2(b)(iv); CDT Article 8 bis.1(b)(iv)): This provision states that the IARCs shall take appropriate measures, in accordance with their capacity, in cases of violation of the MTA. On Saturday, 28 April, developing countries provided alternative text in their proposal for Article 15, which states that IARCs shall take appropriate measures in accordance with their capacity to ensure effective compliance with the conditions of the MTAs and shall promptly inform the Governing Bodies of cases of non-compliance. Given that there was insufficient time to address the proposed language, delegates agreed to append the proposal to the revised Chair's Simplified Text.

ARTICLE 15.3 (formerly CDT Article 8 bis.2): This provision states that access to non-Annex I material, received by international institutions after the IU's entry into force shall be on MATs to be decided by the country where the material is collected and the receiving institution and in harmony with the CBD's terms. On Saturday, 28 April, developing countries proposed deleting this provision. Given that there was insufficient time to address the proposal, delegates agreed to append the request to the revised Chair's Simplified Text.

ARTICLE 15.5: This provision states that the Contracting Parties are encouraged to provide access, as appropriate, to non-Annex I PGRFA important for the IARCs' programmes and activities, and that such access should be consistent with the terms of Article 15 and to the extent possible consistent with the in trust nature of the IARCs' *ex situ* collections. On Saturday, 28 April, developing countries provided alternative text in their proposal for Article 15, which states that such access shall be on MATs with the countries where the PGRFA is collected from *in situ* conditions. Given that there was insufficient time to address the proposed language, delegates agreed to append the proposal to the revised Chair's Simplified Text.

ARTICLE 16: INTERNATIONAL PLANT GENETIC RESOURCES NETWORKS (FORMERLY CDT ARTICLE 9)

ARTICLE 16.1 (formerly CDT Article 9.1): On Friday, 27 April, delegates discussed this provision, which states that international networks to maintain collections of PGRFA will be encouraged or developed, on the basis of existing arrangements, to achieve as complete coverage of PGRFA as possible. A developing country highlighted confusion over the nature of the networks, especially regarding their coverage of Annex I and non-Annex I crops, and proposed that activities regarding existing arrangements be in conformity with the IU. Chair Gerbasi clarified that the provision referred to all PGRFA.

Another developing country requested deleting reference to Articles 12 and 13, which was accepted. Two developing countries proposed deleting reference to existing arrangements. A group of developed countries disagreed, noting that deletion of the reference would mean that new gene banks would have to be established. One delegate highlighted the need to allow for the creation of new

networks. A developing country argued that networks formed prior to the IU might conflict with the terms of the IU, and another questioned whether the existing networks would allow non-Parties to access material in the MS. The group of developed countries then proposed language referring to existing cooperation, and not to networks. After brief consultations, delegates agreed to text addressing existing cooperation to be encouraged or developed on the basis of existing arrangements and consistent with the IU.

The final text states that existing cooperation in international PGRFA networks will be encouraged and developed on the basis of existing arrangements and consistent with the IU's terms, so as to achieve as complete coverage as possible of PGRFA.

ARTICLE 16.2 (formerly CDT Article 9.2): On Friday, 27 April, delegates briefly discussed this provision, making only a minor amendment. The final text states that Contracting Parties will encourage, as appropriate, all relevant institutions, including government, private, non-governmental, research, breeding and others, to participate in the international networks.

ARTICLE 17: GLOBAL INFORMATION SYSTEM ON PGRFA (FORMERLY CDT ARTICLE 10)

ARTICLE 17.1 (formerly CDT Article 10.1): On Friday, 27 April, delegates addressed Article 17.1, which states that Contracting Parties shall cooperate to set up a Global Information Network on matters relating to PGRFA. Two developed countries proposed that the text emphasize developing and strengthening existing information systems and networks rather than setting up a Global Information Network. Regarding a question on the differences between the networks cited in this provision and Article 16.1, a delegate noted that Article 16.1 defines a network of PGRFA material, and Article 17.1 defines a network of information on that material. He also called for clarification of Article 7.1(e) from the original IU, as adopted in 1983, which refers to coordination of information held in collections. The Secretariat explained that within the FAO there is an existing system coordinating information on PGRFA, which includes data from the International Plant Genetic Resources Institute (IPGRI) and from countries who choose to contribute information into the system, which then provides grounds for review and analysis of the state of the world's PGRFA. The system also forms the basis of the FAO's Early Warning System to assist in averting disasters based on natural occurrences.

A regional group of developed countries proposed changing the reference from a network to a system. A developed country suggested, and a developing country supported, alternate text noting "the expectation that such a system will contribute to the sharing of benefits by making information on PGRFA available to all Contracting Parties." Several countries again questioned the need for such a system if existing networks provide information, asked whether PGRFA material would also be disseminated, and noted the need to keep some information confidential. Another developing country reiterated the need for a separate information system.

Following a few additional suggestions for text formulations and a brief discussion on whether a global information system would diverge from the existing systems enough to constitute a new institutional mechanism, delegates agreed to final text stating that "The Contracting Parties shall cooperate to develop and strengthen a global information system to facilitate the exchange of information, based on existing information systems, on scientific, technical and environmental



matters related to PGRFA, with the expectation that such exchange of information will contribute to the sharing of benefits by making information on PGRFA available to all Contracting Parties.”

ARTICLE 17.2 (formerly CDT Article 10.2): On Friday, 27 April, delegates adopted Article 17.2 of the Chair’s Simplified Text without comment. The provision states that early warning should be provided about hazards that threaten maintenance of PGRFA, based on notifications by Contracting Parties.

ARTICLE 17.3 (formerly CDT Article 10.3): On Friday, 27 April, delegates discussed Article 17.3, which was adopted with minor amendments. The final text states that the Contracting Parties shall cooperate with the CGRFA in its assessment of the state of the world’s PGRFA to facilitate updating of the rolling GPA.

ARTICLE 18: FINANCIAL RESOURCES (FORMERLY CDT ARTICLE 16)

ARTICLE 18.1 (formerly CDT Article 16.1): On Thursday, 26 April, delegates discussed Article 18.1, which states that Contracting Parties, through the Governing Body, will develop and keep under review a funding strategy for the IU’s implementation. A developing country proposed replacing reference to the Governing Body, development and review with reference to implementation, noting that the responsibilities of the Governing Body are detailed in Article 19 (Governing Body). After some discussion, which highlighted linkages with Article 19.2(d) on the Governing Body’s adopting and reviewing the funding strategy, delegates agreed to the developing country’s proposal, while limiting the text of Article 19.2(d) to periodically reviewing the funding strategy.

The final text states that the Contracting Parties undertake to implement a funding strategy for the IU’s implementation in accordance with the provisions of Article 18.

ARTICLE 18.4(c) (formerly CDT Article 16.4(c)): On Thursday, 26 April, delegates opened discussion on this provision, which states that Contracting Parties agree to provide financial resources for national activities for the conservation and sustainable use of PGRFA. A developing country noted that such funds pertain to national activities and not to the IU’s financial activities, and requested moving the provision to Article 7 (National Commitments and International Cooperation). Chair Gerbasi deferred further discussion.

On Friday, 27 April, delegates resumed discussion on the proposal to move the provision to Article 7. Several developing countries opposed moving the text, noting the importance of making national contributions to the IU’s implementation as part of the funding strategy, and expressed regret that agreed text was being reopened. Highlighting a footnote in the Composite Draft Text expressing one country’s reservation on the text, three developing countries continued to support moving the provision, stressing that such contributions are for national work and suggesting that calculation of such commitments under the funding strategy might include agricultural subsidies. Several other countries supported placing the provision as new Article 18.6, which would remove it from the funding strategy yet keep it within Article 18.

Delegates then discussed whether to bracket the text or to include a footnote stating that some countries supported moving the provision. The final text remains unchanged from the Chair’s Simplified Text and includes a footnote stating that three countries supported moving the provision to Article 7.

ARTICLE 18.4(e) (formerly CDT Article 16.4(e)): On Thursday, 26 April, a developed country requested bracketing this provision on financial benefits arising from Article 13.2(d) accruing to the funding strategy, since elements of Article 13.2(d) remain unresolved. After some discussion, delegates agreed to include a footnote.

The final text remains unchanged from the Chair’s Simplified Text and includes a footnote stating that the text of Article 18.4(e) is pending resolution, given that four countries do not agree with the text of Article 13.2(d)(ii), (iii) and (iv).

ARTICLE 18.5 (formerly CDT Article 16.5): On Thursday, 26 April, delegates addressed Article 18.5, on priority for implementation of plans and programmes in support of farmers in least developed countries and countries with economies in transition. After debate highlighting similar discussions at the fourth Contact Group meeting and the need for consistency with Article 13.3, delegates agreed that Contracting Parties will provide support to these countries.

The final text states that Contracting Parties agree that priority will be given to the implementation of agreed plans and programmes for farmers in developing countries, especially in least developed countries and in countries with economies in transition, who conserve and sustainably utilize PGRFA.

TECHNICAL GROUPS

On Monday, 23 April, Chair Gerbasi announced the decision by the Bureau to convene three technical groups on definitions, legal matters and the list of crops. Each group would include two representatives from each region (the technical group on the list of crops was later allowed to have three representatives per region). He noted that the groups did not have the authority to negotiate text and would provide their reports to the Contact Group for consideration. The technical groups met in evening and occasional day sessions from 24–27 April, and reported to the Contact Group on Saturday, 28 April.

DEFINITIONS: On Tuesday, 24 April, Chair Gerbasi announced that the definitions group would work from the list created during the fifth Contact Group meeting and would receive further guidance from the Bureau. On Saturday, 28 April, the Chair of the technical group on definitions reported on progress made during the week, highlighting inter-session consultations and noting that all definitions except two (PGRFA and Centres of Origin) have a single text as agreed within the group. The list includes eight terms, pared down from the 16 under discussion at the fifth Contact Group meeting.

Upon Chair Gerbasi’s proposal to introduce the definitions produced by the technical group into Article 2 (Definitions), several delegates supported their further consideration, especially since they were not negotiated. A group of developing countries noted that additional terms could be considered at the next meeting. The Chair of the technical group also noted that reference to a possible definition for “*in situ* conditions” with regard to Article 15 had been considered in conjunction with its definition in the CBD. Delegates then agreed to append the report to the revised Chair’s Simplified Text.

Centre of Crop Diversity: “A geographic area containing a high level of genetic diversity for crop species in *in situ* conditions.”

Centre(s) of Origin: “A geographical area where a plant species, either domesticated or wild, first developed its distinctive properties. In the case of a domesticated plant species this could be evidenced by the presence of its progenitors.” Or “Geographical areas where PGRFA, either domesticated or wild, developed their distinctive properties.”



Ex Situ Collection: “A collection of PGRFA maintained outside their natural habitat.”

Ex Situ Conservation: “The conservation of PGRFA outside their natural habitat.”

Genetic Material: “Any material of plant origin containing functional units of heredity.”

In Situ Conservation: “The conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated plant species, in the surroundings where they have developed their distinctive properties.”

PGRFA: “Any material of plant origin, including reproductive and vegetative propagating material, containing functional units of heredity, of actual or potential value for food and agriculture.” Or “Any material of plant origin, including genetic parts and components, containing functional units of heredity, of actual or potential value for food and agriculture.”

Variety: “A plant grouping, within a single botanical taxon below the level of species or sub-species, defined by the expression of its distinguishing genetic characteristics.”

LEGAL MATTERS: On Tuesday, 24 April, Chair Gerbasi announced that the legal group would focus its work on Articles 19 and onward. Throughout the week additional questions were posed to the legal group regarding Article 4 (Relationship of this Undertaking with Other International Agreements); Article 28 (Non-Parties) and issues of non-compliance.

On Friday, 27 April, the Chair of the legal technical group reported on progress made during the week. He highlighted the advantages and disadvantages of various options for the legal basis of the IU (as an agreement under Article 14 of the FAO Constitution, under the auspices of the FAO but outside the FAO’s Constitution, or as a protocol to the CBD). The advantages of the IU becoming a binding agreement under the FAO Constitution included: no need for a special diplomatic conference; automatic institutional and financial support from the FAO; established procedures for participation of regional economic integration organizations; and arrangements for participation of non-FAO countries that are UN members. The Secretariat of the CGRFA added that such an arrangement would allow for synergies specifically regarding: staff expertise; national and regional offices for technical and policy support; relevant FAO programmes on agricultural production and food; overlap with the FAO’s information systems and the GPA; and collaboration with other international bodies serviced by the FAO, including the International Plant Protection Convention and the Codex Alimentarius. The limitations included the challenges of linking the IU to provisions with the FAO’s Basic Text and that amendments of the IU would have to be consistent with the FAO Constitution.

Advantages for the IU being an agreement under FAO auspices but outside its constitutional framework included: no restrictions on timing for approval; more autonomy; and the potential for linkages with specific agreements. Limitations included: need for a special diplomatic conference; greater costs; and no automatic institutional and financial support from the FAO. The group did not address the pros and cons of becoming a protocol to the CBD, except for noting differences in the composition of FAO members and CBD Parties. The Chair of the legal technical group also highlighted articles where the choice of the IU’s legal basis would require further consideration.

At Chair Gerbasi’s suggestion, delegates agreed to append the report to the revised Chair’s Simplified Text for future consideration, recognizing that the report constitutes a legal opinion and is not agreed text.

Regarding other issues forwarded for consideration, the group’s Chair noted that they could not provide an opinion on the savings clause included in Article 4. He said that the group differed on the article’s necessity and had agreed to look at similar text in other international instruments during the intersessional period. Regarding issues of non-compliance, he again reported that the group did not attempt to resolve political differences, and was only able to agree that such an article should be entitled “compliance” as opposed to “non-compliance.” He further noted that the group did not have sufficient time to address questions regarding Article 28.

Included below are some of the technical group’s more specific comments on Articles 19 – 32.

Article 19: Governing Body (formerly CDT Article 17): The group noted the implications of a decision on the IU’s legal basis regarding issues of financing, the budget, subsidiary bodies, agreements with other international organizations, participation of regional economic integration organizations and the timing of sessions.

During discussions in the Contact Group on Article 18.1 on Thursday, 26 April, delegates agreed to text for Article 19.2(d), stating that the Governing Body would periodically review the funding strategy.

Article 20 : Secretariat (formerly CDT Article 18): The group noted the implications of a decision on the IU’s legal basis regarding issues of staff appointments, performance of Secretariat functions and languages for documentation.

Article 21: Settlement of Disputes (formerly CDT Article 19): The group suggested reverting to the language of the Composite Draft Text, since it encouraged settling disputes through informal means before pursuing formal procedures. The Chair of the group noted that some group members raised concerns about the potential additional cost to Contracting Parties of pursuing such informal procedures.

Article 22: Amendments of the Undertaking (formerly CDT Article 20): The group suggested reverting to the language of the Composite Draft Text and to address the unresolved issues regarding the decision-making procedures (e.g., by consensus or by two-thirds majority) within the Contact Group.

Article 23: Amendments of Annexes formerly CDT Article 21): The group noted that the article’s resolution pended resolution of discussions on Article 22.

Article 24: Acceptance: The group retitled the article from “Accession” to “Acceptance” and noted necessary provisions for an agreement under Article 14 of the FAO Constitution.

Article 25: Member Organizations of the FAO: The group noted the implications of a decision on the IU’s legal basis regarding the need for a provision on participation of regional economic integration organizations.

Article 26: Entry into Force: The group made no recommendations on this article.

Article 27: Reservations: The group made no recommendations on this article, except for noting that it would not be mandatory under the FAO Rules.



Article 28: Non-Parties: The group made no recommendations on this article. On Saturday, 28 April, developing countries proposed a new provision during a Contact Group Plenary session, highlighting discussions on the issue within the technical group on legal matters. The proposed provision states that access to PGRFA under the MS may be granted to non-Parties only on the basis of an MTA containing obligations and conditions under Articles 12 and 13 and on terms less favorable than those available for Contracting Parties. It was agreed that the proposal would be bracketed and appended to the revised Chair's Simplified Text.

Article 29: Withdrawals (formerly CST Article 30): The group made minor editorial suggestions regarding this article.

Article 30: Termination (formerly CST Article 31; not included within the CDT): The group added a clause on termination since it would be necessary for an agreement under Article 14 of the FAO Constitution. The article states that the IU would automatically be terminated if the number of Contracting Parties dropped below 30 as a result of withdrawals, unless the remaining Contracting Parties unanimously decide otherwise.

Article 31: Depositary (formerly CST Article 32; CDT Article 32): The group made minor editorial suggestions regarding this article.

Article 32: Languages (formerly CST Article 29; CDT Article 29): The group noted that the authentic languages of the IU's text would have to be determined if the agreement were not under Article 14 of the FAO Constitution.

Proposed Article: Compliance: On Saturday, 28 April, developing countries tabled a new article on compliance in plenary, highlighting discussions on the issue within the technical group on legal matters. The proposed text states that Contracting Parties: will be responsible for fulfilling their IU obligations; shall as soon as possible adopt appropriate measures to enforce the IU's principle and rules; shall be liable for non-compliance in accordance with international law; and shall ensure that effective recourse is available within their jurisdiction for non-compliance. It was agreed that the proposal would be bracketed and appended to the revised Chair's Simplified Text.

LIST OF CROPS: On Saturday, 28 April, the Chair of the technical group on the list of crops reported on progress made during the week. He noted that: the criteria of food security and interdependence were used for selection of crops; regional lists were used as the basis of discussions with discussions focusing on crops most commonly listed; and crops would serve as the working basis for the list with genera being indicative of crops and species being designated where required. He noted agreement on 30 food crops and considerable support for an additional 17, which remain under discussion. He added that further discussion is necessary on forage crops. Recommendations from the group include:

- examination by a panel of experts of the genera for crops under agreement and those still under consideration;
- further opportunity to discuss crops on regional lists that have not yet been considered;
- continued development of the list of forage crops by the technical group for the next Contact Group meeting; and
- completion of the list of food crops before the next Contact Group meeting.

During discussion of the report, a regional group of developed countries supported the recommendation to provide opportunity for discussion of the crops from the lists submitted by the regions that have not yet been considered, and proposed reconvening the technical

group the day prior to the next session of the Contact Group. Responding to a question on the panel of experts, Chair Gerbasi explained that it could be organized by the FAO and IPGRI. Two countries suggested asking regional groups to contribute technical studies as well. Chair Gerbasi proposed that the Co-Chairs of the technical group coordinate an e-mail exchange of all relevant information.

Crops agreed within the technical group by consensus, include: oat (*avena*); beet (*beta*); cabbages (*brassica*); rapeseed (*brassica* – requires further study); pigeon pea (*cajanus*); chickpea (*cicer*); citrus (*citrus* – requires further study); coconut (*cocos*); major aroids (*colocasia*, *xanthosoma*); yams (*dioscorea*, et al.); finger millet (*eleusine*); sunflower (*helianthus*); barley (*hordeum*); sweet potato (*ipomoea*); lentil (*lens*); apple (*malus*); cassava (*manihot* – *manihot esculenta* only); banana/plantain (*musa* – except *musa textilis*); rice (*oryza*); pearl millet (*pennisetum*); beans (*phaseolus* – except *phaseolus polianthus*); pea (*pisum*); rye (*secale*); potato (*solanum* – *solanum tuberosum*, including *tuberosa*, except *solanum phureja*); sorghum (*sorghum*); triticale (*triticosedale*); wheat (*triticum*, et al.); faba bean/vetch (*vicia*); cowpea, et al. (*vigna*); and maize (*zea*).

Crops with partial support include: onion, garlic, et al. (*allium*); groundnut/peanut (*arachis*); oil palm (*elaeis*); soybean (*glycine*); grass pea (*lathyrus*); tomato (*lycopersicon*); sugarcane (*saccharum*); minor millets (including *digitaria*, *panicum* and *setaria*); mustards (*brassica*); olive (*olea*); pear (*pyrus*); vine/grapes (*vitis*); fruit trees (*prunus* – including apricot, peach, plum, cherry and almond; requires further study); melon, cucumber (*cucumis*); pumpkins, squashes (*cucurbita*); flax (*linum*); and eggplant (*solanum melangena*). The list of forages, which is still under discussion, includes 29 grasses and 33 legumes.

CLOSING SESSION

On Saturday, 28 April, during the closing session, Chair Gerbasi recalled that delegates had been negotiating on the basis of the Chair's Simplified Text and using the Composite Draft Text for cross-referencing. He clarified that the meeting's final report would be comprised of the latest version of the Chair's Simplified Text, including all agreed language as well as bracketed text. It would include as appendices: the reports of the technical groups on definitions, legal matters and the list of crops; and the developing country proposals on compliance and Article 28 as well as the proposed provisions of Article 15 that were not discussed.

Chair Gerbasi then turned delegates' attention to the agenda item on the date, place and financing of the Sixth Extraordinary Session of the CGRFA (CGRFA/CG-6/01/Inf.2). A regional group of developed countries supported parallel meetings of the Contact Group and the CGRFA, time for regional and interregional meetings on the day prior to the session, and a request that the FAO Council include the IU on the agenda of the FAO Conference in November. Chair Gerbasi suggested that the CGRFA establish a smaller contact group to deal with bracketed text, one that could be more flexible in decision-making yet sufficiently and equitably representative.

A developed country questioned how the Council could take a decision considering the state of the IU agreement. Chair Gerbasi recalled that at its 119th session the Council adopted a resolution stating that the Chair should convene, in consultation with the FAO Director-General and subject to the availability of funding, further sessions of the Contact Group, as required, followed by a negotiating session of the Commission to finalize and agree upon the text of the IU for submission to the 31st Session of the Conference in November



2001. The FAO Legal Counsel added that before the IU could be submitted to the Council it must first be approved by the Counsel for Constitutional and Legal Matters, and notification sent to FAO members no later than 90 days before the Conference. He also informed delegates that the Council would meet in November immediately before the Conference. The Secretariat stated that the text therefore must be completed in June, but noted that remaining brackets could be resolved at a higher level. The group then agreed that the extraordinary session would take place from 24-30 June, including a small contact group, Plenary, and a legal group, with the first day reserved for regional meetings and a meeting of the technical working group on the list of crops.

The FAO Secretariat noted the availability of approximately US\$150,000 for the upcoming session and a total cost of US\$566,370, not including resources for the extra day allotted for regional meetings. He stressed that invitations could not be sent until funds were secured. A developed country announced their contribution of US\$40,000.

Chair Gerbasi underscored progress on the list of crops and the work of the technical group on legal matters, which would facilitate discussion on Articles 19-32. He emphasized that progress made in Articles 14, 16, and 17 was equally important as progress achieved in Articles 10, 11 and 12. With such reasons for optimism, he expressed hope that donor countries would assist in financing the IU's completion.

A representative of the host government expressed his appreciation for the progress made during the week and thanked the people of Spoleto, its city council, the hotel staff, the Ministry of Agricultural and Forestry Policy, the CGRFA Secretariat, as well as the country folk responsible for the evolution of the region's landscape, agriculture, architecture and cuisine over the past two millennia. Chair Gerbasi then thanked the delegates, interpreters, CGRFA Secretariat and observers for their work and for enduring the labor pains of the IU's approaching birth. He wished participants a pleasant journey home and officially adjourned the meeting at 6:00 pm.

A BRIEF ANALYSIS OF THE CONTACT GROUP MEETING

Delegates came to Spoleto acknowledging that this would be the make-or-break negotiating session, although their positioning and posturing often divulged a general perception that the key contentious issues could be deferred once again to the next meeting. While maneuvering around such matters until the eleventh hour is common within international negotiations, the quantity and complexity of remaining pieces to this agreement raised the fundamental question of how much progress is sufficient to allow for completion of the negotiations at the sixth extraordinary session of the CGRFA to be held in June. Delegates were of two minds regarding the meeting's outcomes: on the one side, most expressed frustration and concern over the state of negotiations, yet by the final plenary session they were expressing satisfaction about progress made and optimism that the IU would be successfully concluded.

Although the Contact Group continued to stumble through the familiar terrain of past debates, new ground was broken in the three small technical groups, especially with regard to the list of crops. However, the usual political posturing, proliferation of proposals with questionable intent and other negotiating tactics that many identified as compromising countries' good faith within the process were more

pronounced than ever. The key areas of disagreement continue to be: the IU's coverage; mandatory commercial benefit-sharing, including use of IPR as a trigger mechanism; application of IPR over PGRFA in the MS, along with their genetic parts and components; and treatment of *ex situ* collections, specifically those under the CGIAR. This brief analysis will first examine these four key areas and the ongoing debates involved. Then, in addressing process and progress, it will reflect on the dual perspectives manifest in the week's atmosphere: outlining areas of conflict where many see the glass as half empty, and shedding light on the upcoming ExCGRFA session and the future of this process, where the glass appears to be half full.

COVERAGE: The question of inclusion within the MS of collections not under the control of national governments was resuscitated during the final day of the meeting. Recalling the debate in Tehran, most recognized that this is perhaps the most fundamental outstanding issue. Developing countries stuck to their position that the IU should apply to all collections of Annex I crops, to avoid the possibility that governments could designate only a small portion of PGRFA while gaining access to the resources of others. As one delegate commented, inclusion of all resources would provide a level playing field. Others stressed the fundamental problem of applying such conditions to private and other collections not under their control. While most were pleasantly surprised by the technical group's related progress on the list of crops, others observed that the fate of the list is ultimately dependent on agreement regarding this question of an all-inclusive or restricted scope.

The breadth of the MS also has significant implications for commercial benefit-sharing, since an inclusive scope combined with a mandatory benefit-sharing scheme could require payment by private actors commercializing resources from their own collections. Many developed country delegates stressed that this combination would be politically unacceptable. However, some confided that the compromise of a limited scope with mandatory benefit-sharing would only be marginally preferable to an inclusive scope with voluntary benefit-sharing.

MANDATORY BENEFIT-SHARING: While the debate over commercial benefit-sharing for improved materials coming from the MS whose access is restricted by IPR reiterated the same sentiments and positions voiced in Neuchâtel, it did present a slightly new twist on the issue. Previous discussions had focused primarily on the application of restrictive IPR as the trigger point for requiring financial contributions, while the debate in Spoleto focused less on IPR and more on the principle of a mandatory vs. a voluntary system. This opened the door for consideration of other potential trigger mechanisms, such as commercial profit, as a simpler criterion than IPR, which entail a more complex consideration of the intricacies of intellectual property law at both international and national levels. Regardless of the trigger mechanism selected, the difficulty still arises regarding the type of system necessary for implementation of such a requirement. While a voluntary system presents the simplest option (although probably the lowest potential for financial contributions), delegates differed over whether a mandatory system could rely on honor-based contributions or would require a more comprehensive scheme involving monitoring and enforcement.

GENETIC PARTS OR COMPONENTS/IN THE FORM RECEIVED: Again discussions on application of IPR to PGRFA from the MS propagated a similar series of debates to those raised in Tehran. As arguments were regenerated about whether this forum has



the competence to address relevant IPR issues, discussion quickly came to focus on the terms “genetic parts or components” and “in the form” received. Debate over genetic parts and components called attention to different national legislative systems and perspectives on whether isolated or purified genes are fundamentally different than their source material and thereby patentable. Developing countries, arguing that these are one and the same, said that systems allowing for patenting of isolated genes have an implicit tolerance for “biopiracy.” Outside of the debate, some also alluded to a possible scenario of private companies appropriating all the PGRFA in the MS by isolating their gene sequences. Counter-support by developing countries for limiting the text to PGRFA received from the MS (excluding “in the form”), was similarly unacceptable to some developed countries, since it would effectively limit IPR protection for any improvements on such PGRFA. With the positions for each choice of wording clear, several participants highlighted the significant political implications of the provision for other bodies, such as the WTO and WIPO, as well as the IARCs.

While much of the debate remained the same, Chair Gerbasi’s compromise proposal referencing both phrases was supported by a significant number of developed countries, and, as the debate progressed, developing countries as well. Many also recognized that completion of work in the definitions group on PGRFA is pending resolution of this issue. The end result was once again to single out four developed countries, albeit of a slightly different composition than the group of four registering disagreement on commercial benefit-sharing. A footnote to record opposition was inserted, clearly drawing another line in the sand.

EX SITU COLLECTIONS AND THE CGIAR: Discussion on the means of bringing the collections of the CGIAR into the system reopened a number of technical, legal and procedural issues. The developing countries’ proposal to create a multi-tiered system to address and control the different categories of crops under the CGIAR (Annex I; non-Annex I pre-IU; and non-Annex I post-IU) shed light on issues of control over the independence of the IARCs to mandate work on crops and how additions to their collections should be addressed under the MS. While much of the discussion grappled with the issue of the IARCs’ status as independent legal entities, the sub-agenda within the proposal exposed the controversial question of the rights of countries of origin to resources collected prior to the CBD’s entry into force. This debate produced a clear alliance among a regional group of developing countries who adamantly defended such rights and submission of the IARCs to the IU.

The irony, as pointed out by some observers, is that the IARCs have every interest and arguably every intention of becoming part of the IU, yet the more prescriptive the IU text is on their inclusion, the more averse they may become to joining.

THE GLASS IS HALF EMPTY: A spectrum of emotions played out over the week, with expressions of frustration over hearing repeated arguments, confusion over meaning and strange logic, offers of apology, calls for cooperation, pleas for discovery of middle ground, and visible relief during moments of reason and agreement. Certainly, most were not surprised that the impasse on the key issues remained, and questioned the level of political will present to address them, particularly in view of Chair Gerbasi’s call for flexibility in negotiating mandates. Spotlighting the wilting good faith among delegates, some

alleged that the ingrained history of the negotiations and the personalities involved presented significant obstacles to reaching agreement above and beyond differences over the technical issues.

While the principal actors supporting various positions have long been relatively evident, the postures taken at this meeting further clarified, and in some instances isolated, the various groups on each side of the North-South continuum. Some commented that particular blocs of developed or developing countries have become more deeply rooted to their positions, while significant portions of other developed and developing countries are increasingly able to accept, or at least tolerate, a middle ground. Such dynamics provide fertile soil for a final round of political wheeling and dealing, since the role of actors and issues involved in a possible package deal is becoming more apparent.

Some participants argued that concern for farmers and food security had been eclipsed by the political interests of States. During the course of the meeting, civil society organizations, industry and CGIAR representatives all expressed their interest in a completed IU with less detail over the specifics and more concern over reaching a final product. This broad yet unconventional alliance reflects the common interests of diverse sectors in an operable agreement to facilitate their work. Representatives of these sectors expressed frustration at having to stand by as governments determine the rules of exchanging PGRFA. It remains to be seen how effectively the IU will address the needs of all stakeholders.

THE GLASS IS HALF FULL: Despite doubts expressed on resolving the key issues and fear that the negotiations might collapse, the final plenary turned to look at the next steps without a second thought. The positive dynamic in the technical group discussing the list of crops dispelled past fears that reaching agreement on Annex I would prove difficult given vast differences in the regional lists submitted at the third Contact Group meeting in Tehran. The resulting consensus on 30 crops, with more under consideration, provided fodder for optimism. Some delegates acknowledged the predictable yet essential function of this meeting in refining positions and debates, and, more importantly, in uncovering the concepts and principles underlying difficulties in language. Certainly, the elements entailed in a final package deal have been clearly identified: coverage of the MS; mandatory benefit-sharing; IPR on PGRFA in the MS; and treatment of *ex situ* collections. Where ground for compromise among such a complex set of issues and radically divergent positions can be found remains in question, since there are no simple solutions or discrete trade-offs.

The Extraordinary Session of the CGRFA, now scheduled for 24-30 June 2001, certainly keeps the pressure on since there is still much work ahead, and country delegations must again prepare rapidly in the face of limited time. While many appreciate the need to move discussions to a more open and public forum to increase external pressure and attention, one delegate noted the X-variable of non-Contact Group countries entering the picture in the CGRFA. The non-Contact Group countries will need to be both sufficiently informed regarding the Contact Group’s extensive discussions and sufficiently disciplined to keep the negotiations moving forward rather than splintering apart. However, the final indication from the Secretariat that the text of the IU could even be passed along from the Ex-CGRFA to the FAO Conference for adoption with the inclusion of a few brackets plants a potential seed for a new cycle of deliberations to begin. Whether the revised IU will ultimately portend a bountiful or a bitter harvest still hangs in the balance.



THINGS TO LOOK FOR

FIRST MEETING OF THE INTERGOVERNMENTAL COMMITTEE ON INTELLECTUAL PROPERTY AND GENETIC RESOURCES, TRADITIONAL KNOWLEDGE AND FOLKLORE:

The Committee's First Meeting within the World Intellectual Property Organization will be held from 30 April - 3 May 2001, in Geneva. For more information, contact: WIPO Information Center, tel: +41-22-338-8181; fax: +41-22-338-8810; e-mail: information.center@wipo.int; Internet: <http://www.wipo.org>

INTERNATIONAL CONFERENCE ON BIODIVERSITY AND SOCIETY:

This conference, organized by Columbia University and UNESCO, will be held from 22-25 May 2001, in New York. For more information, contact: Christine Alfsen-Norodom, tel: +1-212-854-9449; fax: +1-212-854-6309; e-mail: ca320@columbia.edu; Internet: <http://www.earthinstitute.columbia.edu/events/events/biodiversity.html>

120TH FAO COUNCIL MEETING: This meeting will be held from 18-22 June 2001, at FAO headquarters in Rome. For more information, contact: Mieko Ikegame, Unit for Cooperation with External Partners, FAO; tel: +39-06-5705-4706; e-mail: meiko.ikegame@fao.org; Internet: <http://www.fao.org/events/index.asp>

SIXTH EXTRAORDINARY SESSION OF THE COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE:

ExCGRFA-6 will be held from 24-30 June 2001, at FAO Headquarters in Rome. For more information, contact: Clive Stannard, CGRFA, FAO; tel: +39-06570-55480; fax: +39-06570-56347; e-mail: clive.stannard@fao.org; Internet: <http://www.fao.org/ag/cgrfa/meetings.htm>

OPEN-ENDED EXPERT MEETING ON THE IMPLEMENTATION OF CAPACITY BUILDING PROVISIONS OF THE CARTAGENA PROTOCOL ON BIOSAFETY:

This meeting will take place from 11 to 13 July 2001, in Havana, Cuba, subject to the availability of funds. For more information, contact: the CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; Internet: <http://www.biodiv.org>

CONFERENCE ON SUSTAINABLE FOOD SECURITY

FOR ALL BY 2020: This meeting will take place from 4-6 September 2001, in Bonn. It is being organized by the International Food Policy Research Institute (IFPRI) in collaboration with the German Government. For more information, contact: Simone Hill-Lee, IFPRI, Washington DC, USA; fax: +1-202-467-4439; e-mail: s.hill-lee@cgiar.org; Internet: <http://www.ifpri.cgiar.org/2020conference/index.htm>

INTERNATIONAL CONFERENCE ON SUSTAINABLE AGRICULTURE FOR DRY AREAS FOR THE SECOND MILLENNIUM:

This conference will be held from 15-19 September 2002, in Shijiazhuang, China. For more information, contact: Catherine Vachon, Lethbridge Research Center, Agriculture and Agri-Food Canada; tel: +1-403-317-2257; fax: +1-403-382-3156; Internet: <http://res2.agr.ca/lethbridge/hebei/confindex.htm>

WORLD CONGRESS ON CONSERVATION AGRICULTURE:

This congress will take place from 1-5 October 2001, in Madrid. It is being organized by the FAO and the European Conservation Agriculture Federation. For more information, contact: Armando Martinez, Institute for Sustainable Agriculture, Córdoba, Spain; tel: +34-957-760797; e-mail: conservation.agriculture@ecaf.org; Internet: <http://www.ecaf.org/English/englis.htm>

SECOND MEETING OF THE INTERGOVERNMENTAL COMMITTEE FOR THE CARTAGENA PROTOCOL ON BIOSAFETY (ICCP-2):

This meeting will be held in Nairobi, Kenya, from 1-5 October 2001. For more information, contact: CBD Secretariat, Montreal, Canada; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; Internet: <http://www.biodiv.org>

FIRST SESSION OF THE AD HOC OPEN-ENDED WORKING GROUP ON ACCESS AND BENEFIT-SHARING:

This meeting, under the auspices of the Convention on Biological Diversity, will be held from 22-26 October 2001, in Bonn. For more information, contact: CBD Secretariat, Montreal, Canada; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; Internet: <http://www.biodiv.org>

WORLD FOOD SUMMIT FIVE YEARS LATER: This meeting will be held from 5-9 November 2001, at FAO Headquarters in Rome. For more information, contact: Mieko Ikegame, Unit for Cooperation with External Partners, FAO; tel: +39-06-5705-4706; e-mail: meiko.ikegame@fao.org; Internet: <http://www.fao.org/news/2001/010304-e.htm>

CONVENTION ON BIOLOGICAL DIVERSITY SBSTTA-7:

The seventh meeting of the CBD's Subsidiary Body on Scientific, Technical and Technological Advice will meet in Montreal, Canada, from 12-16 November 2001. This meeting will be followed by Open-ended intersessional meeting on the Strategic Plan, National Reports and the implementation of the Convention, from 19-21 November 2001, also in Montreal. For more information on both of these meetings, contact the CBD Secretariat, Montreal, Canada; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@biodiv.org; Internet: <http://www.biodiv.org>