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FIFTH EXTRAORDINARY SESSION OF THE COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE: 8-12 JUNE 1998

The Fifth Session of the Commission on Genetic Resources for Food and Agriculture (CGRFA-EX5) was held at FAO Headquarters in Rome from 8-12 June 1998. During the week-long meeting, delegates continued negotiations on the Consolidated Negotiating Text of the International Undertaking on Plant Genetic Resources to harmonize it with the Convention on Biological Diversity. The work was divided between an Open-ended Working Group and a Chair's Contact Group. The Working Group reviewed Article 12 of the IU relating to Farmers' Rights. The Contact Group reviewed elements of Article 11 of the IU relating to access to plant genetic resources for food and agriculture and introduced new text in relation to benefit sharing and financial arrangements.

Overall, the Working Group made little progress on the issue of Farmers' Rights. Fundamental differences still divide key regional groups, particularly in relation to ascribing legal rights for farmers. The Contact Group made some progress on access, however, the relationship between facilitated multilateral access and Intellectual Property Rights remains problematic. Various divergent models of benefit sharing were briefly considered. With negotiations faltering on the second day and coming to a grinding halt on the fourth day, delegates left the meeting concerned that the deadline for concluding negotiations is fast approaching and many issues remain to be discussed or elaborated upon.

A BRIEF HISTORY OF THE PROCESS

THE FAO GLOBAL SYSTEM: The FAO established the inter-governmental Commission on Plant Genetic Resources (CPGR) in 1983. Renamed the Commission on Genetic Resources for Food and Agriculture (CGRFA) in 1995, the Commission is currently comprised of 157 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 (PGRFA), which is comprised of the Commission itself and the non-binding International Undertaking (IU) on Plant Genetic Resources (PGR), the rolling Global Plan of Action (GPA) and the International Fund for PGR, the World Information and Early Warning System (WIEWS), Codes of Conduct and Guidelines for the Collection and Transfer of Germplasm, the International Network of *Ex Situ* Collections under the auspices of FAO, and the international network of *in situ* conservation areas and crop-related networks.

THE INTERNATIONAL UNDERTAKING: The IU, the first comprehensive instrument on PGR, was established in November 1983 by FAO Conference Resolution 9/83. Its objective is to ensure that PGR – especially species of present or future economic and social importance – are explored, collected, conserved, evaluated, utilized and made available for plant breeding and other scientific purposes. It was originally based on the principle that PGR should be "preserved ... and freely available for use, for the benefit of present and future generations" as part of the common "heritage of mankind." This principle, however, was subsequently subjected to "the sovereignty of States over their plant genetic resources" (FAO Resolution 3/91). Although a non-binding agreement, the IU was not adopted by consensus, as eight developed countries formally recorded reservations. Over the years, through a series of additional interpretive resolutions, the IU has achieved wider acceptance. As of December 1997, 113 countries had adhered to the IU, with Brazil, Canada, China, Japan, Malaysia and the US as notable exceptions.

The 15 years since the IU's adoption have seen heightened interest in, and awareness of, the issue of biodiversity, culminating in the entry into force of the Convention on Biological Diversity (CBD) in 1993. Advances in biotechnology and developments in related matters concerning intellectual property rights (IPR) have added urgency and complications to the development of an international regime relating to the management of PGR. Countries are now looking anew at the IU as a possible vehicle for this purpose.

In April 1993, the Commission considered the implications of the 1992 UN Conference on Environment and Development (UNCED), and the CBD in particular, for the IU. Recognizing that the CBD would play a central role in determining policy on PGR, the Commission agreed that the IU should be revised to be in harmony with the Convention. At its First Extraordinary Session, held in November 1994, the

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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 CPGR 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, which included the comments made and alternative wording suggested by the Commission to the First Negotiating Draft. At this meeting, the Commission focused its discussions on Articles 3, 11 and 12 (pertaining to scope, access and Farmers' Rights, respectively), and undertook a first reading of the Preamble. Proposals made by the Commission were integrated into a Third Negotiating Draft.

SECOND EXTRAORDINARY SESSION OF THE CGRFA AND THE FOURTH INTERNATIONAL TECHNICAL CONFERENCE ON PGR: The CGRFA held its Second Extraordinary Session at FAO Headquarters in April 1996, in order to address several issues in preparation for the Fourth International Technical Conference on Plant Genetic Resources (ITCPGR-4) held in Leipzig, Germany, in June 1996. ITCPGR-4 agreed on an international programme for the conservation and utilization of PGRFA. Representatives of 148 States adopted the Leipzig Declaration, the Conference's key political statement, and a Global Plan of Action (GPA), the Conference's main substantive output. Delegates were also presented with the first comprehensive Report on the State of the World's PGR and a progress report on the revision of the IU.

THIRD EXTRAORDINARY SESSION OF THE CGRFA: The CGRFA held its Third Extraordinary Session (CGRFA-EX3) at FAO Headquarters in December 1996. Delegates considered a Third Negotiating Draft and returned to discussions on scope, access and Farmers' Rights. Building on the results of a two-day meeting of the Commission's standing Working Group, during which several countries put forward proposals, delegates confronted both the political and intellectual complexities as well as time constraints of revising the IU.

The CGRFA-EX3 was characterized as a constructive pre-negotiation exercise. Although the meeting did not produce any new negotiated text, it did make progress on difficult and often divisive issues. The G-77, the European Region and the US each tabled text on Farmers' Rights to serve as the foundation for the Commission's future deliberations on this issue. The CGRFA-EX3 also commissioned a "two-step" study that would set out the various options for scope and access under a revised IU and assess the viability of these arrangements.

SEVENTH SESSION OF THE CGRFA: The CGRFA held its Seventh Session (CGRFA-7) at FAO Headquarters in May 1997. Delegates continued negotiations on the revision of the IU in two working groups. The Working Group on Scope and Access addressed the principles and procedures that might underline systems of access to PGRFA. Conceptual advances on this issue since the last negotiating session were most clearly reflected by the fact that a vast majority of the participants — most notably the EU and the G-77 — agreed, in principle, to establish a multilateral system to facilitate access to PGRFA in an efficient, effective and transparent way. The Working Group on Farmers' Rights began to move beyond the entrenched positions of OECD and G-77 blocks to clarify positions. In particular, there was a convergence of positions between a number of EU countries and most of the G-77 countries, in that both recognized Farmers' Rights as more than a concept. However, overall the debate remained rhetorical and a precise definition of Farmers' Rights remained elusive.

While the formal outputs of the negotiations were heavily bracketed texts on access and Farmers' Rights, progress was made in the clarification of issues, further formulation of interests and consolidation of positions. In addition, the Commission established the mechanisms that have allowed it to effectively carry out its broadened mandate and designated the IU negotiations as its utmost priority for the next biennium.

FOURTH EXTRAORDINARY SESSION OF THE CGRFA: The CGRFA held its Fourth Extraordinary Session at FAO Headquarters in Rome from 1-5 December 1997. Delegates continued negotiations on the revision of the IU and considered a Fourth Negotiating Draft in one working group and one contact group.

The Working Group addressed the revision and consolidation of IU text on: objectives; relationship of the IU with other international agreements; conservation, exploration, collection, characterization, evaluation and documentation of PGRFA; sustainable use of PGRFA; international cooperation; the GPA; the international network of PGRFA; global information systems on PGRFA; and Farmers' Rights. The Working Group was able to produce consolidated text on all these issues, moving negotiations on the IU beyond discussion of the controversial agenda items on scope, access and Farmers' Rights.

Concurrently, the Contact Group continued discussions on issues related to access and benefit sharing. There was a major breakthrough as proposals for a multilateral system to facilitate access to PGRFA through a list of major crops, yet to be determined, began to take shape. On a smaller scale, the first exchange of views on benefit sharing was insightful and characterized by goodwill. The complexities of tackling the private/public sector interface and balancing IPR interests within a multilateral system were acknowledged, while the introduction of the concept of an International Fund to facilitate benefit sharing marked a willingness to consider innovative approaches.

The Commission prepared a Consolidated Negotiating Text for these articles, "which represented the considerable progress made during the session." Furthermore, the Commission agreed "that this text would be reviewed during further negotiating sessions, with a view to its final adoption."

REPORT OF CGRFA-EX5

The Fifth Extraordinary Session of the Commission on Genetic Resources for Food and Agriculture (CGRFA-EX5) was opened at 10:20 am on Monday, 8 June 1998, by Chair Fernando Gerbasi (Venezuela). On behalf of FAO Director-General Jacques Diouf, Abdoulaye Sawadogo, Assistant Director-General of the FAO Agriculture Department, recalled that the Third Conference of the Parties to the CBD (COP-3) requested that the revision of the IU be carried out efficaciously and speedily, and that the CGRFA-EX4, reaffirmed by the CBD COP-4, stressed the importance of concluding negotiations by the end of 1999. He also noted the FAO's support for the design of a multilateral system of access to PGRFA. Chair Gerbasi expressed confidence that the spirit of CGRFA-EX4 would continue to prevail at the present meeting, and called for the conclusion of negotiations by May 1999 so that a special meeting for the adoption of the revised IU could be convened in November 1999.

The following documents formed the basis for negotiations:

- Consolidated Negotiating Text of the IU for the Conservation and Sustainable Use of PGRFA resulting from the negotiations during the CGRFA-EX4 (CGRFA/IUND/CNT);
- Technical aspects involved in developing a List of Crops for the Multilateral System within the revised IU (CGRFA-EX5/98/Inf.1);
- Relevant characteristics of the crops and genera in the *Tentative List of Crops* annexed to Article 11 of the Consolidated Negotiating Text (CGRFA-EX5/98/Inf.1/Annex); and
- Anthology of definitions that might be pertinent for the revision of the IU on PGR (CGRFA-EX5/98/Inf.2)

ORGANIZATIONAL MATTERS

The Commission Bureau was comprised of: Fernando Gerbasi (Venezuela) as Chair; Tewolde Berhan Gebre Egziabher (Ethiopia), Gert Kleijer (Switzerland), Eng Siang Lim (Malaysia), Andrew Pearson (Australia), Ronald Rose (Canada) and Mohammed Taeb (Iran) as Vice-Chairs; and Michel Chauvet (France) as Rapporteur. Members of the Commission Bureau continued in their capacities at



this session, with the exception of Laurie Tracy (US), who was replaced by Ronald Rose (Canada). The Plenary agreed to establish a Chair's Contact Group to address Article 11 on access to PGRFA, including benefit sharing, chaired by Fernando Gerbasi, and an Open-ended Working Group to address Article 12 on Farmers' Rights, chaired by Gert Kleijer. Following regional group meetings during the remainder of the morning session, the Contact Group and the Working Group commenced their negotiations in the afternoon.

The Commission reconvened a plenary session on Tuesday afternoon in order to assess progress made and receive input from regional representatives on key elements blocking progress in the hope that negotiations could proceed more optimistically in what Chair Gerbasi called the Commission's "race against time."

CONTACT GROUP ON ACCESS AND BENEFIT SHARING

The Chair's Contact Group (CG) on access and benefit sharing met for seven sessions from 8-11 June 1998. Delegates from Angola, Argentina, Australia, Benin, Brazil, Canada, China, Colombia, Cuba, Ethiopia, France, Germany, India, Iran, Libya, Malawi, Malaysia, Malta, Mexico, Morocco, the Netherlands, New Zealand, Poland, Romania, Senegal, South Africa, Switzerland, Venezuela, the UK and the US participated.

Deliberations in the CG were based on the Consolidated Negotiating Text of Article 11 (access to PGRFA) and Appendix 1 (Proposals on Benefit-Sharing by the African Region, European Region and Malaysia from CGRFA-EX4), contained in document CGRFA/IUND/CNT. Delegations focused on how to link access to benefit sharing arrangements. The CG report on access consolidated bracketed text on a portion of Article 11 and compiled proposals on benefit sharing submitted by the African Region, European Region, Canada, Colombia, Malaysia and the US (CGRFA-EX5/98/CG/Rep). Due to the nature of the CG deliberations, this summary does not attribute statements to countries unless submitted as text that appears in the final report.

ACCESS

ARTICLE 11.1 (Sovereign rights of States over PGRFA):

Given possible legal implications of extending beyond CBD provisions, one developed country maintained its reservation to Article 11.1 on the recognition of State sovereign rights over their PGRFA without restrictions that run counter to the IU and CBD. The final report annotates this reservation.

ARTICLE 11.2 (Facilitated access under a multilateral system): A debate emerged over how to establish a multilateral system for facilitated access to and sharing of benefits from the use of PGRFA. A number of developing countries opposed one developed country's suggestion to address benefit sharing in Article 14 (Financial Security) rather than in Article 11 (Access). They also opposed qualifications on "appropriate" transfer of "relevant" technology and "appropriate" exchange of "relevant" information. The CG decided to maintain the original formulation with "appropriate" and "relevant" remaining in brackets.

ARTICLE 11.3.1 (Cost of access to material under the multilateral system): The CG agreed to CGRFA-EX4 text on the provision of material under the multilateral system to be free of charge and where a fee is charged, no more than minimal costs involved.

ARTICLE 11.3.2 (Obligations of recipients of genetic material and conditions of access): On Monday, the CG began deliberations on consolidated text prepared by the Chair relating to obligations of recipients' conditions of access to PGRFA. The previous Consolidated Negotiating Text contained five alternatives for this sub-article.

Article 11.3.2 chapeau (Access subject to conditions): One delegate highlighted the need to distinguish between the obligations of providers and recipients of PGR. This delegate preferred placing obligations on States to inform recipients of PGR of their IU obligations, whether or not they are States. A legal discussion ensued concerning

the issue of liability for recipients who default on their obligations under the IU. Uncertainty was expressed about the legal standing of International Agricultural Research Centres and multinational corporations that transfer material to a subsidiary of that company located in a different country. The Chair underscored the need to obligate States, and the CG agreed that the modalities of these obligations must be discussed in the future. The final text of the chapeau reads: "Parties agree that access to PGR under the multilateral system shall be subject to the following conditions."

Article 11.3.2 (a) (Purpose and use of the multilateral system for research, breeding and/or training in food and agriculture): Delegates debated whether the multilateral system should be "exclusively" used for these purposes, or if any other uses were essential. A number of delegates called for all uses of PGRFA to be subject to benefit sharing. One developed country disagreed, stating that the IU should be kept to its mandate of genetic resources only, and not products derived from those resources. Several developing countries responded that products of PGRFA must be part of benefit sharing for the IU to "fly." In a later session, the Chair explained that his revised text accepted the general CG consensus that access to PGR under the multilateral system would be "only" for PGR used for research, breeding and/or training in food and agriculture. The final report reflects the Chair's formulation.

Article 11.3.2 (b) (Commercial uses and benefits): The Chair noted that his revised text related to fair and equitable benefit sharing associated with "commercial use," rather than "all" uses of PGR received under the multilateral system. A sub-discussion arose on what constituted PGR. One developed country delegate indicated that his country intended to focus on PGR for food and agriculture and not PGR outside this context. He further indicated his country's understanding that the concept of PGR refers to genetic resources rather than material derived from genetic resources. In response, a developing country delegate reiterated that their presence at the meeting was based on "three pillars": access, fair and equitable benefit sharing and Farmers' Rights, and suggested the previous intervention indicated a lack of commitment to benefit sharing. Another delegate added that products and uses other than for breeding, training and research must be included as PGR.

Returning to the initial discussion points, a number of developing country delegates expressed concern that there are no commercial benefits from research, breeding and/or training. A number of delegates disagreed with a proposal to replace "commercial" benefits with "financial" benefits. One developed country delegate expressed concern over the reference to benefits "derived from the use of PGR," indicating a preference to consider modalities for benefit sharing in later deliberations on financial security. Subsequently, the text included a cross-reference to an undefined article dealing with benefit sharing and financial arrangements that will appear in the final report.

Article 11.3.2 (c) (CBD and uses of PGR other than for food and agriculture): Two alternative texts were discussed regarding CBD application to PGR uses other than food and agriculture. One text subjects these uses to different conditions, in accordance with CBD provisions. The other text states that any commercial utilization be subject to CBD provisions, especially for benefit sharing. A number of developing countries supported and a number of developed countries opposed a formulation that "any commercial utilization other than for food and agriculture shall" be subject to CBD provisions. One country suggested moving all CBD references to Article 4 (relations with other international agreements). Two delegates noted the need for IU consideration of future consequences of making facilitated access universal in light of biotechnology advances and commercialization. Two developing country regions expressed frustration with the "funnel" effect whereby provisions on access were widening while provisions on benefit sharing were narrowing. The CG decided to include the two alternative texts in the final report.



The CG decided not to discuss the remaining sub-paragraphs on access, Article 11.3.2 (d) (information sharing and access to technology),(e) (prior informed consent requirements for non-Parties),(f) (rights limiting facilitated access not claimed),(g) (discretionary access by developers), as discussions had reached a stalemate. The sub-paragraphs on access remained in brackets and were annotated to this effect.

BENEFIT SHARING

After the Plenary session on Tuesday, which was aimed at breaking the impasse, the Chair opened discussion based on Proposals on Benefit-Sharing by the African Region, European Region and Malaysia (CGRFA/IUND/CNT, Appendix 1). On Wednesday and Thursday, the CG considered the Chair's consolidated texts, which included: three previous options on benefit sharing, IPR and multilateral financial arrangements as in Appendix 1 (see paragraph 3 options); a new Malaysian proposal on establishing financial arrangements for an International Fund (see sub-paragraph B3.2); and text on IPR and benefit sharing drafted by Colombia (see sub-paragraph C3.2).

The African Region proposal on benefit sharing refers to, *inter alia*:

- information dissemination;
- technology transfer for crop development;
- the non-applicability of IPR on PGR in the Multilateral System;
- benefits from commercial use of materials;
- an International Fund;
- financial benefit arrangements;
- an index on genetic diversity held in each country;
- equitable sharing of benefits of PGR outside the Multilateral System; and
- recipient country obligations.

The European Region proposal refers to benefit sharing being: diverse; independent of transactions between Parties/participants; transparent; and relevant to long-term food security at all levels. Benefit sharing arrangements should also include: conservation and sustainable use; mutual access to PGR; access to information and financial mechanisms; increased availability of high-quality planting materials; training and technology transfer; and should be based on a multi-stakeholder approach.

The initial Malaysian proposal suggested that each Party pay an annual contribution into the International Fund based on the value of PGR crops in each territory that are protected by domestic IPR law.

In the general discussion on these proposals, one developing region, supported by a number of other delegates, highlighted the need to recognize all benefits and principles enshrined in the CBD, but to modify the CBD emphasis on mutually agreed terms between two Parties to a system that functions multilaterally. One developing Party underscored the need for an efficient multilateral system not based on aid. He suggested an International Fund that could draw upon annual Party contributions based on a percentage of IPR protected crops values in Party territories. Another developing country suggested identifying priority areas for an International Fund based on the GPA. A developed country proposed support for: GPA activities; benefit-sharing through appropriate technology transfer; information exchange and scientific training; improvement of information sharing on PGRFA; and unencumbered access to PGRFA. A developing country remarked on this proposal's lack of reference to money generation and another highlighted the necessity of benefit sharing, given global monopolistic tendencies and IPR impositions.

In order to merge proposals on benefit sharing, the CG created a small drafting group. On Wednesday, the Chair presented the drafting group's consolidated text. The Chair noted that the drafting group did not enter into negotiations, merely consolidated previous proposals and interventions. The text represented a new, yet to be numbered, article to the IU.

PARAGRAPH 1 (A benefit sharing approach): This introductory paragraph refers to benefit sharing through a multiple and multi-stakeholder approach to conservation and sustainable use of material under the multilateral system for food security. It also refers to inclusion of financial and in-kind benefits, activities beyond individual transactions between participants, and benefit sharing primarily for developing countries and countries in transition. Some delegates preferred deletion of reference to a "multi-stakeholder" approach and questioned the "multilateral" approach to benefit sharing. In response, one regional group, supported by two other countries, indicated that benefit sharing should not be based on individual transactions. Several delegates objected to the reference to food security and also expressed concern about the reference to developing countries and countries in transition since they believed that benefit sharing should cover all countries. Some developed countries disagreed with including "in-kind" benefits. Another delegate expressed concern over obligatory language, noting that no decision has been made on the IU's legal status. The CG decided to leave contentious issues in brackets.

PARAGRAPH 2 (Non-financial benefit sharing): The CG considered the following two options:

- **Option 1 (In-kind benefit sharing):** This option proposed the facilitation of in-kind benefit sharing for: PGRFA conservation and sustainable use; research and training; technology transfer; capacity building; development of adapted, quality planting materials; and the characterization, collection and documentation of PGRFA and related knowledge. Two countries objected to reference to "in-kind" benefits. A number of countries noted the need to distinguish in-kind from financial or commercial benefits. Some developing countries opposed the reference to "appropriate" technology. The CG accepted language on "transfer of technology in accordance with CBD provisions."
- **Option 2 (Using existing funding sources):** The second option proposed: using existing funding sources to support certain GPA activities; appropriate technology transfer through scientific exchanges, training and information sharing; and unencumbered access to PGRFA listed under the multilateral system. A number of developing countries objected to the reference to "appropriate" technology transfer and "unencumbered access." Delegates stressed inclusion of all 20 "rolling" GPA activities and debated on whether to incorporate "existing" or "ongoing and emerging" efforts. The Chair reminded the CG of GPA commitments to additional funding.

One region proposed establishing a mechanism to channel existing funding sources. In response, one developed country preferred a reference to "activities elaborated" rather than "mechanisms established."

One developed country proposed merging the two options by referring to support for technology transfer in accordance with CBD provisions and activities of the GPA and in IU Articles 5 (conservation, collection, characterization and documentation of PGRFA), 6 *bis* (sustainable use of PGR), 7 (general international cooperation) and 10 (world information systems/network on PGRFA). A number of developing countries called for adding capacity building and Article 12 (Farmers' Rights) on benefit sharing activities. The CG agreed to a revision of this formulation mentioning these additions and with brackets around [in-kind] benefit sharing, [particularly in-kind] and [mechanisms established] [activities elaborated]. This reformulation appears as paragraph 2 in the final report.

PARAGRAPH 3: (Benefit sharing, IPR and financing): Based on the divergent proposals put forward by a number of regional groups, the CG considered three options for this paragraph. One delegate offered the following interpretation of the initial three options. Option A states that IPR would not be recognized under the IU. Option B describes the financial benefits derived from the commercial use of material in the multilateral system and for which IPR has been obtained and suggests formulae for contributions into an International



Fund. Option C recognizes IPR and relies primarily on aid through a benefit sharing mechanism and various activities. These options were discussed as follows.

Option A: (No IPR): In supporting Option A, in principle, one delegate commented on this option's unfortunate "clash" with proprietary rights under the WTO and Union for the Protection of New Varieties of Plants (UPOV). One delegate indicated that "no IPR meant no headaches" and that existing IPR patent crops are being taken unjustly from a country and then sold back to that country. In response to comments about existing international IPR law, he highlighted his view that the IU can be revised to create new international law. A delegate from the same region indicated his support for IPR. Another delegate said the multilateral system should be for food security and that the list of PGR, no matter how small, should be free from IPR. This option remained in the final CG report.

Option B — Sub-Paragraph B3.1 (IPR non-application in country of origin): In the first paragraph of Option B on whether to apply IPR to the country of origin, one developing country said that most countries, as WTO members, could not ignore IPR. He proposed text supporting IPR, but with certain exceptions and privileges to be applied to the country of origin, including research on IPR-protected varieties. This was opposed by a developed country delegate. Another delegate proposed IPR application only with the prior informed consent (PIC) of the country of origin and that, if a PGR originated from a number of countries, the multilateral system would negotiate terms and arrangements. Another developed country said that determining the country of origin is too difficult, while another, in support, added that granting IPR provided incentives for research and breeding and that the IU's role is not to negotiate new exceptions to IPR.

Option B — Sub-Paragraph B3.2 (Share benefits from commercial use): After a general deliberation on financial benefit sharing and a debate on the International Fund or other financial mechanisms (see discussion on sub-paragraphs B3.3 and C3.1), one developing country, supported by three developing regions, tabled a compromise "bottom-line" proposal. This text committed Parties to an agreement based on the sharing of financial benefits arising from commercial and other uses of PGR, to be listed in Annex 1, and the establishment of an International Fund whose formula, mode and mechanism for benefit sharing would be determined by the COP of the IU. A developing country region suggested replacing "COP" with "governing body of this Undertaking." This text was included in the final report (Paragraph 3 Option D — sub-paragraph D3.1).

Option B — Sub-Paragraph B3.3 (International fund): One developed country proposed establishing an International Fund that draws upon permanent annual Party contributions rather than aid. Several developing countries underscored the need for funding sources from PGR commercialization and the CBD financial mechanism. Recalling a side-event organized by the International Association of Plant Breeders (ASSINSEL), a number of delegates noted industry's willingness to engage in financial compensation for patented materials. One delegate remarked that in-kind benefits can generate financial benefits. Given questions on sources for International Fund contributions, the original proponent suggested formulae, such as: the UN formula; the number of patents sought for material, royalties, patent fees; or preferably a formula based on acreage, average yields and sales of major crops, including those protected by IPR. Another developing country suggested including contributions from seed sale proceeds.

A number of developed countries objected to an International Fund. One developing country delegate, supported by a developed country, called for an International Plant Genetic Resources Institute/Secretariat study on the financial resources that can be generated and contributed for the various formulaic options proposed for operationalizing the International Fund. One developed country region suggested removing the reference to an International Fund and "financial benefits," and offered an alternative text referring to a better flow of existing funds through a mechanism (see discussion on Paragraph 3

Option C — Sub-Paragraph C3.1). She also sought brackets around the reference to an annexed list of PGRFA, reiterating that the status of this list had yet to be determined. Developing country regions reiterated their "bottom-line" proposal for an International Fund whose modalities could be determined later. The Chair, in dismay, indicated that discussions had come to a "dead end."

Option B — Sub-Paragraph B3.4 (Financial mechanism under CBD): In a brief discussion on accessing funds from the Global Environment Facility, which serves as the financial mechanism under the CBD, one delegate added that the GEF as a funding mechanism depends on the final legal status of the IU.

Option C — Sub-Paragraph C3.1 (Promote better flow of existing funds): One developed region made a revised proposal for an efficient, stable benefit sharing mechanism to promote and better channel the flow of available funds, including private sector sources related to commercialization of some PGR protected by IPR. One country objected to the discretionary proposition to "promote and better channel" funding flows, and another noted its resemblance to the Convention to Combat Desertification's Global Mechanism. Two others objected to the failure to link PGR commodification with benefit sharing. Noting relevant mechanisms such as the CBD Clearing House Mechanism and PGRFA global networks, several delegates disagreed with one developed country's suggestion to replace "mechanisms established" with "activities elaborated." A number of developing countries questioned the will of certain countries and reiterated their preference for the original concessionary formulation (B3.2).

Option C — Sub-Paragraph C3.2 (No proprietary rights over resources in the form received): A number of delegates supported text not permitting PGR recipients to claim proprietary rights over resources in the form in which they are received. One regional group explained their interpretation of "proprietary rights" as embracing both IPR and plant variety rights under UPOV. A developed country suggested replacing "proprietary rights" with "IPR including plant varietal protection." One delegate addressed text he had submitted to the Chair referring to the application of IPR on improved materials and preferential conditions for countries of origin to access and conduct breeding programmes, using protected varieties and/or technologies applied to them. A number of delegates called for this text to be withdrawn as it had not been properly discussed. The Chair supported the proposition that all options submitted be included in the CG's final report. In the final Plenary, CANADA called for this text to be withdrawn based on his opinion that it had not been properly discussed. This request was rejected. The three versions of the text (all numbered the same) are included in the final report.

In closing the work of the CG, several developing countries noted the "oppressive" wall of silence and suggested leaving further negotiations until the next CGRFA. One developed country recommended not halting negotiations, recalling progress in tabling benefit sharing ideas during CGRFA-EX4 and CG clarification of positions with textual options. He added that a multilateral agreement on mutually agreeable terms would be a "boon" to poor people and world food security. The Chair acknowledged the divergence in positions on key issues and offered his regret that more progress had not been made.

WORKING GROUP ON FARMERS' RIGHTS

The Open-ended Working Group (WG) on Article 12 on Farmers' Rights, chaired by Gert Kleijer, met for seven sessions from 8-11 December. The Consolidated Negotiating Text from the CGRFA-EX4 served as the basis for negotiations. While the WG both considered and negotiated texts, attempting further consolidation and removal of brackets, by Thursday afternoon it became clear that the remaining text reflected distinct and distant positions. The African Region, the Latin American and Caribbean Group (GRULAC), the Near East Group and the developing countries of Asia said it was pointless for the WG to continue its negotiations or for the proposed drafting groups on Arti-



cles 12.3(j), (k), (l), (n) and (o) to meet. As a result, consolidated text reflecting the WG's discussion of these five sub-paragraphs was never formulated. Before closing, the African Region and GRULAC expressed their appreciation to the European Region for its willingness to negotiate and reach consensus.

Article 12 contains three sub-articles: Article 12.1 recognizes the enormous contribution of farmers to the conservation and development of PGRFA; Article 12.2 recognizes Farmers' Rights and equitable benefits; and Article 12.3, outlines national programmes for Farmers' Rights. The following articles were negotiated by the WG at this session: Article 12.1; Article 12.3(a) (measures to assist farmers and [traditional] farming communities in the evolution, conservation, improvement, evaluation and sustainable use of PGR); Article 12.3(b) (international programmes to benefit farmers' conservation and sustainable use of PGRFA); Article 12.3(c) (benefits to farmers in implementation of national commitments); Article 12.3(d) (measures for research, training and institutional capacity building activities); Article 12.3(e) (facilitating integration of [traditional farmers'/farmers' traditional] knowledge, know-how and practices with modern technologies); Article 12.3(f) (research); Article 12.3(g) (recognition and protection of rights of farmers and their communities); Article 12.3(h) (funding); Article 12.3(i) (components of benefit sharing); Article 12.3(j) (legislation); Article 12.3(k) (national legal protection systems); Article 12.3(l) (international *sui generis* system); Article 12.3(n) (PIC, information and variety registration systems, and disclosure of the origin of material in the development of commercial varieties); and Article 12.3(o) (review, assessment and modification of IPR, land tenure and seed laws). Articles 12.3(k), (l), (n) and (o) were considered in general, but were not negotiated. Articles 12.2 and the chapeau of Article 12.3 were not addressed by the WG at this session. Furthermore, definitions are still required for Farmers' Rights, farmers and farming communities throughout the entire article. The following is a summary of the discussions and outcomes of the articles considered by the WG.

ARTICLE 12.1 (Recognition of the contribution of farmers to the conservation and development of PGRFA): This sub-article contained two sub-paragraphs, the first noting farmers' contributions and the second recognizing these as the basis for Farmers' Rights. ETHIOPIA suggested that the first part of Article 12.1(b), which states "these contributions form the basis for Farmers' Rights as they relate to PGRFA," be included at the end of Article 12.1(a). MEXICO supported ETHIOPIA and proposed deleting the rest of Article 12.1(b). CANADA said its farmers have rights because of their citizenship, not because they are farmers, and that while there is special legislation for farmers, there is not a special right. He proposed a definition for Farmers' Rights: "Farmers' Rights are those rights which Member States may wish to apply to their farmers, and are applied at the national level." COLOMBIA stressed that the rights of farmers are based on their contributions, and not the fact that they are farmers. The US, supported by JAPAN and AUSTRALIA, said they could support Ethiopia's earlier proposal, with the modification of "Farmers' Rights" to "the concept of Farmers' Rights." The EU endorsed the Ethiopian proposal on Article 12.1 with the qualification that the text be bracketed until further regional consultation. ZAMBIA, on behalf of the African Group and supported by the Near East Group and the developing countries of Asia, said further negotiations would be futile until regional groups agreed on their positions. ETHIOPIA asked for a preliminary decision as to whether Farmers' Rights will be included in the IU. The WG then broke for regional consultations.

Upon reconvening, the EU said it could accept the Ethiopian proposal without brackets. AUSTRALIA said it could not accept this until conferring with its capital, and proposed inserting "the concept of" in brackets before Farmers' Rights and bracketing the whole phrase. COLOMBIA, supported by INDIA, MEXICO, ETHIOPIA, SYRIA and LIBYA, said the Australian proposal was unacceptable. ETHIOPIA, supported by the PHILIPPINES and INDIA, proposed noting Australia's reservations, but not including the Australian

proposal. The US recalled that two other countries supported "the concept of." The final text consists of two identical options, except for one stating "these contributions form the basis for F/farmers R/rights as they relate to PGRFA," and the other with "the concept of" before "F/farmers R/rights."

ARTICLE 12.3 (National Programmes for Farmers' Rights):

Article 12.3(a) (Measures to assist farmers and [traditional] farming communities in the evolution, conservation, improvement, evaluation and sustainable use of PGR): The US proposed text stating: "assist their farmers and farming communities, including traditional farming communities...to contribute to conservation and sustainable use of PGRFA ...through establishment or strengthening of arrangements in which they may participate." CAMEROON, supported by COLOMBIA, preferred retaining "traditional" before farming communities and "improvement" along with "conservation and sustainable use," and stressed that "may participate" was too weak. AUSTRALIA noted a preference for broadly applicable language, called for deleting "including traditional farming communities" and supported "may participate." The US opposed keeping "traditional" before "farming communities" as it would exclude other communities that contribute to PGRFA. MEXICO, noting the objective of harmonizing the IU with the CBD, proposed adding "including local and indigenous communities" after "traditional farming communities" for consistency with Article 8(j) of the CBD on traditional and indigenous knowledge. ARGENTINA underscored the importance of linking Farmers' Rights to Article 8(j).

The EU, supported by AUSTRALIA, COLOMBIA and ZAMBIA, opposed reorienting Farmers' Rights to local and indigenous communities, preferring a broader text that would support all traditional farming communities. The EU said that the definition of "traditional farming communities" might encompass indigenous and local communities and stressed the importance of addressing definitions. AUSTRALIA, supported by CANADA, requested retaining brackets around "traditional" until "traditional farming" is defined. The EU proposed replacement text for "through establishment or strengthening of arrangements," which said "and promote their participation in the establishment and strengthening of appropriate arrangements." CAMEROON preferred "ensure their participation." The EU, the US and CANADA said they could not accept "ensure." ZAMBIA rejected the EU proposal and proposed "arrangements such as:..." The EU then withdrew its proposal. The final negotiating text reflects these discussions.

Article 12.3(b) (International programmes to benefit farmers' conservation and sustainable use of PGRFA): This sub-paragraph provides, [subject to national legislation], that international programmes [directly] benefit farmers by furthering their activities to conserve and sustainably use PGRFA. The EU, AFRICAN REGION and NORWAY supported removing the brackets surrounding the entire sub-paragraph, as well as around "directly" in relation to benefits. Along with CANADA, they also supported the deletion of "Subject to national legislation," while BRAZIL and CAMEROON requested that the language be retained, in which case they could accept deletion of the brackets around "directly." CANADA and NORWAY proposed the insertion of "relevant" before "international programmes." The US suggested the language "promote" relevant international programmes instead of "ensure." The Chair noted that now even more brackets appeared in 12.3(b) and that, in fact, no progress had been made. The final sub-paragraph incorporates a large number of brackets reflecting these divergent positions.

Article 12.3(c) (Benefits to farmers in implementation of national commitments): The EU supported the content of the sub-paragraph and suggested removing the brackets surrounding it. CANADA, supported by AUSTRALIA and the US, requested that the entire paragraph remain in brackets until the measures to be implemented under Article 5 (Conservation, exploration, collection, characterization, evaluation and documentation of PGRFA) have been



discussed. It was agreed that the language pertaining to benefits to farmers and [their] [traditional/farming/indigenous and local] communities would remain in brackets until definitions were formulated.

Article 12.3(d) (Research, training and institutional capacity building activities): The WG agreed to the content of the first section of the sub-paragraph, which supports research, training and institutional capacity-building activities. The remainder of the paragraph, consisting of G-77 compromise text relating to the transfer of technology, was a completely separate concept that, while not objected to by the WG, was considered unclear. A small drafting group consisting of regional representatives was established to draft compromise text.

The drafting group's revised text concerning the transfer of technology provided support for measures "that facilitate transfer of technology and make financial and market systems supportive of the protection, integration, enhancement and development of [traditional farmers'/farmers' traditional] knowledge, innovations and practices relevant to the conservation and sustainable use of PGRFA.

AUSTRALIA proposed replacing "market systems supportive of" with "remove financial and market barriers to." The WG agreed to the drafting group's text, as amended by AUSTRALIA, which allowed all brackets, save two, to be removed: around "full" with respect to participation, and "traditional farmers'/farmers' traditional," pending formulation of definitions by the Commission.

Article 12.3(e) (Facilitating integration of [traditional farmers'/farmers' traditional] knowledge, know-how and practices with modern technologies): The US and the EU moved to remove all brackets except those around "traditional farmers'/farmers' traditional." This was unanimously accepted and reflected in the final negotiating text.

Article 12.3(f) (Research): This sub-paragraph, which promotes national and international scientific and technological agricultural research that supports and enhances, as appropriate, farmer-based knowledge systems related to PGRFA, remained free of brackets.

Article 12.3(g) (Recognition and protection of rights of farmers and their communities): The consolidated negotiating text contained four options:

- for traditional rights of farmers to keep, use, exchange, share and market their seeds;
- for these same rights but in accordance with national legislation;
- to protect the ability of farmers to keep and use plant reproductive material and, in accordance with national legislation, keep, use, exchange, share and market their seeds; and
- to protect, consistent with national law, their ability to keep, use, exchange, share and market their seeds.

MEXICO, supported by COLOMBIA, MALAYSIA, ECUADOR, the PHILIPPINES, ETHIOPIA, INDIA and LIBYA, preferred the first option. BURKINA FASO expressed concern over the meaning of "traditional rights". CANADA preferred option three. The EU proposed using the second option since it was the most inclusive. CAMEROON supported the second alternative only if "in accordance with national legislation" would be retained. Options 1 and 4 were consolidated by a contact group, which produced the following text: "[[recognize] [and][protect], [consistent with national and international legislation] [as appropriate] the [ability] [traditional rights] of farmers and their communities to keep, use, exchange, share and market their [seeds and any other plant reproductive material] [farmers' varieties/land races][, including the right to reuse farm saved seed].]"

The EU, supported by BRAZIL, MEXICO, the US and ETHIOPIA, proposed bracketing "and international" until Article 4, on international agreements, is resolved. ZAMBIA proposed deleting "ability." AUSTRALIA opposed this and suggested replacing both "ability" and "traditional rights" with "practices." The EU suggested deleting "ability" and "traditional," retaining only the word "rights." MEXICO, supported by SYRIA, INDIA and PERU, emphasized the importance of keeping "rights." Delegates agreed to lift all brackets from the first portion of the text, but were unable to agree on legisla-

tion at the international level and the options "ability" and "traditional rights" of farmers. The final negotiating text contains brackets on "and international" and "ability/traditional rights." All bracketed text after "traditional rights" were maintained.

Article 12.3(h) (Funds to support farmers to conserve and use PGR sustainably): The WG attempted to choose between one of two options as the basis for negotiations – one establishing an "international fund," and the other calling for the mobilization of financial resources through national, bilateral and multilateral funding sources and the private sector. The US preferred deferring discussion until after consideration of Article 14 (Financial Security) or moving the text under Article 14. The EU supported discussing this under Article 14 and preferred the second option. ETHIOPIA opposed this, noting that the sub-article is not strictly concerned with financial issues, but also Farmers' Rights and financial compensation for farmers. BRAZIL, MEXICO, VENEZUELA and BANGLADESH also opposed deferring consideration of the article and preferred the first option. CANADA proposed bracketing text referring to funds.

A drafting group, which noted that its mandate was to determine the purpose of financial support, not the support itself, prepared a heavily bracketed text consolidating the aspects of the two options related to the purpose of financial support. They separated the remaining text on funding arrangements for consideration under appropriate articles. The WG agreed to use the drafting group's text as a basis for negotiations, but since many of the provisions contained therein related to benefit sharing, the WG decided to await the results of the CG on this issue.

Article 12.3(i) (Components of benefit sharing): This heavily bracketed sub-paragraph, which is also surrounded by brackets, provides that [each Party], or [Parties], [subject to national legislation, encourage] recognize and [ensure the rights of [their] farmers in sharing] [endeavour to share] the benefits arising from the [direct] use of PGR on a fair and equitable basis.... The sub-paragraph goes on to outline a number of benefit sharing provisions, including [transfer of technology,] participation in research, and access to the results of research and development, derived from the improved use of PGR through plant breeding[, as well as from their commercial use].

The EU requested that "fully" with respect to sharing of benefits be deleted in favor of "endeavour to share." However, MEXICO preferred the language "ensure the rights of farmers." The EU was willing to support this proposal provided the language "ensure the rights of 'their' farmers 'in sharing the benefits'" was retained. CANADA said it did not recognize rights accruing to farmers to benefits, and requested that "right" remain in brackets. MEXICO, SUDAN, COLOMBIA and SENEGAL rejected the proposal, as this principle was the very foundation of the article. AUSTRALIA admitted that shifting brackets within the sub-paragraph did not bring the WG closer to a principle it could support.

Although the Chair proposed the introductory language, "Implement the sharing of benefits arising from" the use of PGR, it was rejected by MALAYSIA, who supported an acknowledgment of "rights." MEXICO proposed that "As an expression of Farmers' Rights" be inserted before the Chair's proposed text. However, the Chair reminded the WG that "Farmers' Rights" is bracketed throughout the article. ETHIOPIA, noting that the idea of Farmers' Rights emanates from the CBD, said Farmers' Rights is not concerned with implementation solely, but also with asserting the right itself, and noted its preference for the consolidated negotiating text. After a lengthy debate, the final negotiating text remained unamended, apart from deletion of the word "fully."

Article 12.3(j) (Legislation): This sub-paragraph addresses the protection and promotion of [individual and/or] collective knowledge and PGRFA of farmers and [farming/local] communities through legislation [in the form of a collective rights regime] providing for, *inter alia*, protection of traditional or indigenous knowledge, innovations, materials and practices of and by farmers and [farming/local communities] [and promotion of equitable sharing of benefits.]. ETHIOPIA



OPIA underscored the great importance of this sub-paragraph, and proposed lifting brackets from "individual and/or" and "in the form... collective rights regime." The EU noted that Article 12.3(j) echoes Article 8(j) of the CBD in several aspects, save for the emphasis of 12.3(j) on collective knowledge, and noted that this concept is new territory for the EU. ARGENTINA proposed replacing [farming/local] with "their farming, local and indigenous communities," and supported deleting "in the form... collective rights regime." There was consensus to delete the bracketed text on benefit sharing. The GAIA Foundation, speaking on behalf of several NGOs, emphasized that Farmers' Rights are *a priori* rights, that the role of the Commission is to defend the rights of the weak and not to collude with the strong, and that, ultimately, the issue is one of global food security.

CANADA, supported by the US, noted that the sub-paragraph addresses two separate concepts, the protection and promotion of collective knowledge and the protection and promotion of PGR. He questioned whether the two concepts were the result of a typographical error, and suggested that they be merged to form one concept, the protection and promotion of knowledge of PGR, and proposed text to do so. ZAMBIA, JAPAN and LIBYA opposed the text, and MEXICO, ETHIOPIA, ZAMBIA, COLOMBIA and BANGLADESH suggested modifications. Finally, the Chair noted the text was reverting to the consolidated negotiating text produced at CGRFA-EX4, and established a contact group to further the discussion. The final negotiating text retains brackets around "individual and/or" and "farming/local" and does not include the phrase on benefit sharing.

Article 12.3(k) (National systems to address the fair and equitable sharing of benefits arising out of the utilization of PGRFA): This sub-paragraph contains two options. The first promotes national legal protection systems to render effective the rights of farmers [and/relating to] the fair and equitable sharing of benefits. The second establishes national systems, including, *sui generis* systems, [pertaining to] [to ensure/promote] the fair and equitable sharing of benefits. During the WG's general discussion, the EU, CANADA and US proposed deletion of this sub-paragraph, since the subject matter is addressed elsewhere. BRAZIL, COLOMBIA, MEXICO, SYRIA and others, however, preferred its retention, and supported the second option. If retained, the EU also preferred the second option. SYRIA, supported by SAMOA, said the important elements of the sub-paragraph are the legal protection and use of PGR, which should occur both nationally and internationally. There were no changes to the Consolidated Negotiating Text as the drafting group established to formulate consolidated text based on the WG's discussions was cancelled when negotiations ended prematurely.

Article 12.3(l) (International *sui generis* system): This sub-paragraph promotes the establishment of an international *sui generis* system for the recognition, protection and compensation of the knowledge, innovations and practices of farmers and traditional communities. During the WG's general discussion, BOLIVIA and COLOMBIA said a clear difference between Articles 12.3(k) and (l) should be established. While BRAZIL stressed the importance of this sub-paragraph, the EU, supported by CANADA, questioned its appropriateness in the IU, and suggested its consideration within WIPO, although the EU agreed the subject is of international importance. SAMOA supported retaining the sub-paragraph, noting that much of its language is similar to the CBD. The Consolidated Negotiating Text remained intact as the drafting group established to consider this sub-paragraph was cancelled.

Article 12.3(m) (Participation in review and implementation): This sub-paragraph calls on [each Party], or [Parties], to [promote][ensure] the participation of their farmers and farming communities in the review and implementation of measures provided under the IU. The AFRICAN REGION said the sub-paragraph provides for the empowerment of farming communities. SYRIA said reference should be made to the participation of the international community. While CANADA expressed its support for participation, it thought it more appropriate to address the issue in an article on moni-

toring and implementation, such as Article 13, and not solely on Farmers' Rights. The EU said that it could agree in general to the provisions on participation, and suggested several amendments, including a preference for the language "promote" rather than "ensure." ZAMBIA requested that "ensure" be retained, and the EU's proposal, as amended by ZAMBIA, was supported by the WG. The WG agreed to placing two footnotes in the text – one concerning the placement of the paragraph, which will be determined at a later stage, and the other explaining that the precise wording for Farmers' Rights, farmers and farming communities will be provided once definitions are formulated.

Article 12.3(n) (PIC, information and variety registration systems, and disclosure of the origin of material in the development of commercial varieties): This sub-paragraph contains three provisions: ensure that PIC is obtained before the collection of plant resources is undertaken; adapt current variety registration systems so as to identify and record varieties of PGR provided; and require disclosure of the origin of PGR utilized in the development of commercial varieties. During the WG's general discussion of this sub-paragraph, the EU noted its support for the first two provisions, but had difficulties, as did JAPAN, with the third, on disclosure of the origin of material, noting that disclosure may not be feasible in all circumstances. However, the EU said there was potential for agreement if alternative wording could be found. ETHIOPIA added that PIC is consistent with the CBD. The Consolidated Negotiating Text was left unamended.

Article 12.3(o) (Review, assessment and modification of IPR systems, land tenure and seed laws): This sub-paragraph calls for the review, assessment and, if appropriate, modification of IPR systems, land tenure and seed laws, in order to ensure their harmony with the provisions of Article 12. During the WG's general discussion, the EU, NORWAY and CANADA questioned the necessity of this sub-paragraph. CANADA said it did not belong in a discussion on Farmers' Rights, while the EU and NORWAY said Article 12, by nature, is a general commitment to enforce Farmers' Rights and the provisions contained within the sub-paragraph. The EU said that if other delegations insisted on retaining the sub-paragraph, it wished to submit an alternative option. No changes were made to the Consolidated Negotiating Text.

FRIDAY MORNING PLENARY

Delegates met in Plenary on Friday morning to hear regional group presentations and reports on the work of the WG and CG. Working Group Chair Kleijer reported on the WG's deliberations, and explained that disagreement over the terms "Farmers' Rights" and the "concept of Farmers' Rights" had led to an impasse when some delegates needed to consult with their capitals before negotiations could resume. ZAMBIA, on behalf of the African Group, along with BRAZIL, requested delegates to indicate the results from consultations with their capitals and, when delegations did not respond, the Chair recommended, and the Plenary agreed, to cancel the scheduled afternoon WG session.

Contact Group Chair Gerbasi highlighted the CG's consolidation of regional positions achieved on benefit sharing arrangements, but noted little reconciliation of divergent positions. ETHIOPIA, on behalf of the African Region, listed the CBD principles essential for inclusion in the revised IU, including: PIC and transparency for PGRFA access; information sharing with and technology transfer to the country of origin; research on PGRFA in the country of origin; equitable sharing of financial and other benefits; new and additional funds for GPA implementation and PGRFA conservation and sustainable use; legal recognition of local community, indigenous and Farmer's Rights; and IPR consistency with PGRFA conservation.

The EU, supported by NORWAY and SWITZERLAND, highlighted the progress reflected in the new negotiating text on benefit sharing and their region's commitment to implementing CBD Article 15.7, on sharing benefits arising from commercial and other uses. She



reaffirmed support for a multilateral system of facilitated access incorporating a wide range of participants, and read a proposal for facilitating financial benefit sharing that aimed to include private sector constituents, including those benefiting from IPR derived from PGRFA under the multilateral system.

The US, on behalf of the North American Group, JAPAN and the REPUBLIC OF KOREA, expressed disappointment in resorting to "bottom-line" positions, but stressed commitment to continuing IU negotiations. She supported unencumbered access to crops and forages for food security, fair benefit sharing from PGRFA use, information sharing, technology transfer and the mobilization of available funds for GPA implementation.

BRAZIL, on behalf of GRULAC, lamented the lack of willingness of certain delegations to accept the mandate of the IU revision and CBD implementation. He demanded full implementation of the GPA and stressed that progress on access to PGRFA is directly linked to the just distribution of financial and in-kind benefits, Farmers' Rights and the establishment of an International Fund. BRAZIL proposed that the FAO undertake a study of alternatives for sourcing financial benefits from commercial and other PGRFA uses for an International Fund.

MALAYSIA, on behalf of the developing economies of the Asian region, underscored that developing economies were marginalized by the stances of a few developed countries, and questioned what could be negotiated if Farmers' Rights were not recognized. He emphasized that the IU must recognize four components: facilitated access; benefit sharing; Farmers' Rights; and an International Fund. He proposed that Parties agree to share the financial benefits from commercial and other uses of Annex 1 PGRFA in a fair and equitable way, and establish an International Fund. IRAN, on behalf of the Near East Region, regretted the lack of meaningful progress and hoped the interruption in real negotiations was only a passing phase and expressed commitment to further negotiation. AUSTRALIA, on behalf of the South West Pacific Region, stressed its commitment to the negotiation of a package of mutually supportive initiatives and ideas.

SOUTH AFRICA suggested integrating Farmers' Rights into the IPR regime as a viable solution, as it would provide farmers with financial rewards and encourage farmers to conserve their PGR. RAFI, supported by GRAIN, said the Commission must accept the stance of certain countries and move on with negotiations.

Noting the dissatisfaction and frustration with the negotiations, Chair Gerbasi called attention to the progress achieved on benefit sharing, exemplified by the clearer understanding of the different positions of regions and countries. He said the diverging positions prevent further negotiations and called for consultations with industry, which, in some cases, have more progressive positions than governments.

Regarding the next meeting, the US proposed continuing negotiations at CGRFA-8 in May 1999. NORWAY supported convening an extraordinary session in Fall 1998 and requested the Secretariat to prepare a document exploring options for financial arrangements.

CLOSING PLENARY

Delegates convened in Closing Plenary at 9:30 pm on Friday, 12 June, to consider three sections of the Draft Report presented by Rapporteur Michel Chauvet (CGRFA-EX5/98/Draft Report I, II, III). Chauvet explained that Part I represented an introduction to and outline of the meeting, Part II included the regional group presentations made in Plenary on Friday morning and Part III reflected on progress made throughout the meeting. Each of the three sections was adopted with minor language changes. The Chair then introduced the Negotiating Text Prepared by the Open-ended Working Group at its Meeting on 8-11 June 1998 (CGRFA-EX5/98/WG/REP) and Negotiating Text Established by the Contact Group in its Meeting from 8-11 June 1998 (CGRFA-EX5/98/CG/REP). He noted that these texts would replace consolidated text of the IU and explained that an asterisk signified text that had not been properly discussed. The text prepared by the WG was adopted with minor editorial amendments.

Regarding texts on benefit sharing established by the CG, the Chair explained that they would be added to the end of the Consolidated Negotiating Text as a likely new article. CANADA questioned the validity of certain pieces of text (3 option C, C3.2), (3 option D, D3.1 and the 2nd D3.1), which it claimed had not been discussed in the CG. The Chair indicated that these texts had been discussed in the CG. The US also questioned whether a piece of text (3 option C, C3.1) had been fully discussed. The Chair again indicated that he believed the text had been discussed. On the insistence of the US, the text was marked with an asterisk to indicate it had not been properly discussed. The US also sought text deletions in (3 option C, 2nd C3.2) which it understood to be based on a consensus decision of the CG. These changes were accepted and the new Consolidated Negotiating Text was approved. The Chair ended the meeting at 10:30 pm.

A BRIEF ANALYSIS OF THE IU NEGOTIATIONS

The Commission on Genetic Resources for Food and Agriculture stumbled into the same old obstacles, as it continued its attempt to coalesce the IU with the CBD. Compared to the momentum created by the CGRFA-EX4, many frustrated delegates said there had been very little progress, although some thought several innovative concepts had been introduced pertaining to access and financial benefit sharing arrangements. However, these few advancements on access were countered by considerable intransigence on benefit sharing and Farmers' Rights, with negotiations starting to falter on the second day and coming to a grinding halt in both groups on the fourth day. As one delegate explained, these issues are like a funnel, with a wide entry point on access, but a very narrow opening on benefit sharing. Furthermore, with the "three pillars" — access, benefit sharing and Farmers' Rights — still unresolved, all other aspects of the IU remain in a dormant state.

A PANDORA'S BOX ON ACCESS AND IPR: A Pandora's box was opened in the discussion on access and IPR. Some delegates were obviously keen to investigate the possibility of modified IPR regimes that give concessional arrangements to countries of origin. Needless to say, these initiatives were met with a stone wall response from TRIPs-friendly countries. Sooner or later, delegations will need to realize that the goal posts have been moved by the CBD and that *sui generis* systems may need to be considered, despite the dominant presence of TRIPs. Whether there will be progress before the IU negotiating cut-off date of May 1999 remains to be seen.

The modalities of access also stimulated a brief discourse on the list of PGR to be included in the IU. Some delegates conceded that the list could be narrowed if a modified IPR regime was applied to the listed plants. Again, the TRIPs-friendly nations were predictably unimpressed, with one regional group preferring to have reference to the list placed in brackets.

BENEFIT SHARING IN A MULTILATERAL SYSTEM?

There appears to be growing acceptance of the CBD language on benefit sharing arrangements, although uncertainty remains over how bilateral concepts can be incorporated into a multilateral system. Most delegations appear to have conceded the point that benefit sharing arrangements for individual PGR exchange transactions cannot be embraced within a multilateral system.

The CG discussion on benefit sharing also suffered from quite divergent positions on financial arrangements. Some delegations clearly believed that benefit sharing and financial arrangements were one and the same, while others were equally insistent on having these two issues distinctly separated.

The blockage around benefit sharing and financial arrangements received a useful prod from lunchtime presentations by the International Association of Plant Breeders (ASSINSEL). The private seed industry appears to be leapfrogging government negotiations on financial arrangements and going directly to countries of origin to negotiate access agreements. Their presentations stimulated a flurry of phone calls back to capitals, but unfortunately, prompt responses from



the powers-that-be were not forthcoming. Nevertheless, the next meeting of the CGRFA may see some interesting proposals being brought forward.

WHAT IS A FARMER? While the meeting continued substantial discussion on Farmers' Rights, it was patently clear that the conceptual chasm between some delegations is still quite wide. The best that could be said by delegates was that progress was "slow, but encouraging." While progress was made on numerous sub-paragraphs, there were no major victories that can be highlighted and, in fact, all sub-paragraphs must be revisited once definitions are formulated for such basic concepts as what is a "farmer." One delegate suggested that the bracket swapping that occurred within paragraphs, in an effort to assuage certain delegations, was like "rearranging deck chairs on the Titanic." Ironically, one delegation opined that substantial progress had been made in light of the fact that the Working Group had only two formulations for recognizing farmers' contribution to PGRFA: [Farmers' Rights] or [the concept of Farmers' Rights]. This "insightful" observation was made moments before the Working Group adjourned early and cancelled previously established drafting groups, noting that the impasse made further negotiations useless.

It is evident that some delegations, in particular several developed countries with indigenous populations, are profoundly nervous about conceding any principles on Farmers' Rights, for fear that it would trigger commensurate rights for local and indigenous communities under the CBD. Subsequently, some delegations concede, informally, that Farmers' Rights will not progress beyond a piecemeal recognition of farmers' role in food security. Still, others claim that, in principle, positions are not so diametrically opposed and the perceived stalemate is merely a standoff over terminology.

NEGOTIATING TACTICS: Negotiations on Farmers' Rights also suffered from the fact that they were carried out in a working group. The unwieldiness of the group meant that little progress was made, necessitating the establishment of several small contact groups composed of key regional representatives throughout the week. In contrast, a strong Chair in the Contact Group and a smaller gathering of delegates lead to greater flexibility and clarification of positions. Even so, the intransigence of some delegations was enough to test the patience of the Contact Group Chair. Consequently, Bureau and Plenary meetings were called in order to rap a few knuckles.

The World Cup even played a role in delaying deliberations as spectating took precedence over debating. Negotiations ended early on Wednesday and evening sessions were cancelled in deference to certain football fanatics.

Most negotiations were again carried out by delegates representing their own countries and geographical regional groups, rather than larger socioeconomic alliances. Many delegates thought this format created greater flexibility for making interventions and freed up the flow of ideas that may have otherwise been entrapped in the need to adhere to North-South ideological difference. Even so, delegates occasionally intervened on behalf of a number of regional groups as a sign of solidarity. This is a refreshing approach to international negotiations as it gives some regional groups more prominence. Other international institutions could well learn from this approach.

WHERE DO WE GO FROM HERE? A few delegations made note of the fact that the legal status of the IU has yet to be determined. While some delegations see it culminating as a protocol under the CBD, others are not so convinced. Nevertheless, the intensity of debate suggests that most delegations now concede that it will become some form of a legally binding instrument.

Negotiations on the IU still have a long way to go. With the 1999 deadline fast approaching, key issues, like the adoption of definitions and the acceptance of an annexed list of plants, have still to surface. Perhaps special theme intersessional meetings may need to be considered to address these and other issues. But the bottom line remains that in order to make the deadline governments and the FAO will need to do some fast footwork. Otherwise, the IU is likely to wither on the vine.

THINGS TO LOOK FOR

SIXTH EXTRAORDINARY SESSION OF THE COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE: The Sixth Extraordinary Session for the revision of the International Undertaking will be held in the latter part of 1998 at FAO Headquarters in Rome. For date confirmation and more details, please contact: FAO, Viale delle Terme di Caracalla, 00100 Rome, Italy; tel: +39-6-52251; fax: +39-6-52253152; Internet: <http://www.fao.org> or <http://web.icppgr.fao.org>.

BIODIVERSITY FORUM: "Treasures in the World's Forests" will be held from 3-7 July 1998 in Schneverdingen, Germany. For more information contact: Forum Office; tel: +49-5199-989-21; fax: +49-5199-989-46; e-mail: naturschutzakademienna@t-online.de or forests.in.focus@oln.comlink.apc.org; Internet: <http://www.forests.in.focus.comlink.apc.org>.

OPEN-ENDED AD HOC BIOSAFETY WORKING GROUP: The fifth session of the BSWG will take place from 17-28 August 1998 in Montreal. For more information, contact: the CBD Secretariat, World Trade Center, 393 St. Jacques Street, Suite 300, Montreal, Quebec, Canada H2Y 1N9; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: chm@biodiv.org; Internet: <http://www.biodiv.org>.

INTERGOVERNMENTAL FORUM ON FORESTS: The second session of the IFF will meet from 24 August - 4 September 1998 in Geneva. For more information, contact: Secretariat, Intergovernmental Forum on Forests, Division of Sustainable Development, Department of Social and Economic Affairs, United Nations, Two UN Plaza, 12th Floor, New York, NY 10017 USA; tel: +1-212-963-6208; fax: +1-212-963-3463; e-mail: hurtubia@un.org.

46th ANNUAL CONFERENCE OF THE SOCIETY FOR MEDICAL PLANT RESEARCH: This meeting will be held from 31 August - 3 September 1998 in Vienna, Austria. For more information contact: Dr. W. Kubelka/Dr. B. Kopp/Dr. J. Jurenitsch, Institute of Pharmacognosy, University of Vienna, Centre of Pharmacy, Althanstrasse 14, A-1090 Wien, Austria; tel: +43-1-31336-8067; fax: +43-1-31336-772; e-mail: Pharmacognosy@univie.ac.at or johann.jurenitsch@univie.ac.at.

XV EUCARPIA GENERAL CONGRESS: The meeting, "Genetics and Breeding for Crop Quality and Resistance," will be held from 21-25 September 1998 in Viterbo, Italy. For more information, contact: Dr. Mario A. Pagnotta, XV Eucarpia Congress, University of Tuscia, Via S.C. de Lellis, 01100, Viterbo, Italy; fax: +39-761-357256; e-mail: eucarpia@unitus.it; Internet: <http://www.unitus.it/confsem/eucarpia/eu.html>.

CONVENTION ON BIODIVERSITY: A Liaison Group of Experts Meeting on Agrobiodiversity is tentatively scheduled for 6-8 October 1998 in Rome. An expert panel on benefit sharing is scheduled for 26-28 October 1998. A meeting on the Conservation and Sustainable Use of Inland Waters is tentatively scheduled for November 1998. For more information, contact the CBD Secretariat (see above).

STRATEGIES AND TECHNOLOGIES FOR CONSERVATION AND SUSTAINABLE USE OF BIODIVERSITY IN WEST ASIA AND NORTH AFRICA LANDSCAPES: This international workshop will be held from 7-12 November 1998 in Marsa Matruh, Egypt. This meeting will focus on strategies and technologies for the conservation and sustainable use of biological diversity in plant communities in the Middle East. For information, contact: IPGRI-WANA/CA; Regional Office, c/o ICARDA, P.O. Box 5466, Aleppo, Syria; e-mail: g.ayad@cnet.com.

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