



THIRD INTER-SESSIONAL CONTACT GROUP MEETING ON THE REVISION OF THE INTERNATIONAL UNDERTAKING ON PLANT GENETIC RESOURCES, IN HARMONY WITH THE CBD: 26-31 AUGUST 2000

The third Inter-sessional Contact Group Meeting on the revision of the International Undertaking on Plant Genetic Resources (IU), in Harmony with the Convention on Biological Diversity, was held in Tehran, Iran, from 26-31 August 2000. The meeting was attended by 78 participants from 36 countries and four intergovernmental observer organizations. During the six-day meeting, delegates continued negotiations on the Consolidated Draft Text, specifically on Articles 13 (Facilitated Access), 14 (Benefit-sharing) and 16 (Financial Resources). An initial round of discussions was also held on countries' consultations with their private sectors regarding commercial benefit-sharing, and regional groups presented their proposed lists for Annex I (List of Crops Covered by the Multilateral System).

Delegates noted that this Contact Group session was the most successful one to date. Delegates made significant progress on intellectual property rights (IPR) issues as related to facilitated access to technology and commercial benefit-sharing. In-depth conceptual discussion and a small negotiating group on the topic paved the way for a provisional package agreement on the issues. This lays the groundwork for the International Undertaking to inform previously contentious areas of trade policy relating to IPR and plant genetic resources for food and agriculture. Finalizing the list of crops in Annex I, using regional proposals which range from 9 to 287 crops, remains the largest obstacle ahead. The November 2000 deadline for concluding the International Undertaking is fast approaching, and the deadline for financing a final negotiating session is closer still.

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 166 countries, including 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 on Plant Genetic Resources for Food and Agriculture (IU), the rolling Global Plan of Action (GPA) and 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 PGRFA, was established in November 1983 by FAO Conference Resolution 9/83. Its objective is to ensure that PGRFA – 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 plant genetic resources (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 coun-

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tries formally recorded reservations. Over the years, through a series of additional interpretive resolutions, the IU has achieved wider acceptance. 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 (UNCED), 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 PGR, the Commission agreed that the IU should be revised to be in harmony with the Convention. At its First Extraordinary Session, held in November 1994, the Commission reviewed a First Negotiating Draft, which incorporated 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, 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.

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. 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/China, 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.

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, addressing scope, access and farmers' rights. Conceptual advances on facilitated access were most clearly reflected by the fact that most delegates agreed, in principle, to establish a Multilateral System (MS) to facilitate access to PGRFA. Work on farmers' rights began to move beyond entrenched positions with recognition by a number of EU countries and most of the developing countries that farmers' rights are more than a concept. However, a precise definition of farmers' rights remained elusive.

FOURTH EXTRAORDINARY SESSION OF THE CGRFA: The CGRFA held its fourth extraordinary session at FAO Headquarters from 1-5 December 1997. Delegates 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. Concurrently, the contact group continued discussions on issues related to access and benefit-sharing. There was a major breakthrough as proposals for a MS to facilitate access to PGRFA through a list of major crops, yet to be determined, began to take shape. The first exchange of views on benefit-sharing was insightful, and the complexities of tackling the private/public sector interface and balancing IPR interests were acknowledged. The Commission prepared a Consolidated Negotiating Text for these articles.

FIFTH EXTRAORDINARY SESSION OF THE CGRFA: The CGRFA held its fifth extraordinary session at FAO Headquarters from 8-12 June 1998. Delegates continued discussion on the Consolidated Negotiating Text in an open-ended working group and a Chair's contact group. The working group reviewed Article 12 on farmers' rights. The contact group reviewed elements of Article 11 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. Fundamental differences divided 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 IPR continued to be problematic.

115TH FAO COUNCIL: The FAO Council held its 115th session in Rome from 23-28 November 1998. The Council recognized progress made to date and supported the hosting of 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, from 12-22 January 1999. Participants attended in their personal capacity to discuss the IU's legal status, its structure, the Multilateral System of access to and sharing of benefits, 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 and providing 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 Multilateral System, including components for facilitated access and benefit-sharing (coverage, facilitated access, equitable and fair sharing of benefits, and supporting components); 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 from 19-23 April 1999. The Commission decided to continue negotiations on the IU's revision using a Composite Draft Text, and authorized the Chair to convene sessions of the Chair's Contact Group to advance negotiations on the basis of the Chairman's Elements derived from the Montreux meeting. The Chair's 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 the Chair to request the FAO Director-General to convene an Extraordinary Session of the Commission to adopt the final text, when appropriate, so that the results could be submitted, at the latest, 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 Multilateral System) and 15 (Farmers' Rights). 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 in the Multilateral System), 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 generally 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 to PGRFA within the Multilateral System), 14 (Benefit-sharing in the Multilateral System) and 16 (Financial Resources), and made some progress on clarifying positions and agreeing on text.

REPORT OF THE CONTACT GROUP

The third Inter-sessional Contact Group Meeting on the revision of the International Undertaking on Plant Genetic Resources (IU), in Harmony with the Convention on Biological Diversity was opened by Amb. Fernando Gerbasi (Venezuela), Chair of the CGRFA, on Saturday, 26 August 2000. Gamal Ahmed, FAO Representative to the Islamic Republic of Iran, on behalf of FAO Director-General Jacques Diouf, expressed thanks to the host government and to the governments of Japan and Sweden for their contributions to the meeting and the participation of developing countries. He noted that the 115th FAO Council Meeting (November 1999) considered the IU at the intersection of agriculture, environment and commerce and that the multilateral system and benefit-sharing should be the cornerstone of the revised IU. Ahmed noted the FAO Council's request that the IU be ready for consideration at its next meeting in November 2000, and expressed the FAO's willingness to host an extraordinary session of the Commission, possibly with another Contact Group session, to finalize negotiations.

Abbas Keshavarz, Deputy Minister of Agriculture of the Islamic Republic of Iran, noted the history of the exchange of knowledge and germplasm to advance agriculture, which requires joint and collective effort now more than ever. He noted Iran's wealth of genetic resources and its role as its custodian for tens of centuries. He noted progress made in negotiations on farmers' rights and stressed the need for movement in other areas.

Chair Gerbasi noted his request for delegations in their preparations to discuss a possible list of crops for inclusion in the IU's multilateral system and the views of domestic industry regarding proposed language on benefit-sharing for commercialized crops. He stated that

the meeting would consider in detail Articles 13 (Facilitated Access), 14 (Benefit-sharing) and 16 (Financial Resources), using the Draft Composite Text (CGRFA/CG-3/00/2) as a basis for discussion.

Delegates met in two sessions per day and held a closing session on Thursday, 31 August, to review and adopt their work.

Editors' 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 13 (FACILITATED ACCESS)

On Monday, 28 August, Chair Gerbasi asked delegates to consider a reformulation of Article 13 proposed by a regional group of developed countries, to serve as a basis for discussion. Several developing countries requested that the Composite Draft Text (CGRFA/CG-3/00/2) remain open for negotiation, but agreed to work from the new version.

13.1: This provision states that Parties agree that access to PGRFA shall be in accordance with the provisions of the IU. On 28 August, a developed country proposed adding language symmetrical to a footnote in Article 14 (Benefit-sharing in the Multilateral System) stating that Parties agree that benefit-sharing within the MS would be subject to facilitated access under this article. Many developing countries opposed, suggesting that this would confuse the interpretation of the link between access and benefit-sharing, which is addressed in Article 11 (Multilateral System of Access and Benefit-sharing). The developed country noted that Article 14.1 also contains repetitious elements linking benefit-sharing to access, and agreed to withdraw his proposal if delegates would consider deleting similar text in Article 14.1. On Thursday, 31 August, delegates agreed to omit symmetrical text in Articles 13 and 14 and to add language emphasizing the mutual dependence of "both" access and benefit-sharing "with a complementary and mutually reinforcing basis" to Article 11.2. The rest of the provision remains unchanged, and was agreed.

The provision states that facilitated access shall be in accordance with the IU's provisions.

13.2: This provision serves as a chapeau, outlining the conditions of access, detailed in a series of sub-paragraphs. There were no changes to the chapeau.

13.2(a): This provision addresses the purpose for use of accessible plant genetic resources, including restrictions for applications extending beyond agricultural use, such as chemical, pharmaceutical and other uses. On 28 August, Chair Gerbasi opened the provision for discussion. A developed country suggested, with support from developing countries, moving a reference to 13.2(h), on emergency disaster situations, to Article 7 (National Commitments and International Cooperation). One developed and two developing countries proposed addressing emergency disaster situations in new Article 13.3, and everyone agreed.

One developed and three developing countries requested clarification on a reference to conservation. A number of countries responded that multilateral access would allow countries to specialize in the conservation of particular PGRFA, and that ensuring access to resources would support such conservation as a form of "genetic insurance." Those opposed to the reference preferred to address conservation in Article 5 (Conservation, Exploration, Collection, Characterization, Evaluation and Documentation of PGRFA).

On restrictions on use beyond agricultural applications, one regional group of developing countries proposed adding reference to agricultural industrial use, as contained in the Chairman's Elements



from the Montreux experts' meeting. A regional group of developed countries noted difficulty understanding the implications of "industrial" agriculture. A developing country stressed that the IU's aim is food production in the context of food security. The regional group of developed countries questioned how crops not intended for direct food consumption would be included. One developed country inquired whether forage and animal feed could be considered as food. A developing country sought to clarify the point using the example of cotton, which has an industrial use (fibers) and a food use (oil), stating that the IU must apply to the food use. He noted that forage as food for livestock contributes to food security and suggested discussing the list for Annex I of Article 12 (List of Crops Covered by the MS) crop by crop. Another developing country then proposed alternative text referring to exclusion of "non-food industrial uses." After a series of consultations, the two regional groups proposed text that: retained brackets around conservation; exempted chemical, pharmaceutical and/or other non-food/non-animal-feed industrial uses; and stated that food security should be the determinant for including multiple-use crops in the Multilateral System.

One developed country accepted the regional group's proposal. Three developed countries expressed their concern that the first sentence of the provision addresses the terms of access, whereas the second sentence addresses the coverage of the MS, which should be addressed in Article 12 (Coverage of the MS). One developed and one developing country noted the need to eventually address the criteria for including multi-use crops. A small drafting group was formed to discuss these issues further.

On 31 August, the drafting group suggested that in the case of multiple-use crops, importance for food security should be the determinant for their inclusion in the System. A developed country said this wording confused the scope of the MS with access and proposed that importance for food security should be the determinant for their "availability for facilitated access under the Multilateral System." Delegates opposed reopening the text, but took note of this reservation. A developing country proposed, and all supported, replacing reference to "non-food/non-animal-feed industrial uses" with "non-food/feed industrial uses."

The final text states that access shall be provided solely for the purpose of [conservation and/or] utilization in research, breeding and training for food and agriculture, provided that such purpose does not include chemical, pharmaceutical and/or other non-food/feed industrial uses, and notes that importance for food security should be the determinant for inclusion of multiple-use crops (food and non-food) in the MS.

13.2(b): This provision addresses expeditious access and assurance of minimal or no costs. On 28 August, Chair Gerbasi opened the provision for discussion. A developing country noted that the itemization of costs in the proposed text did not include that of seed multiplication, and, supported by several other delegations, proposed deleting the list. The paragraph was accepted with the proposed change.

The provision states that "access shall be accorded expeditiously, without the need to track individual accessions and free of charge, or, when a fee is charged, it shall not exceed the minimal cost involved."

13.2(c): On 28 August, delegates discussed this provision, which addresses information to accompany PGRFA provided through the MS to a recipient requesting access. A developing country, supported by several countries, stressed that passport data should always be provided. A regional group of developed countries inquired about situations where passport data might be incomplete or unavailable. Some

developing countries noted redundancy in references to "non-confidential information" and "subject to applicable law." A regional group of developed countries and one other developed country noted that databases and copyrights are instances where information might be non-confidential while relevant laws still apply. One country also noted the importance of characterization and evaluation data, and a delegate inquired whether providing such information would be at additional costs to providers. Two countries noted that it is standard procedure to provide relevant characterization data, and one noted that costs are generally assumed within the service of providing materials. Upon request, an international organization representative said that the agreement between the FAO and the Consultative Group on International Agricultural Research (CGIAR) generally provides for the distribution of all relevant information with germplasm. After discussion, delegates agreed on a formulation to incorporate the concerns raised.

The provision states that "all available passport data, and, subject to applicable law, any other associated available, non-confidential, descriptive information, shall be made available with the PGRFA provided."

13.2(d): This provision is designed to prevent recipients from claiming rights that limit access to genetic resources. On 28 August, a developing country, supported by others, tabled a proposal adding reference to IPR and specifying genetic parts or components in addition to plant genetic resources. Two developed countries opposed referring to genetic parts or components, with one noting that reference to IPR would be inconsistent with the World Trade Organization's (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). Both references were bracketed.

Delegates then debated the provision's relation to Article 13.2(g), on ensuring availability. A developed country elaborated that 13.2(d) refers to legal rights and 13.2(g) addresses the recipients' obligation to donate materials back into the Multilateral System. A developing country explained that this was the rationale for including IPR in 13.2(d), to avoid ambiguity and protect the flow of genetic information. Debate on IPR also revolved around: whether PGRFA "in the form received" was sufficient to address restrictions on materials accessed under the MS; the legal technicalities of gene and crop patenting as related to access; and whether proposed language including genetic parts and components would prevent such patents.

A developing country emphasized the need to consider whether to allow patenting of all genetic material and to what extent it should be restricted. A developed country wished to avoid indications that receiving a genotype sample might prevent new innovations, and agreed to support specification of parts or components in defining PGRFA. The developing country asked whether a gene could be patented if the entire genome sequence were known. A representative from an international organization explained that sequencing a genome does not mean that the functions of all the genes are known, and that one must know the function and its practical application in order to be granted a patent. He also stated that access to a patented gene construct would be restricted, whereas the gene in its original form would be freely available for further breeding. One delegate noted there is no internationally binding or agreed upon form of patenting or IPR. He stressed the need to apply the precautionary principle, referencing the problem of granting of patents on plant varieties that have not been improved, but merely transplanted from another country.



Chair Gerbasi then put forward the developing country proposal again for agreement. Developed countries called for more time to consult with government experts. One developed country, supported by a developing country, proposed replacing language on “in the form received” with “received from the MS.” Another country requested including text from the Draft Composite Text (CGRFA/CG-3/00/2) stating that “no plant varietal or patent protection will be sought by recipient Parties on the PGRFA received under this Multilateral System.” Based on these suggestions and further requests to bracket this text, Chair Gerbasi noted that the two proposals would be bracketed in their entirety for future consideration.

The final provision includes two alternatives, stating that “Recipients shall not claim any intellectual property or other rights, that limit the facilitated access to the plant genetic resources [, or their genetic parts or components], for food and agriculture, [in the form] received [from the Multilateral System]” and “No plant varietal or patent protection will be sought by recipient Parties on the PGRFA received under this MS.”

13.2(e): This provision addresses the availability of PGRFA under development. On 28 August, delegates agreed to language from the revised text for Article 13, submitted by a regional group of developed countries, without debate.

The text states that access to PGRFA under development, including material being developed by farmers, shall be at the discretion of its developer, during the period of its development.

13.2(f): This provision defines access to PGRFA protected by property rights. On 28 August, Chair Gerbasi opened the provision for discussion. A developing country proposed text stating that “Parties shall take measures to facilitate access to this material, *inter alia*, on concessional and preferential terms,” in order to ensure that permanent access and flow of materials under the MS would not be restricted. He noted that when resources are legally protected by any IPR there are still ways to facilitate access and improve material.

One delegate added reference to developing countries, and another suggested reference to countries with economies in transition. A developed country said that language on providing materials on concessional terms was already contained elsewhere and supported retaining the original text. A developed country questioned whether this meant that countries would be expected to put pressure on companies to sell their genetic materials at lower rates, forcing Parties to interfere in normal business operations. One delegate noted that the proposed addition would simply facilitate making protected material available to developing countries. One developing country noted that relevant references to technology transfer and IPR in 14.2(b) (Access to and Transfer of Technology) were bracketed. A developed country stated that 14.2(b)(i) references technical transfer of genetic material, when this should be addressed fully in Article 13, and proposed adding reference in Article 13.2(f) to “under fair and most favorable terms.” He agreed with others who opposed reference to mutually agreed terms, since it would denote that the IU was incomplete, as the MS was to replace bilateral agreements.

A regional group of developed countries noted that this article is designed to ensure that everyone’s rights are safeguarded. She proposed, and delegates supported, specifying “in particular, recipients in” developing countries, and to including “where appropriate” before concessional and preferential terms. A small drafting group was created to discuss these issues further.

On 31 August, the small drafting group reported that they had been close to agreement on the issue of access to PGRFA protected by property rights, but could not reach consensus. Delegates debated additional suggestions, but no progress was made and the original text, as contained in the regional group formulation of Article 13, remains bracketed.

The original text states that access to PGRFA protected by intellectual and other property rights shall be consistent with national law and other relevant international law.

13.2(g): This provision addresses availability of resources under the MS. On 28 August, delegates agreed to language in the revised text for Article 13, submitted by a regional group of developed countries, without discussion. The provision states that PGRFA accessed under the MS and conserved shall be made available by the recipients of those resources.

13.2(h) (formerly 13.6): This provision deals with *in situ* collections. On 28 August, Chair Gerbasi opened the provision for discussion. Delegates debated whether to address the “means of collection of” or “access to” PGRFA found in *in situ* collections. A regional group of developed countries supported reference to the means of collection, specifically to the actual process of collecting genetic resources. Most developing countries preferred maintaining reference to access, as contained in the Composite Draft Text (CGRFA/CG-3/00/2), noting that Article 13 addresses access and not the specifics of collection.

Regarding language on “subject to national legislation, or, in its absence, standards established by the Governing Body qualifying such action,” one delegation proposed deleting language on the absence of legislation. Several developing countries objected, noting the need for standards for those without such legislation. More general discussion arose over whether this separate paragraph on *in situ* PGRFA implied that Article 13.2 referred to *ex situ* PGRFA. After deliberations, there was consensus that Article 13.2 refers to both *in situ* and *ex situ* PGRFA. Delegates then generally agreed to use the term access, and to move the provision under Article 13.2 as a special condition for *in situ* PGRFA.

A developed country proposed inclusion of language on providing access to *in situ* areas designated as programmes established by governments to meet the IU’s objectives. Developing countries objected, stating that: the MS addresses all *in situ* areas and should not lead to prioritization; geographic areas are inappropriate for *in situ* PGRFA whose populations can shift; reciprocal access to the *ex situ* collections of private holders in developed countries would be necessary; and the provision would be better suited to Article 5 (Conservation, Exploration, Collection, Characterization, Evaluation and Documentation of PGRFA), 9 (International Network of PGRFA) or 12 (Coverage of the MS). He requested that the proposal be retained, noting that it provides a voluntary means for governments to prioritize *in situ* conservation efforts and that Articles 5, 9 and 12 do not specifically address the issue of access. Despite the continued objections of developing countries, the proposal was included in brackets.

The provision states that without prejudice to the other provisions under Article 13, Parties agree that access to PGRFA found in *in situ* conditions will be provided according to national legislation or, in the absence of such legislation, in accordance with standards set by the Governing Body. Proposed language noting that, pursuant to the above, access will be provided to PGRFA in areas designated, or programmes established, for the purpose of this agreement by governments for the *in situ* conservation of PGRFA, remains in brackets.



New 13.3 (old 13.2(h)): This provision addresses emergency disaster situations. On 29 August, Chair Gerbasi re-opened discussion from 28 August, when delegates agreed to address the issue of emergency disaster situations under a new sub-paragraph. A developing country proposed, with a developed country, including reference to all countries, not just Parties. Several delegates said that this element should be linked to international relief coordination efforts, and asked for input from relevant international organizations, and one proposed including this component here and under Article 7 (National Commitments and International Cooperation). One developed country questioned the scope of application, suggesting that facilitated access to genetic resources would not be sufficient to re-establish an agricultural system and proposed including agricultural resource collections. One developed country noted potential difficulty in undertaking this task under the MS. A developing country cautioned that the goal should be only to re-establish agricultural systems using genetic resources formerly present, and not to allow Parties to gain access to additional resources. The developed country agreed, and withdrew his proposal on agricultural resource collections. A small drafting group was formed to develop consensus text.

On 31 August, the drafting group presented text that was accepted by all. The new provision states that in emergency disaster situations, Parties agree to provide facilitated access to Parties and non-Parties to appropriate PGRFA to contribute to help re-establish agricultural systems in cooperation with disaster relief coordinators.

13.4: This provision addresses linkages between the MS and the International Agricultural Research Centers (IARCs) of the CGIAR. On 29 August, Chair Gerbasi opened the provision for discussion. A developing country called for consideration of how the CGIAR system relates to the MS and the IU, and suggested looking at all references to IARCs and the CGIAR together. Another developing country noted that Articles 9 (The International Network of PGRFA), 12 (Coverage of the Multilateral System), 13, and possibly 14 contain references to the CGIAR and supported taking a holistic approach. Two countries supported, while others opposed, a separate article on how these and other collections are linked, sustained and supported. One developed country noted a difference in status between Parties and research centers, and suggested differentiating the responsibilities of the CGIAR and other international institutions.

A representative of an international organization noted that the CGIAR centers have different legal arrangements, various host country agreements, and a different international role regarding PGRFA. He further observed that it would be sensible to look at provisions relating to the CGIAR holistically. Two regional groups supported further discussion on provisions relevant to the CGIAR. Chair Gerbasi asked one to draw up comments for future discussion.

On 31 August, delegates agreed to include a footnote stating that all issues relating to the CGIAR and other international organizations would be considered together. The paragraph remains bracketed, and states that Parties agree to provide facilitated access to PGRFA to CGIAR centers that accept the IU's provisions.

13.5: This provision addresses access to PGRFA for non-Parties. On 29 August, developing countries expressed preference for language in the Composite Draft Text (CGRFA/CG-3/00/2), stating that access will not be provided to non-Parties unless they adhere to the IU's obligations and that where access is granted it will be subject to a standardized Material Transfer Agreement (MTA) to be developed by the IU's Governing Body. Two developed countries proposed deleting the provision, urging that there be as little difference in terms of access

for Parties and non-Parties as possible, while emphasizing the incentives for joining the IU. The other developed country added that international agreements generally do not address non-Parties and that without such reference Parties can grant or deny access as they wish. Others noted that non-Parties would still have to adhere to CBD provisions on access and benefit-sharing, presuming the country was a Party to the CBD.

Most developing countries favored including text on non-Parties, stressing, *inter alia*, the need to establish differentiated conditions for access and to specify guidelines for non-Parties accessing PGRFA under the MS. One developing country said that conditions for access should state that recipients will not seek any form of IPR over materials received or developed and that benefit-sharing arrangements be more generous than those for Parties. Another developing country noted that without this provision a non-Party could access materials without sharing any benefits or access materials from one Party through an accession by a third Party. It was noted that without such a provision a non-Party could patent accessed material, which would restrict its use under the MS. Discussion also focused on how a standardized MTA could compel a non-Party to seek accessions under the MS as opposed to pursuing alternative bilateral arrangements.

Several delegates highlighted that open access to resources would be an incentive, as non-Parties would otherwise be required to develop bilateral agreements for all accessions. Debate centered on incentives for becoming Parties versus responsibilities for benefit-sharing and financial contributions as Parties. One developed country questioned how this provision relates to Article 28 (Non-Parties). A small drafting group was formed to develop compromise language.

On 31 August, delegates in the small drafting group had not reached consensus. A group of developing countries requested that proposed references requiring non-Parties to be bound by obligations and conditions set out in the IU be included.

The final text, which remains bracketed, states that access shall not be provided to non-Parties unless they agree to be bound by the obligations and conditions set out in the IU, and that where access is granted, non-Parties shall be subject, *inter alia*, to a standardized MTA agreed to by the Parties.

ARTICLE 14 (BENEFIT-SHARING)

14.1: This provision generally addresses the relation between facilitated access and benefit-sharing. In discussions on 29 August, Chair Gerbasi recalled the tacit agreement during the discussion of Article 13.1 to delete the first sentence on the link between access and benefit-sharing. One developing country did not agree to the deletion. After further consultations the text was deleted and delegates agreed to language in Article 11.2 addressing the MS, stating that the Multilateral System is to facilitate access and share benefits on a complementary and mutually reinforcing basis.

The final provision notes that access to PGRFA is a major benefit and that benefits accruing from access shall be shared fairly and equitably.

14.2: This provision lists the mechanisms for benefit-sharing (exchange of information, access to and transfer of technology, capacity building and sharing of commercial benefits) and serves as a chapeau for sub-paragraphs on each item. The Contact Group discussed this chapeau on 29 August. Developing countries proposed removing all brackets from text on commercial use, funding and benefit-sharing. Delegates agreed to include reference to commercial use. One regional group of developed countries and another developed country opposed reference to funding. A developing country proposed



including language from CBD Article 15.7, on sharing results of research and development. A group of developed countries suggested adding “sharing of the benefits arising from commercialization.” Such suggestions were not incorporated and delegates adopted the provision with minor textual rearrangements.

The final text states that Parties agree that benefits, including commercial, will be shared through the mechanisms listed above.

14.2(a): On 29 August, the Contact Group agreed on the text on exchange of information from the Composite Draft Text (CGRFA/CG-3/00/2), without substantive debate. The provision states that Parties will make information available to the MS, where non-confidential, subject to applicable law and in accordance with national capabilities. Such information includes: catalogues and inventories; information on technologies; and technical, scientific and socio-economic research results.

14.2(b)(i): On 29 August, the Contact Group started discussions on sub-paragraphs under the heading of access to and transfer of technology. One developed country proposed deleting language recognizing that some technologies can only be transferred through genetic material, and a reference to facilitated access to genetic material. Three developing countries objected. The developed country noted difficulties in distinguishing genetic material from associated technologies, and suggested adding “in conformity with the provisions of Article 13” to avoid confusion. Delegates supported this amendment, and the text was agreed.

The final text states that Parties will facilitate access to technologies for the conservation, characterization, evaluation and use of PGRFA. It recognizes that some technologies can only be transferred through genetic material and improved varieties, and such transfer shall conform with Article 13 and respect applicable property rights and access laws.

14.2(b)(ii): This provision was already agreed to and therefore was not discussed. It states that technology transfer will occur through measures such as crop-based thematic groups, partnerships in research and development, and commercial joint ventures.

14.2(b)(iii): On 29 August, delegates began discussion of this bracketed provision, which initially included three components, stating that: access to information and technology under intellectual property protection shall be freely available for conservation purposes and to small farmers in developing countries; for commercial purposes, such access and transfer to developing countries shall be provided under fair and most favorable terms, where mutually agreed and through partnerships; and in the case of technology subject to intellectual property protection, access and transfer shall be provided on terms consistent with the protection of IPR. Several countries indicated that the first and third elements are contradictory. Some developing countries and one developed country supported deleting the third element. Some developed countries preferred retaining it, noting that retaining the first element without the third would effectively waive property right protections, which would deter private sector research. One developed country suggested deleting the first element.

Chair Gerbasi proposed moving the second element to the beginning. Regarding a reference to technologies referred to in 14.2(b)(i) and (ii), one developing country proposed adding language on including technologies protected by IPR. He also proposed deleting language on mutually agreed terms and inserting “*inter alia*” to suggest other means of access and transfer besides partnerships. One developed country called for retaining “where mutually agreed.” Chair Gerbasi highlighted the text of CBD Article 16.2, which addresses

access to and transfer of technology on mutually agreed terms. One developing country noted that defining such terms was the current task of the Contact Group, while a developed country stated that defining mutually agreed terms is a bilateral, not multilateral, decision. Two countries raised questions as to whether such mutually agreed terms were necessarily applicable to unpatented technologies or those transferred multilaterally, such as through the IARCs. A drafting group was formed to develop consensus text.

On Wednesday, 30 August, after viewing text from the drafting group on this provision and related Article 14.2(d)(iv), which address IPR and commercial benefit-sharing, developing countries stated that the proposed text was vague and did not reflect a compromise, particularly on the benefits of facilitated access to technology. One developed country questioned the Contact Group’s level of expertise on IPR, and suggested that this issue be addressed in more appropriate fora. Delegates then engaged in a lengthy debate about the application of IPR to access and benefit-sharing, and whether the IU had the competence and mandate to address such issues.

One developing country highlighted the differences in mandatory and voluntary benefits with regard to the private sector. He noted that IPR and royalty payments could constitute a tax on the private sector, which could ultimately increase food prices and threaten food security. He noted the utility of an open-access multilateral system, but noted that countries could return to a bilateral system to protect their perceived competitive advantage. Another developing country noted that the issue of mutually agreed terms remained unresolved because Parties were as yet unclear on exactly what they were agreeing to. He proposed dealing with benefit-sharing in broad terms, recommending a mechanism leaving the specifics to individual Parties. If no terms could be defined on benefit-sharing under the Multilateral System, then he also supported reverting to a bilateral system.

Several countries, both developing and developed, emphasized that although the Contact Group was not qualified to create new IPR regimes, the Council for the TRIPs Agreement did not necessarily have expertise on issues of PGRFA. They considered it necessary to discuss IPR to provide technical input and influence how IPR are legislated and interpreted, rules are made and material accessed. One developed country underscored the opportunity available to promote plant breeders rights (PBR) and coordinate governments without interfering with IPR legislation. A developing country called for a flexible compromise formula in line with the CBD, respecting IPR realities, and not obstructing the flow of PGR.

One developed country proposed addressing mutually agreed terms for access to technology, stating that requiring access to different types of technologies, both genetic and non-genetic, would result in loss of rights to those that hold these technologies. He noted that although some technologies have no commercial value, as with PGRFA, they are combined and developed over time to create a commercial product. He said that some were underestimating the benefit of technology transfer, and, supported by other developed countries, noted that a system threatening IPR would actually restrict access as contracts and trade secrets became more common.

One group of developed countries stated that problems on the issue of IPR and benefit-sharing were due to lack of a clearly defined mechanism for implementation, and suggested that a drafting group have a brainstorming session to produce ideas for future consideration. Chair Gerbasi then convened a closed meeting of key delegates.



The small group, facilitated by Chair Gerbasi, met throughout the afternoon to continue negotiations on Articles 14.2(b)(iii) and 14.2(d)(iv). The Contact Group reconvened in an evening session to discuss proposed text on both. The agreed text for 14.2(b)(iii) provides for access to and transfer of technology to developing countries on favorable terms, including on preferential and concessional terms where mutually agreed. Further, terms for access and transfer will be consistent with the protection of IPR. (Note: see discussion on Article 14.2(d)(iv) for proposed additional text.)

Developing countries accepted the text presented by the small group. Several developed countries, including one regional group, agreed with the main principles of the compromise text. Some also noted that final approval of this text extended beyond their negotiating mandates, and that they would hold further consultations with their capitals. One developed country and two developing countries noted that the proposed text was part of a larger package agreed within the drafting group, that Articles 14.2(d)(i) and (ii) (on annual contributions based on the value of crop production or according to the UN Scale of Assessments) would be dropped if the proposed text was accepted without change. One country proposed reference to countries with economies in transition. After it was explained that such references had been rejected in view of particular understandings and agreements addressing IPR, the country reserved the right to address the issue at the next meeting of the Commission. Chair Gerbasi closed the discussion requesting delegates to take the text back to their capitals for consideration.

The provision provides for access to and transfer of technology to developing countries on favorable terms, including on preferential and concessional terms where mutually agreed. Terms for access and transfer will be consistent with the protection of IPR.

14.2(c): On 31 August, the Contact Group considered Article 14.2(c), addressing capacity building. Delegates discussed bracketed language referencing the priorities that developing countries accord to capacity building in PGRFA in their plans and programmes. Several developing countries supported removing the reference, noting that developing countries that do not have plans or programmes addressing PGRFA should not be penalized. One developed country supported maintaining the text, stating that such language can focus efforts on those countries prioritizing PGRFA capacity-building efforts and provide an incentive for other countries to identify such priorities. After some discussion of language to incorporate such concerns, delegates agreed to reference such plans and programmes, "when in place." Delegates then debated whether Parties shall agree to or endeavor to the specific capacity-building objectives listed. After extensive debate, delegates accepted "agree to give priority to."

The final text prioritizes capacity-building efforts, regarding the conservation and sustainable use of PGRFA, to: establish or strengthen educational and scientific programmes; develop and strengthen facilities; and carry out and strengthen research efforts and capacity. The provision particularly cites the needs, programmes, plans and priorities of developing countries and countries with economies in transition.

Comments on Inter-session Consultations with Industry: As a prelude to discussing Article 14.2(d), on sharing the benefits of commercialization, on 26 August, Chair Gerbasi invited comments on governments' consultations with their national industries regarding provisions on commercial benefit-sharing. At the end of the previous Contact Group session, he had requested developed countries to conduct such consultations to inform discussions on commercial benefit-sharing. One regional group of developed countries noted that

providing access to PGRFA under the MS is an important benefit to Parties, along with its supporting components on information exchange, technology transfer, capacity building and commercial work. She noted that the final agreement should be practical, transparent and avoid the need for bilateral negotiations. A developed country noted that its consultations with industry revealed that there is no objection to enhanced cooperation between the private sector and developing countries provided that there is no violation of confidentiality or IPR. He supported studying the possibility of a fund, provided that industry contributions would be voluntary, relatively small (US\$10,000 - US\$100,000 a year) and channeled through companies' headquarters. Another developed country delegate noted that: the IU's primary benefit is crop improvement; there is industry support for contributing to global food security through crop improvement and exchange of PGRFA; and there is support for access to PGRFA for research, training and breeding as long as it is consistent with national legislation. She highlighted a suggestion that industry be encouraged to provide more direct support for existing work under the IARCs.

Another developed country noted that the private and public sectors play different roles in different national contexts, which would require benefit-sharing provisions that could respond to individual national needs and legislative systems. She stressed that benefit-sharing should take different forms and that a compulsory system based on a fixed formula may not deliver the expected benefits or provide the necessary incentive to attain the IU's objectives. Two developed countries noted the importance of including domestic views beyond the private sector. A developing country further noted that the issue of quantifiable benefits should move beyond a narrow focus on seed companies and their profits to also account for harvest revenues. A regional group of developing countries noted that the issue of benefits and obligations is already contained in the CBD, and that a revised IU must build on and improve the existing system.

Chair Gerbasi then introduced the specific provisions of Article 14.2(d) for discussion.

14.2(d)(i) & (ii): These provisions call, respectively, for annual contributions by Parties based on a percentage of the value of their annual crop production under national IPR protection, and annual contributions by Parties based on the UN Scale of Assessments. On 26 August, delegates commented on both in a discussion on Article 14.2(d). One developed-country regional group with several other developed countries stated that both elements were unacceptable. One of those countries highlighted the difference between developing the funding strategy contained in Article 16 (Financial Resources) and the concept of actually developing a fund, noting that the Chairman's Elements from the Montreux experts' meeting specify developing a strategy, not a fund. A developing country questioned what the responsibility for sharing is if PGR are accessed, used and commercialized. Two developing countries further referenced CBD Article 15.7 on sharing the commercial benefits derived from genetic resources, to which a developed country countered that the text further states that such sharing will be on mutually agreed terms. One developing country stated that the elements provide a means to source the funding strategy, and another said that development of a fund-raising system should not negate commercial benefit-sharing requirements.

Regarding the first element, two developed countries noted problems with practical implementation. One noted it would impose a tax on crops not protected by IPR, requiring regulation by parliaments and involving unacceptable compliance schemes. A developed country stated that the second element had no link to commercialization and



was therefore misplaced. She further noted that benefits from the private sector are not just monetary, but include crop improvement. Two developing countries noted the value of non-monetary benefits, but emphasized that blockage had occurred in the sharing of commercial benefits. A developed country delegate highlighted discussion within the Global Environment Facility (GEF) Council about financing IU activities in a new operational programme on agrobiodiversity.

According to a package developed by the small negotiating group on IPR issues, these two provisions will be deleted if proposed text for Articles 14.2(b)(iii) and 14.2(d)(iv) is adopted as is. (See discussion under Article 14.2(b)(iii).)

The provision for Article 14.2(d)(i) states that Parties shall pay, in accordance with the funding strategy, an annual contribution representing a percentage of the crop value produced in its territory through the use of PGRFA and for which IPR protection has been sought under its national legislation. Article 14.2(d)(ii) states that Parties shall make annual contributions to the funding strategy proportional to their national contributions according to the UN Scale of Assessments. Both are bracketed.

14.2(d)(iii): On Sunday, 27 August, the Contact Group discussed this provision, which addresses benefit-sharing through private sector involvement in partnerships for research and technology development. One developed country, generally supported by a number of developing countries, proposed text on promoting commercial benefit-sharing involving the private sector of developed countries in partnerships with developing countries. After a comment that this formulation excluded private sector partnerships between developing countries, such language was included. One delegate also proposed, and all accepted, inclusion of countries with economies in transition. One developing country proposed, and others supported, including reference to the public sector. Another developing country questioned whether the formulation included hybrid public-private entities, such as parastatals.

Delegates debated language reflecting the degree of Parties' obligation in commercial benefit-sharing, specifically in terms of explicitly sharing benefits or promoting such sharing. Several developing countries preferred language on "sharing" commercial benefits, underscoring the importance of ensuring commitment. A developed country stated that it would be difficult for its government to commit the private sector to specific international obligations, whereas the government could promote benefit-sharing activities. One developing country inquired as to the role and responsibility of governments in coordinating or regulating other sectors. Delegates debated other possible formulations and eventually agreed on "take measures to achieve."

The provision states that Parties should take measures in order to achieve commercial benefit-sharing through the involvement of the private and public sectors in partnerships and collaborations in research and technology development.

14.2(d)(iv): On Saturday, 26 August, the Contact Group started a general discussion of this provision, which provides for benefit-sharing on a percentage of royalties for any product derived from PGRFA under the MS protected by patents or subject to access restrictions. One developed country supported the provision, stressing that governments have to assume responsibility in benefit-sharing to avoid tracking procedures and bilateral agreements. He further stated that if forms of IPR are employed that limit access, then there should be compensation. A developing country also supported this provision.

One developed country stated that the private sector might be more valuable in forming partnerships for providing technology transfer, information sharing and capacity building, and that expectations regarding royalty mechanisms might not generate significant funds. She noted an industry concern that requirements for paying royalties could discourage private sector investment in developing countries. She also stated that such a provision would require a government role in monitoring and enforcement, which in turn would necessitate new legislation in her country. Another developed country stressed that the element on royalties should be interpreted as voluntary and not mandatory. A developed country stated that some were placing too much emphasis on commercial benefit-sharing and a funding strategy when the most important benefit of a multilateral system would be the open exchange of germplasm.

On 27 August, Chair Gerbasi asked participants to consider language on the provision within the Composite Draft Text (CGRFA/CG-3/00/2). One developed and one developing country suggested deleting reference to "any form of commercial protection that restricts further access." Developing countries proposed alternative language regarding forms of IPR protection. One developing country said that the onus of sharing benefits should be on companies profiting from PGRFA and that these companies must contribute to the fund. One developed country suggested excluding other forms of IPR, such as PBR, to avoid unnecessary bureaucracy, noting that it would be impossible to trace the movement of material after breeding. A representative of an international agreement addressing such issues explained that the International Union for the Protection of New Varieties of Plants (UPOV) includes the concept of PBR, which allows plant breeders to profit from their work, while making their material available for others to improve. He noted that the patent system in some countries may restrict others from using plant material during the period of the patent (e.g., 20 years).

It was noted that the draft text actually contained the essence of a proposal of a non-governmental observer. Upon the request of several countries, that observer presented a conceptual model to clarify the proposal. Under the proposal, a private or public sector user would access PGRFA under the MS held *in situ* or in a gene bank and sign a Material Transfer Agreement (MTA), which would include a commitment to pay a percentage of royalties in the event of a patent and the range of possible percentages (the final percentage would be discussed with the administrator of the IU). The user could then develop a new variety or biotechnology invention, which could be protected by either patents or PBR. In the case of a patent, the product would then be commercialized and a percentage of the royalties would be given to the International Fund for implementation of the Global Plan of Action. In the case of PBR, the primary benefit would be continued access by farmers and other plant breeders through the right of the plant breeders' exemption to the commercialized variety and, in this case, monetary contribution would not be required.

Responding to a question about why the GPA would be the sole beneficiary, the non-governmental representative stated that the GPA sets priorities for the conservation and sustainable utilization of PGR, while indicating that other priorities could be funded. Responding to questions about the range of percentages for royalty payments, the organization stated that a fixed percentage would be inappropriate as some crop types generate more revenue than others, which could be a disincentive for further research on some PGRFA. One developed country stated that terms of access are set in Article 13 and terms for benefit-sharing in Article 14, and therefore the MTA should merely serve as an informational – not negotiated – document, as per its use



under the CGIAR. Responding to questions about calculating the percentage of royalties if the sources of parent material are only partially from PGRFA, the organization responded that such issues could be solved by the IU administrator.

After discussion on the presentation, Chair Gerbasi asked for further reflections on delegations' positions. One regional group of developed countries proposed replacing language on patents or other restrictive forms of commercial protection by addressing products "covered by any form of commercial protection that restricts further utilization." One developed country stated that incorporation of all forms of intellectual property protection could be detrimental in some cases, for example with regards to undisclosed information. He also stressed that such contributions be voluntary and not mandatory. Several countries cautioned against including language that might include rights under *sui generis* systems developed in accord with the TRIPs Agreement.

Several developing countries stated that monetary benefits should be shared for both patents and PBR. A regional group of developed countries explained that requiring royalties on all PBR could burden farmers and small breeders. Some developing countries acknowledged this point. Two developing countries suggested exempting farmers or local communities from contributing to the fund, unless they commercialized a product. One developed country did not agree with the proposed exceptions.

Upon a statement that only three countries allowed patents on plant varieties, several developed countries stressed the need for extending the provision's coverage to PBR. A representative of an international organization clarified that only three countries allow industrial patents for plant varieties, while most developed countries grant patents for biotechnological inventions, which could use PGRFA. He also stated that there is a greater scope for profit under patents than PBR. A developing country stated that the seed sector is only a small portion of commercialization, and that the provision should be applied to the industrial food sector. A developed country called attention to the practical concern of implementing such a provision with regard to determining the degree of genetic contributions, tracking, enforcement and measurement of monetary benefits. A drafting group was formed to develop compromise text.

On 30 August, the provision and the issue of IPR were revisited within the discussion on Article 14.2(b)(iii), which were then referred to the small negotiating group facilitated by Chair Gerbasi. The package text was agreed to by developing countries. Several developed countries noted their agreement with the principles of the provision, while stressing the need to consult with their capitals. Such statements were reiterated on 31 August. At that time, one developed country noted her understanding that the concepts had been agreed, whereas the precise language was still open to discussion.

The text for the provision includes three components. First, whenever PGRFA accessed under the Multilateral System result in a plant genetic resource covered by any type of IPR or commercial protection that restricts further use, Parties agree that the rights-holder shall pay an equitable royalty. Second, for non-restrictive IPR and commercial protection, Parties shall encourage the rights-holder to pay an equitable royalty. Third, Parties will review the provision on non-restrictive protections within five years of the IU's entry into force, particularly to assess the possibility of making contributions mandatory.

Proposal on Food Industries: One developing country, with the support of other developing countries, tabled a new proposal to be added to Article 14 (possibly under Article 14.2(d)), calling for the IU's Governing Body to consider a strategy for voluntary contributions from food industries benefiting from PGRFA. He explained that existing provisions in Article 14.2(d) only address the first two stages of commercialization, farmers and the seed industry, and neglected the food industry, which also benefits from the end product. He stated that contributions would be voluntary because national legislation may restrict compulsory charges on a sector, and it would be impractical to determine appropriate levels of contribution throughout the process. Another developing country proposed language referring to the food processing or manufacturing industry. One developing country requested that the proposal exclude those industries using animal resources. One developed country expressed concerns about whether the provision should be included under benefit-sharing or funding provisions. Delegates agreed to consider the proposal and deferred further discussion.

14.3: On 30 August, delegates considered this provision, which addresses the flow of benefits to farmers. One developed country, supported by two developing countries, suggested returning to text derived from the Chairman's Elements of the Montreux experts' meeting, stating that benefits should flow to farmers in developing countries embodying traditional lifestyles. Two developing countries noted that the term traditional might not reflect the dynamic nature of farming communities and their use of newer technologies and practices. Several developing countries supported the inclusion of "particularly" with regard to those embodying traditional lifestyles. One country requested reference to countries with economies in transition. One group of developed countries and two other developed countries preferred using the existing text from the Composite Draft Text (CGRFA/CG-3/00/2), which specifies all countries. One noted that such a provision provided an incentive for all to become Parties. A developed country stated that that text extends beyond the mandate provided by the Montreux meeting. One developing country noted that the spirit of Montreux was to emphasize the position of poor, developing country farmers and that farmers in others countries have access to other support systems. After a debate over whether benefits "should" or "shall" flow to such farmers, delegates agreed to use "should." After further discussion, delegates could not agree on inclusion of reference to traditional lifestyles, and the original text was maintained in brackets.

The provision states that benefits should flow [*inter alia*] primarily, directly and indirectly to farmers in all countries, especially in developing countries and those with economies in transition, who conserve and sustainable use PGRFA. It remains in brackets.

14.4: On 30 August, delegates agreed to Article 14.4 on consideration of the relevant policy and criteria for assistance in the IU's funding strategy, without substantive discussion. The provision specifically states that the first meeting of the Governing Body will consider criteria for assisting developing countries and countries with economies in transition whose contribution to PGRFA is significant or who have special needs.

14.5: On 30 August, delegates agreed to Article 14.5 without substantive discussion. The provision recognizes that implementation of the GPA depends on the effective implementation of Article 14 and the funding strategy.



ARTICLE 16 (FINANCIAL RESOURCES)

On 31 August, the Contact Group started an initial discussion of Article 16, which address financial provisions, including the funding strategy and arrangements. In a general statement, one developing country noted the importance of the funding strategy, the need to reaffirm commitments to funding and to define the necessary and minimal amount of funding necessary to implement the GPA.

16.1: On 31 August, delegates considered this provision which provides for a funding strategy for the IU's implementation. Several developing countries supported, and several developed countries opposed, removing brackets around a reference to implementation of the strategy. One developing country noted that this provision simply outlines what the article will address and did not bind Parties to a specific strategy. Delegates agreed to clarify that it would be the Governing Body that developed, reviewed and implemented the funding strategy.

The final text states that Parties will undertake through the Governing Body, to develop, keep under review and implement a funding strategy for the IU's implementation according to the provisions of Article 16.

16.2: On 31 August, delegates addressed this provision, which serves as a chapeau for sub-paragraphs detailing the funding strategy's objectives. They debated whether the strategy's objectives should be to "enhance" or "improve and increase," eventually agreeing to use "enhance" and to state that such activities be implemented on a continuing basis. A developed country then proposed, and all supported, moving sub-paragraphs (a), (b) and (c), which address means and not objectives, to 16.4, which contains specific commitments regarding provision and receipt of financial resources. The text remains bracketed and the sub-paragraphs remain under this provision, since delegates did not have sufficient time to discuss Article 16.4.

The final text states that the funding strategy's objectives will be to enhance the availability, transparency and effectiveness of providing financial resources to implement activities under the IU on a continuing basis.

16.3: This provision, which addresses establishing a target for the funding strategy on a periodic basis, was not discussed.

16.4: On 31 August, delegates started to address this provision, which serves as a chapeau detailing specific commitments regarding provision and receipt of financial resources. A developed country proposed, and delegates agreed, that the chapeau should read, "pursuant to this funding strategy."

ANNEX I (LIST OF CROPS COVERED BY THE MULTILATERAL SYSTEM)

On 26 August, Chair Gerbasi opened the floor for statements from regional groups addressing the list of crops covered by the MS, as contained in Annex I of the composite draft text of the IU (CGRFA/CG-3/00/2). One regional group of developing countries stated that consensus on a combined list of crops relevant for food security had been reached at a recent regional meeting. They noted that their submission of 29 crops to the contact group was subject to conditions including, inter alia: adoption of a mechanism for benefit-sharing; consensual adoption of the IU; use of genetic material under the MS to be used only for food purposes; and access to genetic material relevant to the private sector. Another group noted difficulty in assessing regional input due to the small number of countries present at the meeting. They announced submission of a limited list of nine crops.

A regional group of developed countries recalled its position that the MS should apply to all PGRFA, noting that world food security reaches beyond the small number of large crops grown throughout the world. They underscored the need for broad inclusion of plant genera, supporting a list 287 crops compiled through consultations with stakeholders at all levels. On this principle, the group also expressed support for all proposals made by other delegations. Another regional group submitted a list of 22 crops based on food security and interdependence, noting that this reflected consensus, although some countries in the region preferred expanded lists. They stated that additions to this list would be contingent upon progress in other areas of the IU addressing access and benefit-sharing. A regional group of developed countries supported the current list of 40 crops appearing in Annex I of the composite text. Another regional group said that its members had not yet met and would prepare their list for submission at a later time.

The lists were distributed to delegates for future consideration.

PROPOSAL ON SUPPORTING COMPONENTS OF THE MULTILATERAL SYSTEM

A regional group of developed countries tabled relevant modifications to a proposal for a new article contained in CGRFA/CG-3/00/3 (Supporting Components of the Multilateral System).

The Contact Group discussed whether it should be contained under Part III (Supporting Components of the Undertaking) or Part IV (Multilateral System of Access and Benefit-sharing). After brief discussion it was decided to maintain the article within Part IV given its relation to the Multilateral System, while leaving it unnumbered. The Contact Group also agreed to bracket it and defer further discussion until the next meeting.

The proposal includes four provisions, which note that: information systems, Networks of Plant Genetic Resources for Food and Agriculture, and partnerships in research and technology are supporting components of the MS; these components are to improve the knowledge, understanding, conservation, exchange and utilization of the PGRFA, as well as to facilitate the use of collections and strengthen regional and international cooperation; there is a strong relationship between these components, the MS's coverage and priorities defined in national and regional plans and programmes as well as in the GPA; and the IARCs of the CGIAR play an important role in supporting the Multilateral System.

CLOSING SESSION

During the closing session on 31 August, Chair Gerbasi opened a discussion on how to proceed with the final negotiations for the revised IU. He noted that the approved IU is supposed to be ready for presentation to the 119th FAO Council scheduled for November and that further negotiating sessions are contingent upon extra-budgetary funds. He asked countries to assess the past six days of work and the advisability of continuing work on the revision. All of the regional groups noted that substantial progress had been made and encouraged a rapid conclusion to the negotiations. Chair Gerbasi then presented a proposal to have an Extraordinary Session of the CGRFA to conclude the negotiations, which would be convened from 9-20 October 2000, in Rome. It would consist of two working groups and the Chair's Contact Group. Working Group I would address Articles 1 through 10; Working Group II Articles 18, 19 and 22 through 32; and the Contact Group Articles 12 through 17, 20, 21 and the annexes. The costs of the meeting were announced, and delegates were informed that the budget would have to be secured by the following week in order to send out letters of invitation to Commission members in advance of the meeting.



Several developed countries said that they would try to secure funds, although, noting the short timeframe, warned that sometimes bureaucracy is stronger than political will. Should the funds not become available, Chair Gerbasi suggested making a progress report to the FAO Council and holding the final meeting early in 2001. Some delegates emphasized the need to maintain the momentum achieved and to hold another meeting as soon as possible. One country suggested holding another Contact Group meeting prior to the Council, although others thought this might prolong the negotiations. It was decided that Chair Gerbasi would assess the funding situation and maintain close connection with the Secretariat, Bureau and Contact Group members before taking a final decision on schedule.

One developing country delivered a Tehran Declaration, which notes the progress made at the meeting, the commitment to and importance of finalizing the IU, and the generosity of the Islamic Republic of Iran for hosting the meeting. The Declaration was approved by acclamation. A representative of the host country expressed his gratitude and stressed that the contributions of this Contact Group would be important for mankind. Gerbasi took the opportunity to thank the Governments of Sweden and Japan for their financial support, and to thank the delegates, interpreters and staff. He urged a rapid conclusion of the negotiations and adjourned the meeting at 8:00 pm.

A BRIEF ANALYSIS OF THE CONTACT GROUP MEETING

The revised IU lies on the fault lines of agriculture, trade and the environment. The extended and beleaguered history of this negotiation process speaks to the difficulties inherent in addressing the overlap of these sectors, and has repeatedly raised the question of what is the key incentive for creating an IU. Access to PGRFA, benefits in the form of technology and funds, and food security are important incentives that respectively arise from each one of these three areas. The complexity of these negotiations, therefore, demands competence in plant genetic resources, IPR protection for plants and genes, the financial and technical aspects of germplasm flows and transfer agreements, as well as knowledge of the CBD. Such a panoply of issues has even some developed countries concerned about their lack of expertise.

Chair Gerbasi impressed upon the group that this was the last chance to move forward, and the threat of negotiations being terminated by the FAO Council for lack of progress placed additional pressure on participants as they again confronted unresolved issues. In order to set the foundation for the Multilateral System, progress needed to be made in the key areas of benefit-sharing and IPR. After years of discussion, delegates at last took a hard look at what this must entail, and succeeded in taking sufficient steps toward agreement.

This brief analysis organizes key points covered in the meeting according to their implications for and impact upon agriculture, trade and environment, and examines the overall process and its immediate future.

AGRICULTURE: The IU's ultimate objective is the conservation and sustainable use of plant genetic resources for agriculture and food security. Agriculture has been the mainstay of civilizations throughout history, and increasingly raises central concerns about self-sufficiency and economic strength. The *de jure* shift of genetic resources from the common heritage of mankind to national sovereignty, the fact that most PGRFA are now held in *ex situ* collections, and a history of biopiracy all muddle the picture of who is entitled to rights and how benefits are distributed.

The lists of crops important to each region range in number from 9 to 287, revealing the diversity of interests and concerns involved and a large gap to be bridged. The smaller list presented by one group of developing countries obviously restricts the level of access, and coincidentally, the potential for benefit-sharing. This group sees a small list as a "trial sample" that will allow countries to build trust and gauge the levels of success and failure before being expanded. The longest list, with the expressed agreement to include all the other lists, raised some concerns about a push to open access to an expanded range of genetic resources, since some of these crops may not directly relate to food security. Such concerns were reflected in the debate over excluding non-agricultural/industrial/food uses. One participant believed that developing countries' fears of resource appropriation were unfounded, and that an expanded list might in fact be more beneficial since they have been net recipients of PGRFA over the past several decades. Defining the list will be a central issue during the final negotiations.

TRADE: Recent international debates over multi-functionality and the next round of WTO negotiations highlight the problematic links between agriculture and trade. While such references were relegated to whispers in the corridors, the meeting's most contentious element related to IPR in the context of access and benefit-sharing. Many observed that this meeting marked the first time that IPR-related concerns had been addressed in depth.

The IU's location on the fault lines was further evidenced when some declared that this body did not have the authority to negotiate IPR-related issues, while others argued that the TRIPs Council does not have expertise on PGRFA. With a tentative agreement reached, many hoped that a mutually supportive system could be developed wherein the IU could provide technical input into TRIPs and other processes. This constitutes an important breakthrough in defining the IU's role and its limitations, following the same path as the recently concluded negotiations on the Cartagena Protocol on Biosafety, which many believe will complement the WTO's Agreement on Sanitary and Phytosanitary Standards.

However, some noted that the potential financial benefits arising from the Multilateral System would probably be minimal and result only in the long-term. Others suggested that the point was not money, but the principle and precedent of collecting royalties on patented commercialized products.

ENVIRONMENT: The negotiation's relevance to the environment was most clearly expressed through continued reference to the CBD and its provisions. While the revised IU will necessarily focus on the conservation and sustainable use of PGRFA, close attention was also paid to how to move beyond the CBD's system of bilateral access agreements to a system of open multilateral access. The process itself shared many similarities with the recently completed biosafety negotiations. Both processes raise the potential for conflicts with the WTO and its sub-agreements, one on IPR and the other on potential trade barriers and sanitary standards. The "savings clause," a provision subordinating an agreement to existing international commitments (e.g., WTO rules) was a central debate under the biosafety protocol, and a similar provision was suggested under the IU to address the IPR issue. The final issue for resolution under the Cartagena Protocol was that of documentation and whether industry should be required to segregate genetically-modified organisms (GMO) and non-GMO grains. In comparison, a group of countries resisted the proposal requiring industry to pay royalties on patented products resulting from PGRFA under the Multilateral System. Finally, definition of the IU's



coverage through the list of crops could prove almost as difficult as the issue of scope and inclusion of GMOs for food, feed and processing was in the biosafety negotiations.

Should the IU be successfully concluded with acceptable terms on access, benefit-sharing and IPR, it will effectively build on the Cartagena Protocol as a body of international environmental law that can be used to inform the development and practice of international trade law.

NEXT STEPS: Delegates left Tehran on a very positive note, commending the progress and positive spirit of the meeting in vivid comparison to past meetings. Most stated that this was by far the most successful meeting yet. Negotiation processes generally defer consideration of the toughest issues until the last possible moment, which becomes problematic when a process must show progress to continue. The spirit of compromise was fueled by pressure from the Chair to break the stalemate on Article 14, through forcing a closed session to resolve the issue. The outcome was a significant step forward, although one that is pending in-capital consultations by a handful of developed countries.

Further success now appears conditional on securing funding for the final negotiating session. While attending to the realities of a one-week deadline to raise the money, delegates were eager to maintain this meeting's momentum, satisfied with having broken new ground and confident that the process would continue moving towards completion. Ultimately, finalization and implementation of the IU will build on a body of international law that intersects multiple disciplines and will serve as an historical step in the harmonization of agricultural, trade and environmental policy.

THINGS TO LOOK FOR

GLOBAL INVASIVE SPECIES PROGRAMME: The GISP will hold its next meeting from 17-22 September 2000, in Cape Town, South Africa. For more information, contact: Mr. Laurie Neville, Conference Coordinator, GISP/STAN; Stanford University, California, USA; tel: +1-650-728-2614; fax: +1-650-723-1530; e-mail: Lneville@leland.stanford.edu; Internet: <http://jasper.stanford.edu/gisp/>

FAO COMMITTEE ON WORLD FOOD SECURITY: This committee will meet from 18-21 September 2000, at FAO Headquarters in Rome. For more information, contact: FAO, Viale delle Terme Caracalla, 00100 Rome, Italy; tel: +39-6-5705-2287; fax: +39-6-5705-3369; Internet: <http://www.fao.org/UNFAO/Bodies/cfs/default.htm>

COUNCIL FOR TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS: The TRIPs Council will hold its next meeting from 21-22 September 2000, at WTO Headquarters in Geneva. For more information, contact: the WTO; tel: +41-22-739-5111; fax: +41-22-739-5458; Internet: <http://www.wto.org>

INTERNATIONAL CONFERENCE ON BIOTECHNOLOGY IN THE GLOBAL ECONOMY: SCIENCE AND THE PRECAUTIONARY PRINCIPLE: This conference will be held from 22-23 September 2000, at Harvard University, Cambridge, MA, USA. For more information, contact: Derya Honca; fax: +1-617-496-8753; e-mail: Derya_Honca@KSG.Harvard.Edu; Internet: <http://www.cid.harvard.edu/cidbiotech/homepage.htm>

SECOND IUCN WORLD CONSERVATION CONGRESS: The second WCC will be held from 4-11 October 2000, in Amman, Jordan. For more information, contact: Usila Hult Bunner, IUCN, Gland, Switzerland; tel: +41-22-999-0001; fax: +41-22-999-0002; Internet: <http://www.iucn.org/amman/index.html>

SIXTH EXTRAORDINARY SESSION OF THE COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE: This session is tentatively scheduled for 9-20 October 2000, at FAO Headquarters in Rome, to finalize the revised International Undertaking. For more information, contact: Clive Stannard, FAO, Viale delle Terme Caracalla, 00100 Rome, Italy; tel: +39-6-5705-2287; fax: +39-6-5705-3369; e-mail: clive.stannard@fao.org; Internet: <http://www.fao.org/ag/cgrfa/>

FIRST NORTH AMERICAN SYMPOSIUM ON UNDERSTANDING LINKAGES BETWEEN TRADE & ENVIRONMENT: The symposium will be held from 11-12 October 2000, in Washington, DC, USA. For more information, contact: Scott Vaughan, CEC, Montreal, Canada; tel: +1-514-350-4302; fax: +1-514-350-4314; e-mail: svaughan@ccemtl.org; Internet: <http://www.cec.org>

CGIAR INTERNATIONAL CENTERS WEEK: International Centers Week will be held from 25-29 October 2000, in Washington, DC, USA. For more information contact: Frauna Hall, The World Bank/CGIAR, Washington, DC, USA; tel: +1-202-473-8915; fax: +1-202-473-8110; e-mail: fhall@worldbank.org; Internet: <http://www.cgiar.org>

119TH FAO COUNCIL: FAO's 119th Council will meet from 20-25 November 2000, at FAO Headquarters in Rome. For more information, contact: FAO, Viale delle Terme Caracalla, 00100 Rome, Italy; tel: +39-6-5705-2287; fax: +39-6-5705-3369; Internet: <http://www.fao.org/>