



SIXTH EXTRAORDINARY SESSION OF THE COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE: 25-30 JUNE 2001

The sixth extraordinary session of the Commission on Genetic Resources for Food and Agriculture (CGRFA) opens today at the FAO headquarters in Rome, Italy. The session is expected to conclude negotiations on the Revision of the International Undertaking on Plant Genetic Resources for Food and Agriculture (IU), the first comprehensive instrument on plant genetic resources for food and agriculture (PGRFA), ahead of a November 2001 deadline set by the 119th FAO Council.

The outstanding issues to be considered at the session include provisions relating to: the Multilateral System of Access and Benefit-sharing; *Ex Situ* Collections of PGRFA held by the International Agricultural Research Centers of the Consultative Group on International Agricultural Research (CGIAR) and Other International Institutions; Institutional Provisions; the List of Crops Covered by the Multilateral System (MS); and the Use of Terms. During the session delegates are expected to meet in parallel sessions of the Plenary and a Committee of the Whole, and in evening informal consultations of the technical working groups on the list of crop genera and on the use of terms.

A BRIEF HISTORY OF THE PROCESS

THE FAO GLOBAL SYSTEM: The FAO established the intergovernmental Commission on Plant Genetic Resources in 1983. Renamed the Commission on Genetic Resources for Food and Agriculture (CGRFA) in 1995, the Commission currently comprises 160 countries and the European Community. The CGRFA coordinates, oversees and monitors the development of the Global System for the Conservation and Utilization of PGRFA, which is comprised of the Commission itself and the non-binding IU, the rolling Global Plan of Action (GPA), the International Fund for Plant Genetic Resources, the World Information and Early Warning System, Codes of Conduct and Guidelines for the Collection and Transfer of Germplasm, the International Network of *Ex Situ* Collections under the auspices of FAO, and the international network of *in situ* conservation areas and crop-related networks.

THE INTERNATIONAL UNDERTAKING: Established in November 1983 by FAO Conference Resolution 9/83, the IU aims to ensure that PGRFA are explored, collected, conserved, evaluated, utilized and made available for plant breeding and other scientific purposes. The IU was originally based on the principle that PGRFA should be "preserved ... and freely available for use, for the benefit of present and future generations" as part of the common "heritage of mankind." This principle was subsequently subjected to "the sovereignty of States over their plant genetic resources" (FAO Resolution 3/91). Although a non-binding agreement, the IU was not adopted by consensus, as eight developed

countries formally recorded reservations. To date, 113 countries have adhered to the IU, with Brazil, Canada, China, Japan, Malaysia and the US as notable exceptions.

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

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

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

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

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

FIFTH EXTRAORDINARY SESSION OF THE CGRFA: The fifth extraordinary session was also held in Rome in June 1998. Delegates continued discussions in an open-ended working group and a Chair's contact group. The working group reviewed the provision on farmers' rights. The contact group reviewed

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

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

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

EIGHTH SESSION OF THE CGRFA: The CGRFA's eighth session was held in Rome in April 1999 and decided to continue negotiations on the IU's revision using a Composite Draft Text, and also authorized the Chair to convene a Contact Group to advance negotiations using the Chairman's Elements derived from the Montreux meeting. The Contact Group consisted of 41 countries selected according to regional representation and was formed to address the most contentious issues under debate. The Commission also authorized an extraordinary session of the CGRFA to adopt the final text, when appropriate, so that the results could be submitted to the 119th Session of the FAO Council in November 2000.

FIRST INTER-SESSIONAL CONTACT GROUP

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

SECOND INTER-SESSIONAL CONTACT GROUP

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

THIRD INTER-SESSIONAL CONTACT GROUP

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

FOURTH INTER-SESSIONAL CONTACT GROUP

MEETING: The fourth meeting of the Contact Group was held in Neuchâtel, Switzerland, from 12-17 November 2000. Significant

time was devoted to financial resources and agreement was reached on most provisions. Provisional progress made on IPR and commercial benefit-sharing at the third Contact Group meeting was called into question as four countries stated, based on consultations with their capitals, that the proposed compromise package was unacceptable. Delegates also engaged in extended discussions and considered input from external experts regarding intellectual property issues as related to the IU, CBD and the World Trade Organization's Agreement on Trade-related Aspects of Intellectual Property Rights.

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

FIFTH INTER-SESSIONAL CONTACT GROUP

MEETING: The fifth meeting of the Contact Group was held in Rome, Italy, from 5-10 February 2001. Delegates continued discussions on provisions related to access, the governing body, secretariat, amendments of the Undertaking and the annexes, as well as a proposed article on supporting components of the MS. Delegates held general discussions on the IU's legal basis in relation to the FAO and the CBD, and addressed the terms for including *ex situ* collections held by Centers under the CGIAR and other international institutions. A technical group was also formed to list and define terms used within the IU text.

SIXTH INTER-SESSIONAL CONTACT GROUP

MEETING: The Sixth Inter-sessional Contact Group was held in Spoleto, Italy, from 23-28 April 2001. Delegates discussed a range of outstanding items, resolving language in Articles 14 (GPA), 16 (International Plant Genetic Resources Networks), 17 (Global Information System on PGRFA) and 18 (Financial Resources). Three technical groups were convened to consider definitions, legal matters and the Annex I list of crops. As debates generally revisited those held during previous Contact Group meetings, delegates often expressed frustration at being unable to move beyond entrenched positions, although clarification of the principles underlying the various positions was seen as an essential step in moving the process forward. A major accomplishment at this meeting was agreement on a list of 30 crop genera to be covered under the IU.

120TH FAO COUNCIL: The FAO Council held its meeting from 18-23 June 2001 at FAO headquarters in Rome and considered Chair Gerbasi's preliminary report on progress in the revision of the IU, in which he noted that the Contact Group meeting in Spoleto considered the conclusion of the negotiations to be within reach. The Council: emphasized the importance of world food security; recalled the request of the 119th FAO Council to submit the completed text to the November 2001 FAO Conference; and, recognizing that consensus had been reached on a number of difficult issues, but a few substantive issues were still under consideration and require political will, flexibility and creativity, urged the Commission to find solution by consensus, where possible. Some members suggested postponing negotiations if agreement is not reached on the IU, while others said the IU should be finalized during the Commission's extraordinary session with the largest possible number of countries. The Council deferred the decision on whether the text would be submitted to the November 2001 Conference to the FAO Director General.

THINGS TO LOOK FOR TODAY:

PLENARY: Plenary will convene at 10:00 am in the Red Room for a brief opening session to consider the provisional agenda and timetable, after which it is expected to adjourn for the day to make way for regional group consultations. Commission Chair Gerbasi and a FAO Assistant Director General will address the opening session. A report of the 120th Council meeting will be circulated.