



CGRFA-EX6 HIGHLIGHTS:

FRIDAY, 29 JUNE 2001

Delegates met in an afternoon and an evening Plenary for a report on the progress of the negotiations. Committee of the Whole (COW) Chair Francis Montanaro Mifsud (Malta) presented the COW's report on institutional provisions and CGRFA Chair Fernando Gerbasi (Venezuela) presented his proposed compromise text on Articles 11-13 (Coverage of, facilitated access and benefit-sharing in the Multilateral System (MS)). Delegates considered these texts article-by-article, as well as the use of terms, submitted by the informal working group. In the morning, informal consultations of the working group on Article 15 (*ex situ* collections), and the "Friends of the Chair" contact group took place, while a new working group on resolutions met in the afternoon.

PLENARY

The NETHERLANDS, on behalf of the EUROPEAN REGION, expressed concern over the state of negotiations on the list of crops under the MS. He highlighted lack of progress, illustrated by the exclusion of soybean, groundnut, tomato, and of the wild relatives of maize, wheat and potato, which are essential for breeding. He noted some regions' wish to exclude from the list any crops or wild relatives for which their region is an important centre of origin. Ethiopia, on behalf of the AFRICAN GROUP, stressed that developing countries are expected to make their resources available, bearing additional burden, and receiving fairly negligible benefits. He underscored that resolution of negotiations on the list of crops depends on resolution of other issues as well.

Venezuela, on behalf of GRULAC, said their region is willing to include important species for food security, however, technically there is no reason to include all crops in the MS. Regarding soybean, CHINA urged delegates to understand the sacrifices China had made regarding crops. Sudan, on behalf of the NEAR EAST REGION, said they would defend the interests of developing countries. Cuba, on behalf of the G77/CHINA, said they have shown willingness to resolve issues, and would continue to do so in a spirit of goodwill and in the interest of food security.

COW Chair Francis Montanaro Mifsud (Malta) presented the Committee's work. He said the COW had completed a review of Articles 19-32, on institutional and legal aspects, and noted outstanding issues related to: the use in decision making of consensus only, or a two-thirds majority vote as a last resort; and issues linked to the pending decision on the IU's legal basis, either as an FAO Article XIV body or an independent agreement. Chair Gerbasi then drew delegates' attention to his proposed compromise text of Articles 11 (Coverage of the MS), 12 (Facilitated access), 13 (Benefit-sharing), and a new Article 20 *bis* (Non-compliance). This proposal was the result of several days of nego-

tiation by the "Friends of the Chair" contact group.

During adoption of provisions, Articles 11 (Coverage of the MS), 21 (Settlement of Disputes), 24 (Signature), 24 *bis* (Ratification, acceptance or approval), 24 *ter* (Accession), 25 (FAO Member organizations), 27 (Reservations), 29 (Withdrawals), 30 (Termination), and Annex II (Arbitration and conciliation) were adopted without comments or with minor editorial changes.

RESULTS OF THE TECHNICAL WORKING GROUP

ON THE USE OF TERMS: Delegates approved definitions of *in situ* and *ex situ* conservation without comment. Regarding two alternative definitions for PGRFA, discussion centered on whether genetic parts or components should be treated as discrete units. MEXICO, ANGOLA, IRAN, INDIA and others proposed combining the two definitions, to state that PGRFA means any material of plant origin, including reproductive and vegetative propagating material, and its genetic parts and components, containing functional units of heredity, of actual or potential value for food and agriculture. The US, with CANADA, preferred to state that PGRFA means any material of plant origin including reproductive and propagating material containing genetic parts and components, and functional units of heredity of actual or potential value for food and agriculture. No agreement was reached.

ARTICLE 8 (TECHNICAL ASSISTANCE): BULGARIA proposed, and delegates agreed, to include reference to countries with economies in transition.

ARTICLE 11 (COVERAGE OF THE MS): This Article, which was agreed, states that the MS includes PGRFA: in Annex I and under the management and control of the Contracting Parties and in the public domain; and listed in Annex I and held in *ex situ* collections of the CGIAR Centres and other international institutions. It also invites inclusion of all other holdings, encourages inclusion of holdings of natural and legal persons within the jurisdiction of Contracting Parties and calls for assessment by the GB of their inclusion two years after the IU's entry into force.

ARTICLE 12 (FACILITATED ACCESS TO PGRFA WITHIN THE MS): Article 12.1, on facilitated access being consistent with the IU, was discussed in parallel with 12.3(h), on *in situ* conditions, and the relationship of these provisions to Article 11 (Coverage of the MS). BRAZIL proposed specifying access to PGRFA listed in Annex I, in Article 12.1 and in the chapeau of 12.3. Delegates debated the relationship between coverage outlined in Article 11, and facilitated access within the MS, as per Article 12. CANADA, supported by the US, defended the existing text, since Article 11 defines Annex I material. ETHIOPIA, INDIA, and MALAYSIA proposed, and delegates agreed, to amend text of Article 12.1, stating that facilitated access shall be provided to PGRFA "listed in Annex I," as defined in Article 11 under the MS.

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Regarding Article 12.2, on measures taken to provide such access, ETHIOPIA proposed to defer decision pending resolution of Article 13, on benefit-sharing. Articles 12.3(a)-(c) and (e)-(g), on conditions for access, were agreed, and 12.3(d), on intellectual property rights limiting access to PGRFA [or their generic parts or components/in the form] received from the MS, was left pending resolution of the definition of PGRFA.

Article 12.4, a new provision on material transfer agreements (MTA), generated protracted debate regarding an amendment proposed by BRAZIL to distinguish between MTA obligations of Contracting Parties and of legal and natural persons, in response to COLOMBIA's inquiry regarding lack of provisions ensuring that private entities are involved in the MTA. Delegates agreed to consult over proposed amendments on: allowing facilitated access in accordance with paragraphs 12.2 "and 12.3" (conditions for access); benefit-sharing provisions as set forth in Article 13.2(d)(ii) "and other applicable provisions of Article 13"; and "such other provisions as may be decided by consensus by the Governing Body (GB)."

Article 12.5, on emergency disaster situations, was agreed without comment.

ARTICLE 19 (GOVERNING BODY): Plenary adopted, without objection, provisions on: establishment of the GB (19.1); authorization of alternative voters (19.3); procedures to admit observers (19.4); adoption of Rules of Procedure and financial rules by consensus (19.7); a quorum for GB's sessions constituted by the majority of Parties (19.8); the holding of regular (19.9), and special sessions (19.10); and election of the Bureau (19.11). Also adopted were various GB functions, specifically, the thrust of its implementation function (chapeau 19.2), establishment of subsidiary bodies "subject to the availability of necessary funds" (19.2(e)), establishment of an appropriate mechanism to receive and utilize funds (19.2(f)), cooperation with other relevant international organizations (19.2(g)), consideration of modalities of a strategy to encourage voluntary contributions (19.2(j)), the performance of other functions as necessary (19.2(k)), and the need to take note of relevant decisions of CBD COP and other relevant international organizations and treaty bodies (19.2(l)), and to inform the same bodies about IU implementation matters (19.2(m)).

Pending issues that were agreed following debate concern: the adoption of plans and programmes (19.2(b)); the need for the GB to adopt by consensus at its first meeting, and periodically review the implementation of the funding strategy, in accordance with Article 18 (19.2(c)); and the GB's decision making by consensus only and by consensus subject to a two-thirds majority as a last resort (19.5).

The outstanding issues refer to: the use of consensus in providing policy direction and guidance (19.2(a)), budget adoption (19.2(d)), amendments of the IU (19.2(h)), and of the IU annexes (19.2(i)); participation of FAO Member Organizations; as well as a list of issues that must be agreed by consensus, to which BRAZIL added Articles 12 (Coverage of the MS) and 13 (MS of Access and Benefit-sharing). Following a half hour suspension of the Plenary to allow G-77/China consultations on the matter, Chair Gerbasi requested, and delegates noted, provisions containing matters requiring decisions to be taken by consensus by the GB.

ARTICLE 20 (SECRETARY): The following provisions were adopted: Secretary's functions (20.2); communication to Parties, of GB decisions and information received (20.3); and cooperation with other organizations and bodies, in particular with the CBD (20.5).

Articles 20.1, on appointment of the Secretary by either the FAO Director-General or the GB, and 20.5, on providing documentation in either the FAO or the UN languages, which include Russian, remained bracketed for consideration at a later stage.

ARTICLE 22 (AMENDMENTS OF THE UNDERTAKING): The following provisions were adopted: proposal of amendments by Parties (22.1); adoption and communication of amendments (22.2); amendments coming into force (22.4); and

rules for deposition of instruments by FAO Member Organizations (22.5). Article 22.3, on voting procedures for amendments, remained bracketed. The two options are: agreement by consensus and by two-thirds majority as a last resort; and agreement by consensus only.

ARTICLE 23 (AMENDMENTS OF ANNEXES): Article 23.1, on Annexes forming an integral part of the IU, was adopted. Articles 23.2, on application of the provisions on amendments to the IU, and 23.3, on Annex I amendments adopted by consensus, remain bracketed.

ARTICLE 24 QUAT (ENTRY INTO FORCE): Delegates debated and agreed that the IU would require a minimum of 40 instruments of ratification, 20 of which must be by FAO Members. The RUSSIAN FEDERATION proposed, and all accepted, deletion of Article 24.3, on participation in the GB by non-FAO Members.

ARTICLE 28 (NON-PARTIES): Following consultations, delegates agreed to text stating that the Contracting Parties shall encourage any FAO Member or other State, not a Party to the IU, to accept this Undertaking.

ARTICLE 31 (DEPOSITARY): Delegates agreed that the FAO Director-General shall be the Depositary of the IU.

ARTICLE 32 (AUTHENTIC TEXTS): The US opposed, while the RUSSIAN FEDERATION, POLAND, the EU, INDIA, BULGARIA, ETHIOPIA, SOUTH AFRICA, and IRAN supported, inclusion of the Russian language. Following clarification from the Legal Office that Contracting Parties would bear the cost, the US agreed to include the Russian language in IU texts.

IN THE CORRIDORS

A day before they are scheduled to adopt the IU, delegates' doubts regarding a successful conclusion seemed to be growing. Tension and lack of trust between regional groups and between developing country delegations have been persistent throughout the week, and are said to be undermining the process, with many participants visibly angry at the reopening of debates in Friday's Plenary, particularly during discussion of the Chairman's proposal, by some of the delegates who participated in the intense and delicate informal consultations. One participant likened the threat of no consensus to the story behind the extinction of dinosaurs.

With the adjournment Thursday of the informal working group on the list of crops due to lack of progress, some participants were angered that poor developing countries were punishing other poor developing countries by reserving on important crops and attempting to go back on the list of crops agreed in Spoleto. Some participants from one developing region, who had earlier indicated willingness to complete the IU, indicated that there would be little interest in it with the present list of crops. Others observed that the process was being held hostage by one country, whose offer to include a crop could stimulate progress. With agreement still pending on benefit-sharing, (Article 13), *ex situ* collections (Article 15), the relationship with other international agreements (Article 4), and even a definition of PGRFA, many are anticipating a closing Plenary that could be working on Sunday morning...

THINGS TO LOOK FOR TODAY

PLENARY: The Final Plenary will convene at 3:00 pm in the Red Room to adopt outstanding provisions, the sessions' resolutions and the Report.

Informal consultations are scheduled for the "Friends of the Chair" contact group at 9:30 am, the working group on the list of crops at 10:00 am in the Green Room, and for the working group on resolutions at 10:00 am in the Mexico Room.