



## SUMMARY OF THE FIRST MEETING OF THE COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE ACTING AS THE INTERIM COMMITTEE FOR THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE: 9 – 11 OCTOBER 2002

The first Meeting of the Commission on Genetic Resources for Food and Agriculture (CGRFA) acting as the Interim Committee for the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR) was held from 9-11 October 2002, at the UN Food and Agriculture Organization (FAO) headquarters in Rome. Approximately 280 participants from 99 countries and intergovernmental and non-governmental organizations attended the meeting.

According to FAO Conference Resolution 3/2001 on the adoption of the Treaty and interim arrangements for its implementation, the Interim Committee was convened to: adopt its rules of procedure; consult with the International Agricultural Research Centres (IARCs) on the agreements to be signed with the Treaty's Governing Body; agree on the terms of reference (TOR) for the expert group on the terms of the standard Material Transfer Agreement (MTA); and initiate cooperative arrangements with the Conference of the Parties (COP) to the Convention on Biological Diversity (CBD).

During the Committee's first session, delegates adopted the rules of procedure for the Interim Committee and established an open-ended expert working group to propose draft rules of procedure and financial rules, and draft procedures for compliance. After a lengthy debate, they also finalized the TOR for the expert group on the MTA. The other elements of the work programme, namely consultation with the IARCs, international cooperation and the funding strategy for the Treaty will be considered at the second session of the Interim Committee, which is to be held by 2004.

Overall, delegates expressed general satisfaction with agreement on procedural issues, a necessary pre-condition for addressing substance when the Treaty enters into force. The pace of negotiations was noticeably slow, but understandable in light of the number and complexity of issues to be addressed.

More specifically delegates highlighted the strengthening of language on decision making by consensus as a positive step, particularly in building trust among countries. The debate on the TOR of the MTA expert group was arduous and lengthy, reminiscent of the difficult Treaty negotiations and foreshadowing the problems the Governing Body will have to resolve. It was often reiterated that the expert group would be technical in nature, and many stated that too much time was spent discussing such an advisory group for the Interim Committee which in turn will only make recommendations to the Governing Body. Others commented that the lengthy debate on minute details was politically motivated, with some countries trying to influence the substantive debate prior to the constitution of the Governing Body. Additionally, the lengthy discussion on the expert group's composition and representation further highlighted these political sensitivities. Although, the final result was viewed as a compromise, package deal, some participants still expressed their surprise and dissatisfaction at the decision not to include a CBD representative, despite the inclusion of representatives from the Consultative Group on International Agricultural Research (CGIAR), the World Intellectual Property Organization (WIPO) and the International Union for the Protection of New Varieties of Plants (UPOV), and notwithstanding the specific references to the CBD in the Treaty's text and the Convention's work on access.

Until the Interim Committee's next meeting, when delegates will have to consider the remaining agenda items, a lot will depend on the work of the two expert groups. In the end, it will culminate

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at the first meeting of the Governing Body, which will consider the Committee's recommendations. Parties will then have to decide on the most contentious issues, thereby shaping the future of the Treaty.

### A BRIEF HISTORY OF THE ITPGR

The International Treaty on Plant Genetic Resources for Food and Agriculture establishes an MS for facilitated access to a specified list of plant genetic resources for food and agriculture (PGRFA), balanced by benefit-sharing in the areas of information exchange, technology transfer, capacity building and commercial development. Its objectives are the conservation and sustainable use of PGRFA and equitable benefit-sharing for sustainable agriculture and food security. The Treaty also contains sections on general provisions, farmers' rights, supporting components, and financial and institutional provisions. The list of crops in Annex I, which defines the Treaty's scope, includes 35 crop genera and 29 forage species. The Treaty also recognizes the need for close links with the FAO and the CBD.

The Treaty's negotiations spanned seven years and were based on the revision of the non-binding International Undertaking on Plant Genetic Resources for Food and Agriculture (IU). The negotiations were held under the auspices of the FAO's CGRFA, which reviews and advises the FAO on policy, programmes and activities related to the conservation, sustainable use and equitable sharing of benefits derived from the utilization of genetic resources of relevance to food and agriculture. Currently, 62 countries have signed the Treaty with eight countries having ratified (Cambodia, Canada, Eritrea, Guinea, India, Jordan, Malawi and Sudan).

**THE INTERNATIONAL UNDERTAKING:** Established in November 1983 by FAO Conference Resolution 9/83, the IU aims to ensure that plant genetic resources for food and agriculture (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," according to FAO Resolution 3/91. Although a non-binding agreement, the IU was not adopted by consensus, as eight developed countries formally recorded reservations.

In April 1993, the CGRFA considered the implications of the 1992 UN Conference on Environment and Development, and the CBD in particular, for the IU, and agreed that the IU should be revised to be in harmony with the CBD.

**CGRFA:** From 1994 to 1998, the CGRFA met in five extraordinary sessions and two regular sessions to develop the structure and refine a draft negotiating text. Initial discussions focused particularly on the agreement's scope, access to PGRFA and farmers' rights. With general agreement on establishing a Multilateral System (MS) to facilitate access to PGRFA, negotiations turned to more specific issues, including: objectives; the agreement's relationship with other international agreements; benefit-sharing and financial arrangements; sustainable use of PGRFA; the rolling Global Plan of Action; global information systems on PGRFA; intellectual property rights (IPR); and a list of major crops for inclusion in the MS.

**115TH FAO COUNCIL:** At the FAO Council's 115th session (Rome, November 1998), the Council recognized the progress made 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:** At the meeting of experts (Montreux, January 1999), participants discussed, in their personal capacity, the IU's legal status, its structure, the MS, farmers' rights and financial resources. Following the discussions, CGRFA Chair Amb. Fernando Gerbasi (Venezuela) drafted a series of "Chairman's Elements" reflecting areas of broad consensus, including: 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:** At the CGRFA's eighth session (Rome, April 1999), Chair Gerbasi was authorized 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.

**CONTACT GROUP:** The Contact Group met in six sessions over the period 1999 to 2001 to continue negotiations on a draft composite negotiating text. The Contact Group spent significant time addressing: benefit-sharing in the MS, particularly commercial benefit-sharing; application of IPR to materials under the MS; the list of crops for inclusion under the MS; financial resources; resources held by the IARCs; and definition of key terms. The Contact Group also dealt with more procedural issues including: the Governing Body; Secretariat; amendments of the IU and the annexes; and the IU's legal basis. Delegates were instructed to provide final texts through the CGRFA to both the 119th and 120th FAO Council (Rome, November 2000 and June 2001 respectively). However, given the protracted pace of negotiations both deadlines were passed.

**SIXTH EXTRAORDINARY SESSION OF THE CGRFA:** CGRFA-Ex6 (Rome, June-July 2001) met to conclude negotiations on the IU. Agreement was reached on many outstanding issues, including coverage of the MS, access and benefit-sharing, *ex situ* PGRFA held by the IARCs of the CGIAR, and legal and institutional issues. However, agreement was not reached on the definitions of PGRFA and genetic material, the application of IPR to PGRFA covered by the agreement, the IU's relationship with other international agreements and the list of crops for inclusion in the MS. The session adopted the text, transmitting the IU and outstanding issues to the FAO Council for resolution.

**121ST FAO COUNCIL AND 31ST FAO CONFERENCE:** The 121st FAO Council and an Open-ended Working Group convened under its auspices (Rome, 30 October - 3 November 2001) resolved the outstanding issues forwarded from CGRFA-Ex6. After seven years of negotiations, the draft International Treaty on Plant Genetic Resources for Food and Agriculture was submitted to the 31st FAO Conference on 3 November, where it was adopted by a vote of 116 in favor, zero against and two abstentions.



## REPORT OF THE MEETING

On Wednesday, 9 October, CGRFA Chair Gerbasi opened the meeting, welcomed participants and invited nominations for the positions of Chair and six Vice-Chairs of the Interim Committee. Upon a proposal by Iran, on behalf of the G-77/China, delegates elected Amb. Gerbasi as Chair of the Interim Committee. The Netherlands, on behalf of the OECD group comprising the regions of Europe, North America and South West Pacific, suggested Gert Kleijer (Switzerland), Brad Fraleigh (Canada) and Kristiane Herrmann (Australia) to act as Vice-Chairs, and Marcel Vernooij (The Netherlands) to act as the meeting's rapporteur. The G-77/China then proposed Elizabeth Matos (Angola), A. Abou Zeid (Egypt) and C. Han Hee (Malaysia) to act as Vice-Chairs. All nominations were accepted.

Louise Fresco, FAO Assistant Director-General for Agriculture, stressed the Treaty's capacity to initiate and carry out specific policies in the agricultural sector for food security and to the mutual benefit of all. Noting that 60 countries had signed and eight ratified the Treaty, she underscored that countries' participation in the Governing Body, which will take decisions on crucial issues such as the sharing of monetary benefits in cases of commercialization, requires ratification. Fresco also noted that, since the FAO's work programme and budget for the current biennium were prepared before the Treaty's adoption, the work programme's implementation will depend upon the availability of extra-budgetary sources. Highlighting the assumption that the Treaty will enter into force within the next two years, she underlined the tasks the Interim Committee has to complete before the first meeting of the Governing Body.

Portugal, on behalf of the European region, highlighted the region's flexible and pragmatic approach, and said that the Interim Committee should take decisions by consensus. Australia said the MS must be applied in a commercially realistic way to facilitate exchange of PGRFA for the benefit of all, and highlighted the need for: progress on the MTA to secure confidence for implementation; input by stakeholders; and information on relevant work in other forums. The US noted extensive consultation with stakeholders and government agencies at the national level, and suggested a practicable MTA to facilitate rather than impede access to genetic resources. Egypt highlighted national programmes on preservation of plant genetic resources and noted that the vast majority of plant genetic resources are unused. Many delegates urged signature and ratification of the Treaty to ensure rapid implementation.

The meeting then approved the agenda and time-table (CGRFA/MIC-1/02/1 and 2). Delegates met in six Plenary sessions over the three days. On Wednesday morning, delegates heard the report on the status of signatures and ratification, and discussed the rules of procedure for the Interim Committee in the afternoon. On Thursday, 10 October, they adopted the Committee's rules of procedure, had an initial discussion on the work programme and budget for the Interim Committee, and discussed the rules of procedure and financial rules, as well as compliance procedures. In a lengthy afternoon session, they debated the TOR of the expert group on the MTA, and a small group of regional representatives met on Friday morning to address the expert group's composition. Discussion on the issue was finalized on Friday afternoon. Due to time restrictions, delegates agreed to move the remaining elements of the work programme to the next meeting of the Interim Committee, namely: consultation with IARCs and other relevant international institutions; cooperation with relevant international bodies; and the funding strategy for the Treaty's implementation.

Delegates concluded their deliberations considering the consolidation of the Committee's work programme and budget, and the date and place of the Committee's second meeting.

The closing Plenary was convened on Friday evening, and met for an hour to adopt the meeting's report (CGRFA/MIC-1/02 – draft report) tabled in three parts for the three days of the meeting.

## REPORT ON THE STATUS OF SIGNATURES AND RATIFICATION

José Esquinas-Alcázar, Secretary of the CGRFA, noted that Peru and Yugoslavia had recently signed the Treaty and stressed the call of the World Summit on Sustainable Development for rapid ratification. He reminded delegates that the Treaty will enter into force 90 days after the deposit of the 40th ratification instrument, and that signature and ratification can take place during the Interim Committee's meeting.

Angola and Cuba noted their intention to sign the Treaty in the next few days. Colombia, Iran, Poland and the Russian Federation announced their intention to sign the Treaty as soon as possible. Nepal stated that their parliament would consider signature after its coming elections. Argentina, Burkina Faso, Ethiopia, Costa Rica, the Former Yugoslav Republic of Macedonia and Syria said they are in the process of ratifying. Canada noted national consultations, which resulted in signature and ratification; stressed that the Treaty facilitates innovation and supports environmental sustainability, sustainable development and food security; and, with Guinea and Sudan, urged countries to join them as Parties. Sudan mentioned the danger of genetically modified seeds used in Africa for scientific purposes and expressed hope that Africa could limit their use to protect its gene pool. Burkina Faso welcomed the balance in participation between developing and developed countries. A representative of the CBD Secretariat drew attention to relevant decisions of CBD COP-6, regarding: establishing cooperation with the Interim Committee and the Governing Body; the Bonn Guidelines on Access and Benefit-sharing; the work programme on agricultural biodiversity; the Global Strategy on Plant Conservation; and CBD Article 8(j) on traditional knowledge.

## RULES OF PROCEDURE FOR THE INTERIM COMMITTEE

On Wednesday morning, delegates started discussing the rules of procedure for the Interim Committee. The Secretariat introduced document CGRFA/MIC-1/02/3 and its corrigendum, prepared on the basis of the rules of procedure of the Interim Commission on Phytosanitary Measures. He drew attention to alternative clauses in Rules V on agenda and documents, VI on voting procedures and XII on amendment and suspension of the rules.

Rules I on membership, III on the Secretary, IV on sessions, VIII on records and reports, XI on languages and XIII on entry into force were approved without discussion. Regarding Rule II on officers, Argentina requested a reference ensuring regional representation, but upon reassurance from Chair Gerbasi, accepted the initial text considering regional representation to be an unwritten rule.

**DECISION MAKING BY CONSENSUS:** On Wednesday, Denmark, on behalf of the EU, and supported by the European region and the Russian Federation, tabled a proposal regarding a series of amendments to reflect decision making by consensus. He referenced FAO resolutions providing for consensus in substantive decisions, while allowing procedural decisions to be taken by majority vote, and therefore proposed to amend Rule XII on amendment and suspension of the rules to allow for decision making by consensus. He clarified that the rules of procedure for



the Interim Committee do not constitute a precedent for the rules for the Governing Body. Upon Angola's request, Chair Gerbasi confirmed that the Governing Body would decide on its own rules of procedure tailored to its work on the basis of the Interim Committee's recommendations.

Chair Gerbasi proposed to reflect the issue of consensus under Rule V on agenda and documents, Rule VI on voting procedures and Rule XII on amendment and suspension of the rules. Australia, Brazil on behalf of the Latin American and Caribbean Group (GRULAC), Canada, China, Japan and the US supported the Chair's proposal. Zimbabwe noted that so far the principle of consensus has worked well and has helped build harmony and trust among countries. The rules were then amended accordingly.

**DECISION-MAKING PROCEDURES:** Regarding Rule VI on voting procedures, Argentina, Australia and Canada expressed concern about a reference to Rule XII of the FAO's General Rules, containing minute details on voting procedures and on problem solving. To avoid possible ambiguities and to strengthen the consensus principle, such language was deleted. All detailed voting procedures were eliminated with just one initial sentence remaining, clarifying that each member of the Interim Committee has one vote. Rule VI was then renamed to Decision-Making Procedures and was adopted.

**OBSERVERS:** Regarding Rule VII on observers, delegates discussed an EU proposal requesting the Secretary to notify the UN, its agencies and any non-Member States so that they may be represented as observers at the sessions of the Interim Committee, as well as any governmental or non-governmental body qualified in fields related to PGRFA, which has informed the Secretary of its wish to be represented. Such observers would be able to participate in the proceedings unless at least one third of the Parties present at the meeting object. Upon request of the US, the EU explained that their suggestion, stemming from Article 19.5 of the Treaty, was in line with CBD practice, and aimed at broadening participation and a more active approach. Canada supported the EU proposal, making an amendment to reflect prior discussion on consensus. The US expressed concern that non-Member States could be excluded if one third of the Parties present objected to their participation, and suggested including reference to non-governmental organizations under Rule VII on inviting international organizations to attend sessions of the Interim Committee. Argentina, Brazil and Iran preferred to keep the initial text on observers, while Cuba suggested reference to the role of the Bureau in inviting organizations. The Netherlands called for including national NGOs. Following lengthy discussion and drafting, delegates agreed to mention in Rule VII that the FAO Director-General, with guidance by the Interim Committee in consultation with the Bureau, may invite international and national organizations to attend sessions of the Interim Committee. Rule VII was approved with this amendment. The European region agreed on the condition that the final language would not affect rules on observers' participation in the rules of procedure for the Governing Body.

On Thursday, delegates also agreed that observers would not be part of the decision-making process.

**SUBSIDIARY BODIES:** On Wednesday, regarding Rule IX on subsidiary bodies, Brazil noted ambiguity about who appoints individual experts participating in the Interim Committee's subsidiary bodies in their personal capacity. Delegates discussed the level of participation of the Interim Committee in the appointment process and concluded that such individuals shall be appointed by the FAO Director-General at the request of the Interim Committee.

**EXPENSES:** Regarding Rule X on expenses, Argentina suggested that, in the case of developing countries, the FAO should provide financial assistance to ensure the participation of government representatives. The Secretariat and the Legal Counsel responded that FAO rules do not allow funding from the budget and that extra-budgetary sources have been used to support participation of developing countries. Following interventions by Poland and the Russian Federation, delegates agreed to mention that the FAO, upon request, would endeavor to facilitate the attendance of delegates from developing countries and countries with economy in transition at meetings of the Interim Committee and any body that it may establish.

On Thursday morning, delegates adopted the rules of procedure for the Interim Committee.

**Final Outcome:** The final document (CGRFA/MIC-1/02/3/Rev.1) contains Rules on: membership; officers; Secretary; sessions; agenda and documents; decision-making procedures; observers; records and reports; subsidiary bodies; expenses; languages; amendment and suspension of the rules; and entry into force.

### **CONSIDERATION OF THE ELEMENTS OF THE WORK PROGRAMME**

On Thursday morning delegates started discussing elements of the work programme and budget for the Interim Committee. The Secretariat introduced documents CGRFA/MIC-1/02/4 on the draft rules of procedure for the Governing Body and CGRFA/MIC-1/02/5 on draft financial rules for the Governing Body. The EU proposed to establish a single inter-sessional working group of legal experts to consider both issues as well as compliance procedures. The proposal was broadly accepted. Argentina, supported by many, called for fair regional representation. Angola and the Russian Federation requested financial assistance for the participation of representatives of developing countries and countries with economies in transition, respectively.

**DRAFT RULES OF PROCEDURE AND FINANCIAL RULES FOR THE GOVERNING BODY:** On Thursday morning, delegates discussed the rules of procedure and financial rules for the Governing Body. Many stressed that, according to the Treaty, the consensus principle should guide decision making in the Governing Body, with Brazil thereby commenting that no voting procedures would be required. Many said the regular FAO budget should cover the core costs for the Treaty's functioning, including meeting expenses and staffing of the Secretariat. Norway requested that Chair Gerbasi convey this to the FAO Council to be taken into account in budget allocation. It was then stressed that country contributions should be voluntary, with some saying they should not be fixed and the US and Japan objecting to an indicative scale of contributions. Guinea said that developing countries lack capacity and resources to develop national legislation on PGRFA. The Secretariat acknowledged the need for capacity building in the long run, but noted that the funding rules under consideration cannot provide for it. Jordan stressed the need to address the issue through extra-budgetary sources. Delegates agreed to establish an expert group to address the rules of procedure and the financial rules.

**Final Outcome:** The final report of the meeting establishes an intergovernmental, open-ended expert group to address the rules of procedure and the financial rules on the basis of CGRFA/MIC-1/02/4 and 5 respectively.



### DRAFT PROCEDURES TO PROMOTE COMPLIANCE:

On Thursday morning delegates discussed procedures to promote compliance based on document CGRFA/MIC-1/02/7, outlining practice in other forums and also containing an annex with draft compliance procedures and mechanisms under the Cartagena Protocol on Biosafety. Many delegates stressed that each instrument requires compliance procedures tailored to its nature and needs, and advocated the development of a specific regime for the Treaty. Argentina noted the Treaty's unique characteristics relying heavily on private agreements and the need for cooperative legal mechanisms to ensure safe access, and objected to conforming the Treaty's mechanisms to the ones developed under the Biosafety Protocol. Canada suggested looking at the structure of the Protocol's compliance procedures, but not their substance.

Australia, the EU and the US, supported by others, called for simple, practical, transparent, non-binding and non-judicial mechanisms to facilitate compliance through capacity building rather than punitive measures. Colombia, Iran and South Africa stressed that the Treaty's legally binding nature requires enforcement mechanisms, with Colombia highlighting the threat of abuse and misuse of materials by corporations and governments. Norway recommended imposing strong compliance mechanisms to reduce the potential of conflict with other agreements and to allow for resolution of potential difficulties in the Treaty framework and not in other forums. The Institute for Agricultural and Trade Policy noted that industrialized countries prefer punitive compliance mechanisms in trade agreements, but non-adversarial ones in environmental agreements. Recognizing differences in opinion, delegates agreed that details could be addressed by the expert group.

The EU requested that the Secretariat seek governments' opinions on the basis of a questionnaire and present those to the expert group. Regarding the proposed questionnaire, Australia and the US suggested that governments review its content before it is widely distributed. Chair Gerbasi, supported by Angola, Brazil, Cuba and Iran, proposed that the Secretariat prepare an open document requesting countries to submit their general views on compliance procedures. Brazil alternatively proposed that the Secretariat consult with the Bureau on the content of the questionnaire. The US called for either the Bureau's involvement or for its review by a friends of the chair group during the meeting, but delegates finally agreed with Chair Gerbasi's suggestion. Delegates agreed that the intergovernmental, open-ended expert group addressing rules of procedure and financial rules, would also discuss the compliance procedure on the basis of a Secretariat report containing countries' views and their analysis.

**Final Outcome:** The final report of the meeting establishes an intergovernmental, open-ended expert group to address the compliance procedure on the basis of a Secretariat report containing countries' views and their analysis. The expert group, which will also discuss the rules of procedure and financial rules, is expected to report to the second session of the Interim Committee.

**TERMS OF REFERENCE FOR THE EXPERT GROUP ON THE MTA:** On Thursday afternoon, delegates considered CGRFA/MIC-1/02/6 on the terms of reference for the expert group on the MTA, established by FAO Conference Resolution 3/2001.

**Composition:** Regarding the expert group's composition, the EU, supported by Poland, proposed to have three representatives per region, for: government; industry; and academia or civil society organizations. He also suggested that the CGIAR, UPOV and WIPO be represented. Norway and Poland proposed that the FAO

Director-General nominate representatives from national breeding companies and gene banks, as well as a limited number of NGOs from the different regions.

Afghanistan, on behalf of the G-77/China, proposed having up to four experts per FAO region, backed by advisers, and objected to the participation of experts coming from independent entities. Poland stated that the expert group is not meant to negotiate, but to facilitate, the Interim Committee's work, and needs as much expertise as possible. Australia supported the participation of a CGIAR representative only.

Many underlined the advantages of a small group, with some opposing the participation of advisors. The Russian Federation, supported by the EU, called for an appropriate balance between developing, developed and countries with economies in transition.

Chair Gerbasi proposed using the regional representation scheme applied by other FAO technical groups, to include five representatives for each of the regions of Africa, Asia, Europe and GRULAC, three for the Middle East, two for North America and two for the South West Pacific. He also proposed inviting five experts from the CGIAR, WIPO, UPOV, civil society and industry respectively. Upon Colombia's suggestion, he added a CBD representative. Argentina, Cameroon on behalf of the African Group, Colombia, China, Iran, the EU and the European region supported the suggestion, while Canada and the US called for an equal number of representatives per region and an independent expert from the CGIAR only. Many noted that an equal number of representatives per region would not provide for a fair regional balance. Canada expressed preference for having four representatives per region and the G-77/China clarified that their proposal implied a maximum of four government representatives per region, and would not allow more than one representative per country.

After a lengthy discussion, the US, supported by Australia, proposed that each region have four representatives, while North America and the South West Pacific have two, with the addition of two advisors per region, preferably from industry or civil society, as well as a CGIAR representative. Delegates then debated the number of advisors per region, with Canada and the US insisting on having two, proposing alternatively the introduction of a consensus decision-making process. Upon the reminder that the group only has advisory functions, Vice-Chair Kleijer suggested including a reference that minority positions may appear in the report and be submitted to the Interim Committee. Australia and the US requested that the group be able to propose different options. Following a suggestion by the Russian Federation, the Chair established a small group with two representatives from each region to solve the issue.

On Friday, Vice-Chair Kleijer drew attention to a draft resulting from negotiations in the small group. The compromise stated that the expert group shall:

- examine and report on all options identified, reflecting all views, with the associated implications;
- comprise 24 members, four from each of the regions of Europe, Africa, Asia, GRULAC and the Near East, and two from North America and the South West Pacific, while each region would appoint an equivalent number of advisors, including government, industry, academia and civil society representatives; and
- include three more representatives from the CGIAR, WIPO and UPOV.

He said that consensus had been difficult to reach and invited delegates to adopt it as a package.



Angola, on behalf of the African Group, with Brazil, Colombia, Ethiopia and South Africa, questioned the exclusion of a CBD representative, stressing the Treaty's links with the CBD and its work on access and benefit-sharing. Australia, Canada, the EU, the European region and the US supported approval of the package. South Africa stressed that the CBD's exclusion was a major question for the African Group and called for an explanation. Noting concerns regarding the expert group's size, Angola suggested that, given the institutional links between WIPO and UPOV, the latter could be replaced by the CBD. To avoid re-negotiating the expert group's composition, delegates finally accepted the compromise package as such, with some expressing their dissatisfaction.

**Scope of Work:** On Thursday, regarding the expert group's scope of work, Brazil and Iran, followed by many, supported reference to Treaty Article 12.4 on facilitated access provided pursuant to a standard MTA. Delegates then made textual changes on the basis of the Secretariat document.

Regarding the chapeau of the list of issues to be considered by the expert group, Argentina, supported by many, suggested focusing on the language of the Secretariat document. Iran, supported by Brazil and Cuba, objected to limiting the elements to be included in the MTA to Article 13.2(d)(ii). Canada, supported by the US, argued that only this provision was relevant to MTAs, and that countries could make their case for the inclusion of other provisions at the expert meeting. In an attempt at compromise, the Secretariat proposed to use language from Resolution 3/2001, however, as the Interim Committee's mandate with relation to the TOR of the MTA expert group contained more detailed language than the Resolution, no agreement was reached. Delegates then discussed various compromise options without reaching consensus and decided to revisit the chapeau after agreement on the list of issues.

On Friday, delegates amended language on the expert group's scope of work to state that the group shall develop and propose recommendations on the terms of the MTA in accordance with Article 12.4. According to the chapeau of the list of issues, the expert group is to provide advice and, where appropriate, propose options and elements for inclusion in the standard MTA on, *inter alia*, the list of issues.

Regarding the indicative list of questions to be considered by the expert group, on Thursday, Argentina, on behalf of the G-77/China, requested including: the definition of provider; the definition of monetary and other benefits mentioned in Treaty Article 13.2(d) on sharing of monetary and other benefits of commercialization; and the means by which the MTA could facilitate compliance with Article 12.3 on the conditions for access. The EU suggested restructuring the text, which was generally accepted and integrated in a new draft circulated later in the afternoon. On the basis of this draft, Canada suggested further restructuring and ensuring consistency with Treaty language, but the EU opposed. Argentina, supported by others, suggested an amendment to ensure that all questions in the indicative list are equally important.

Canada requested adding an item so that recipients of material from the MS would be bound by the MTA according to Article 13.2(d)(ii) on the MTA requirement for sharing of benefits arising from the commercialization of a product containing material accessed through the MS. Colombia and Canada debated the specific reference to Article 13.2(d)(ii), with Colombia arguing that there were other relevant provisions the experts should consider

and Canada saying that Article 13.2(d)(ii) was the only one relevant for commercial benefit sharing as it addresses recipients of germplasm and not contracting Parties.

The issue of what should be the level, form and manner of payments in line with commercial practice was accepted without comment. On the issue of whether different levels of payment should be established for various categories of recipients or different sectors, delegates agreed to delete a reference to specific sectors. On the issue of exemption from payments of small-scale farmers in developing countries and countries with economies in transition, delegates discussed a suggestion by Burkina Faso to refer to farmers in developing countries and small-scale farmers in countries with economies in transition and a Canadian proposal to ask whether there is a need to exempt those farmers. Many called for consistency with Treaty language. Delegates finally agreed to a US suggestion, to ask whether to exempt small farmers in developing countries and countries with economies in transition from payments, and if so, who qualifies as such a "small farmer."

On Friday, delegates approved the items on what constitutes commercialization and incorporation of material accessed through the MS. On the issue of defining when products are considered available for further research and breeding, the Secretariat clarified that this would determine whether the contribution was obligatory or voluntary in case of research, and the item was approved.

Some delegates questioned the necessity of requesting definition of "providers" and proposed deletion, while the US proposed narrowing it to providers for the purposes of the standard MTA. Delegates finally decided to delete the item.

On the issue of defining monetary and other benefits mentioned in Article 13.2(d), Canada argued that the request to define monetary and other benefits did not require reference to the specific provision, but should rather be defined for the purposes of the standard MTA. The item was amended to reflect this proposal.

Regarding the item on the means by which the MTA would facilitate compliance with Article 12.3, Australia and Canada opposed using "compliance," arguing that a separate expert group would address the issue, and proposed to use "application" instead. Brazil supported by Angola, Cuba, Ethiopia and Panama opposed, while Argentina and Burkina Faso proposed to refer to "correct application." Delegates finally accepted a suggestion by Angola to ask by what means the MTA would ensure the application of Article 12.3 on the conditions of access.

On the terms to bind the recipients, the US proposed to clarify that obligations originating from the MTA would apply to recipients from the moment of receipt. Colombia stated that the question would restrict discussion to recipients while also questioning how the MTA would apply to third parties. Delegates then discussed different views and scenarios where the obligations could apply. Canada suggested asking which terms should be included in the MTA so that recipients are bound by it on acceptance of the material. With Angola's addition clarifying that the material would come from the MS, delegates agreed, concluding consideration of the list of issues.

**Schedule:** On Friday, delegates deliberated on the schedule for completion of the expert group's functions. The Secretariat said that nominations could be forwarded until the end of the year and that the group's first meeting could be held within the first half of 2003. The EU suggested, and delegates agreed, that the group report to the Interim Committee after its first meeting, which could decide whether a second meeting would be appropriate.



**Final Outcome:** The final report of the meeting includes the TOR in an annex. They contain sections on: scope of work; composition; and schedule for the completion of the expert group's functions. According to its scope of work, the expert group shall propose recommendations on the terms of the standard MTA in accordance with Article 12.4 for the Interim Committee's consideration and will propose options and/or elements for inclusion in the standard MTA on the basis of an indicative list of issues related, *inter alia*, to payments and commercialization, exemption of small farmers, monetary benefits and ensuring the MTA's terms.

Regarding its composition, the expert group shall be composed by government experts and will reflect an appropriate balance between developed and developing countries and countries with economies in transition, comprising four members from each of the regions of Europe, Africa, Asia, GRULAC and the Near East, and two members from North America and South West Pacific, accompanied by an equivalent number of advisors. The CGIAR, WIPO and UPOV are also invited to nominate one expert each.

The expert group will report to the next meeting of the Interim Committee, which will decide whether further meetings are required.

### **CONSOLIDATION OF THE WORK PROGRAMME AND BUDGET**

On Friday afternoon delegates discussed the consolidation of the work programme and budget and the status of extra-budgetary resources for the work of the Treaty. The Secretariat introduced changes to the work programme and its budget contained in CGRFA/MIC-1/02/9 due to the decisions made by the Interim Committee and their budgetary implications. It was explained that the decision to have a single expert group on the Governing Body's rules of procedure, financial rules and compliance will reduce the estimated Secretariat expenses and the cost of the meeting. Costs for the expert group on the MTA and the second meeting of the Interim Committee will remain approximately as estimated. Overall savings will amount to about 20% with staff savings up to 25%. Extra-budgetary contributions available after this meeting amount to US\$50,000.

Norway requested that priority be given to a medium-term work programme and, supported by the EU, called for a strong message to the FAO Council regarding the need for funding of core activities such as the Secretariat. The EU said both expert groups should only meet once and the Secretariat should develop job descriptions to attract voluntary contributions and mobilize extra-budgetary funds for 2003-04. Canada and the US called for efficiency, with Canada stating that the Treaty's implementation needed full FAO support, and that costs should be shared by all countries involved in the negotiations. The US considered the Secretariat costs relatively high and opposed appealing to the FAO Council if this meant an increase in the overall FAO budget. Japan expressed difficulties in allocating funds to the FAO, and expected the organization to generate funds from their regular budget.

The Director of the Office of Programme, Budget and Evaluation advised delegates that, in the short term, the Interim Committee's functions were already over budget and were competing with other FAO bodies for additional resources. In the long term, he considered an automatic reference to regular FAO resources inappropriate, and said that most Article XIV bodies raise their own funds. He also noted that the FAO budget had experienced a 15% reduction in real terms over the last decade.

**Final Outcome:** The final report of the meeting states that, on the basis of the available funds, priority should be given to convening the expert group on the MTA and the working group on the rules of procedure and financial rules for the Governing Body, and compliance, in 2003.

The second meeting of the Interim Committee is scheduled to be held no later than 2004 in Rome, unless another country offers to serve as host.

### **CLOSING PLENARY**

On Friday evening, rapporteur Vernooij introduced the draft report of the meeting (CGRFA/MIC-1/02 – draft report) tabled in three parts for the three days of the meeting, containing an introduction and sections on:

- election of the Chair and Vice-Chairs;
- adoption of rules of procedure for the CGRFA acting as the Interim Committee;
- establishment of the work programme and budget for the CGRFA acting as Interim Committee, with a sub-section on draft rules of procedure and financial rules, and draft procedures to promote compliance for the consideration of the Governing Body;
- TOR for the expert group on the terms of the standard MTA, with an annex on the draft TOR;
- establishment of the work programme and budget for 2003-04, including an appendix with an indicative budget; and
- the next meeting of the Interim Committee for the Treaty.

On the basis of a consultation with regional representatives held in the afternoon, he introduced a number of corrections and specifications. He also noted that the indicative budget would be further reviewed by the Secretariat.

The UK suggested a reference that the coordinator of the expert group on the MTA would be selected by the Bureau, as proposed in the small group discussing the composition of the expert group, but there was no agreement and he withdrew the proposal. Delegates then adopted the report of the meeting. Chair Gerbasi thanked participants and the Secretariat for their dedication.

Esquinas-Alcázar, Secretary of the CGRFA, drew attention to an updated list of signatures and ratifications comprising 62 signatures and eight ratifications, including the recent signatures by Angola and Cuba. He also announced a satellite event on biodiversity and the ecosystem approach in agriculture, forestry and fisheries, organized by FAO during the weekend, at the occasion of the ninth session of the CGRFA.

Chair Gerbasi officially closed the meeting at approximately 9:30 pm.

### **THINGS TO LOOK FOR**

**CGRFA-9:** The ninth session of the CGRFA will be held from 14-18 October 2002 in Rome, Italy. The Commission will discuss plant and animal genetic resources; consider FAO policies, programmes and activities on genetic resources for food and agriculture and cooperation with the CBD; and hear reports on the status of codes of conduct and on agricultural biodiversity. For more information, contact: Paloma Señor; tel: +39-06-5705-2199; fax: +39-06-5705-6347; e-mail: Paloma.Senor@fao.org; Internet: <http://www.fao.org/ag/cgrfa/meetings.htm>