



Item 4 of the
Agenda

COMMISSION ON PLANT GENETIC RESOURCES

Third Session

Rome, 17-21 April 1989, Green Room

PROGRESS REPORT ON THE INTERNATIONAL UNDERTAKING
ON PLANT GENETIC RESOURCES

Working Group Report on the Negotiations for
An Agreed interpretation of the
International Undertaking on Plant Genetic Resources

At its Second Session in 1987, the Commission on Plant Genetic Resources requested the Working Group to proceed with negotiations to reach an agreed interpretation of the Undertaking that would include simultaneous and parallel recognition of breeder rights and farmer rights. The objective of this agreed interpretation of the Undertaking is to achieve greater acceptance of the latter and to strengthen the preservation, use and availability of germ-plasm through mechanisms recognizing and legitimizing the rights of both germ-plasm donors and funds and technology donors to be compensated. This would facilitate the withdrawal of reserves any countries may have with regard to the Undertaking, and would secure the adhesion of others and lay the bases for an equitable, and therefore solid and lasting, global system. To establish this system, and without prejudice to the continuation of negotiations under way, the Working Group proposes that the Commission make:

- (a) A statement recognizing that plant breeders' rights as provided for under UPOV are not incompatible with the International Undertaking;
- (b) A statement to the effect that a state may impose only such minimum restrictions on the free exchange of materials covered by Article 2.1(a) of the International Undertaking as are necessary for it to conform to its national and international obligations;
- (c) A statement to the effect that states adhering to the Undertaking recognize the enormous contribution that farmers of all regions have made to the conservation and development of plant genetic resources, which constitute the basis of plant production throughout the world;
- (d) A statement to the effect that the adhering states consider that the best way to compensate farmers for their work in the past, present and future is to ensure the conservation, management and use of their plant genetic resources. This could be achieved through the medium of the International Fund for Plant Genetic Resources already established by FAO. To ensure a sound financial basis and to reflect the responsibility of those countries that have benefited most from the use of the germplasm, the Fund could be supplemented by mandatory contributions from adhering governments; for example taking into account such factors as the volume of sales of seeds from national and multinational companies in those countries. The International Fund should be used to support plant genetic conservation, management and utilization programmes within developing countries, and particularly in those which are important sources of plant genetic material. Special priority should be placed on intensified educational programmes for biotechnology specialists and strengthening the capabilities of developing countries in genetic resource conservation and management, as well as the improvement of plant breeding and seed production.

It is understood that

- (i) the term free access does not mean free of charge, and
- (ii) the benefits to be derived under the International Undertaking are part of a reciprocal system and should be limited to countries adhering to the International Undertaking.

The Working Group agreed in recognizing the need to define and direct the concept of farmer rights in order to avoid divergent and erroneous interpretations and to ensure that this concept benefited society in general. It therefore proposed that the Commission adopt the attached text, which is the fruit of discussion and consensus by the Working Group.

The Working Group recorded its concern over the escalation of laws restricting the free exchange of germ-plasm (which, particularly in recent years, has become increasingly widespread) on the grounds of providing greater incentives for researchers in various countries, and expressed the wish that the present system of competitiveness in this matter should be replaced or complemented by a system of cooperation moving toward standardized, rational and objective international legislation that would ensure the preservation, use and free exchange of germ-plasm in the short, medium and long term for the benefit of society as a whole. To this end, the negotiations under way should continue.

The Working Group of the Commission on Plant Genetic Resources

Recognizing that:

(a) plant genetic resources are a common heritage of mankind to be preserved, and to be freely available for use, for the benefit of present and future generations;

(b) full advantage can be derived from plant genetic resources through an effective programme of plant breeding, and that, while most such resources in the form of wild plants and old land races are to be found in developing countries, training and facilities for plant survey and identification and plant breeding are insufficient or even not available in many of those countries;

(c) plant genetic resources are indispensable for the genetic improvement of cultivated plants, but have been insufficiently explored and are in danger of erosion and loss;

Considering that:

(a) in the history of mankind unnumbered generations of farmers have conserved, improved and made available plant genetic resources;

(b) the majority of these plant genetic resources come from developing countries, where the farmers have not sufficiently been compensated or rewarded for their efforts;

(c) the farmers in developing countries must benefit fully and not only partially from the improved and increased use of the natural resources they have preserved;

(d) there is a need to continue the conservation (in situ and ex situ), development and use of the plant genetic resources in developing countries.

Endorses:

The concept of farmers' rights¹

- to ensure that the need for conservation is globally recognized and that sufficient funds for these purposes will be available
- to assist farmers and farming communities in all regions of the world, but especially in the areas of origin/diversity of plant genetic resources, in the protection and conservation of their plant genetic resources and of the natural biosphere;
- to allow farmers, their communities and countries in all regions to participate fully in the benefits derived at present and in the future from the improved use of plant genetic resources through plant breeding and other scientific methods.

¹ Farmers' rights mean rights to compensation arising from the past, present and future contributions of farmers, particularly those in the centres of origin/diversity of plant genetic resources, in conserving, improving and making available those resources. These rights are vested in the International Community as trustee for present and future generations of farmers, for the purpose of ensuring full benefits to farmers and supporting the continuation of their contributions as well as the attainment of the overall purposes of the International Undertaking.



SUPPLEMENTARY REPORT OF THE WORKING GROUP ON THE NEGOTIATIONS FOR AN AGREED INTERPRETATION OF THE INTERNATIONAL UNDERTAKING ON PLANT GENETIC RESOURCES.

During the course of the discussions of the Commission on the progress report submitted by the Working Group, a number of amendments to the proposals agreed upon by the Working Group were presented by the delegate of the United Kingdom. Since these amendments had been submitted in a constructive attempt to reach consensus on an agreed interpretation, had received considerable support in the Commission's discussions and offered possibilities of reaching such a consensus, the Commission requested the Working Group to hold a further meeting with a view to reaching full agreement on the text of an agreed interpretation. The Working Group met this morning with the authors of the amendments and, I am happy to report, reached consensus on a new text that would take into account the amendments presented. These then are the modifications agreed upon by the Working Group to the original proposals submitted by the Working Group in document CPGR/89/12 and should be read in conjunction with that report:

- (i) Add to para (c) on page 2 at the end of the paragraph the following words:

" and which form the basis for the concept of farmers' rights. "

(ii) Paragraph (d) on page 2. Redraft the first part as follows:

" (d) The adhering states consider that the best way to implement the concept of farmers' rights is to ensure the conservation, management and use of plant genetic resources for the benefit of present and future generations of farmers. This could be achieved through appropriate means, monitored by the Commission on Plant Genetic Resources, including in particular the International Fund for Plant Genetic Resources already established by FAO. To reflect the responsibility of those countries which have benefitted most from the use of germplasm, the Fund would benefit from being supplemented by further contributions from adhering governments on a basis to be agreed upon in order to ensure for the Fund a sound and recurring basis. The International Fund should be used to support plant genetic conservation, management and utilization programmes particularly within developing countries and those which are important sources of plant genetic material. Special priority..."

Subpara (b)

" The majority of these plant genetic resources come from developing countries, the contribution of whose farmers has not been sufficiently recognized or rewarded. "

Subpara (c)

Redraft to conform to the amendment proposed by the delegate of the UK as follows:

" the farmers, especially those in developing countries, should benefit fully from the improved and increased use of the natural resources they have preserved; "

Subpara (d)

Redraft as follows:

" there is a need to continue the conservation (in situ and ex situ) development and use of the plant genetic resources in all developing countries and to strengthen the capabilities of developing countries in these areas. "

Page 4 footnote

Redraft as follows:

"Farmers' rights mean rights arising from the past, present and future contributions of farmers in conserving, improving and making available plant genetic resources, particularly those in the centres of origin/diversity. These rights are vested etc."

The Working Group noted that this agreement on the interpretation of the International Undertaking was an important first step in the process of ensuring wider participation in the International Undertaking. While consensus had been achieved on the above interpretation, many issues remained to be negotiated regarding the implementation of the system. One particular issue that remained to be confronted was the nature of further contributions to the International Fund, and the issue of whether or not such contributions should be mandatory.

One member of the working group, while welcoming the achievement of consensus, noted that as she had not been able to participate in the negotiations of the Working Group last week, she would have to reserve her country's position on the agreed interpretation, until such time as she had been able to further consult with her Government.



AMENDMENT TO THE PROPOSED INTERPRETATION OF THE INTERNATIONAL UNDERTAKING ON PLANT GENETIC RESOURCES

Proposed by: United Kingdom

Supported by: Australia
Federal Republic of
Germany

Page 2, sub-paragraph (d):

Amend to read: "A statement to the effect that the adhering States recognize the work of farmers to ensure the conservation, management and use of their plant genetic resources. This could be achieved by several means, including the International Fund for Plant Genetic Resources already established by FAO. To ensure a sound financial basis and to reflect the responsibility of those countries which have benefited most from the use of germplasm, the Fund could be supplemented by contributions from adhering governments. The International Fund should be used to support plant genetic conservation, management and utilization programmes particularly within developing countries, and those which are important sources of plant genetic material. Special priority"

Page 3, heading: "Considering that":

sub-paragraph (b)

Amend to read: "the majority of these plant genetic resources now come from developing countries, where the role of farmers has not been sufficiently recognized;"

sub-paragraph (c)

Amend to read: "the farmers, especially those in developing countries, should benefit fully from the improved and increased use of the natural resources they have preserved;"

sub-paragraph (d)

Line 2: delete "developing", insert "all".

Page 4, note 1:

Amend definition of "Farmers' rights" to read as follows:

"Farmers' rights mean the right to benefit from the contribution made in conserving, improving and making available plant genetic resources, particularly those in the centres of origin/diversity. These rights are vested...."