

insist that the IU reflects agreements negotiated elsewhere, for example in the Biosafety Protocol, to ensure that it is NOT subordinate to other agreements in general and the WTO in particular.

GOVERNING GENETIC RESOURCES

Since the IU was first agreed on voluntary terms in 1983, all the rules on intellectual property, trade, access and benefit sharing have been re-written and new agreements on conservation and sustainable use have been ratified.

- The original IU was agreed before the first Life Patent was awarded and before the WTO foundation was even discussed. Genetic engineering was in its infancy.
- The Convention on Biological Diversity, which called for the renegotiation of the IU in "harmony with the CBD", predated the birth of the WTO and the Agreement on TRIPs and its controversial Article 27.3(b) on IPRs and Genetic Resources.
- Later still, after the 1996 landmark agreement in Leipzig on a Global Plan of Action on PGRFA, related CBD and FAO Conference decisions, the alarming spread of genetically modified crops, the debacle of the WTO Ministerial meeting in Seattle and the successful agreement of the Biosafety Protocol, the IU entered its final and decisive stages of negotiation.

It is unsurprising that these negotiations have been difficult, given the turbulent context in which they have been conducted.

It is now important to ensure that the IU is agreed and implemented and recognised by many organisations with which it will interact.

WORLD FOOD SUMMIT - FIVE YEARS LATER

The World Food Summit - five years later could decisively strengthen the IU. Success or failure to adopt a fair, equitable and comprehensive IU will swing back full circle on

- The Ministerial meeting of the World Trade Organization (WTO) in Qatar, November 2001
- The Conference of the Parties to the Convention on Biological Diversity (CBD) in The Hague, 8 - 19 April 2002 and
- The heads of states assembled at the World Summit on Sustainable Development (WSSD) in Johannesburg (Rio+10), 2 - 11 September 2002

The IU has the potential to be a prime example of responsible global governance, ensuring that those genetic resources which underpin social needs are maintained in the public domain. It is imperative that agreement is reached not only for food security and farmers' livelihoods but also the future of the international gene banks and public agricultural research. The implementation of the 1996 Leipzig Global Plan of Action on plant genetic resources for food and agriculture equally depends on a successful outcome. Failure to reach an agreement at the FAO Conference and World Food Summit - Five years later would also damage the credibility of the FAO as it hosts this high profile summit: it is unthinkable.

The challenge for governments is simply whether the world's agricultural biodiversity is to be nurtured to provide profit for a few or food for all. The IU, while not perfect, could provide the start of an answer and the World Food Summit, although

potentially distracted by development targets, biotechnology and food aid, could be the medium to convey this good news.

DEMANDS OF CIVIL SOCIETY ORGANISATIONS (CSOS)

- Some governments still need to be convinced that the free access to and exchange of genetic resources is a key to food security and food sovereignty. The International Undertaking on Plant Genetic Resources (IU), though not perfect, should be adopted by FAO Conference in November as planned.
- The IU should be fair - a level playing field on access rules without any threat of privatisation and biopiracy. No IPRs should be allowed on agricultural crops or parts thereof. The IU must ensure guaranteed access to the genetic resources for food and agriculture required by farmers and Breeders.
- The IU should be equitable - it should deliver benefits to farmers in developing countries. Mandatory payments and the financial mechanism should be implemented, to ensure that farmers receive benefits that are commensurate with the benefits humankind derives from the use of plant genetic resources for food and agriculture. These funds will also serve to implement the Leipzig Global Plan of Action to save agricultural biodiversity. The food we eat comes from these resources and farmers expect a reasonable share of the benefits rich consumers derive. Sharing the benefits from the commercial use of plant genetic resources for food and agriculture, for example by the food industry, must be explored. It is estimated that the food industry's global annual turnover is in excess of \$2 trillion - all of this is based on genetic resources - and more benefits

are provided to poor farmers, who are the principal developers and managers of these resources, proportional to the massive benefits rich people get from food.

- The IU should be comprehensive - i.e., contain a full list of the crops and forages that are vital for food security. Also, public agricultural research on vital food crops depends on their inclusion in the IU. High-level bilateral and inter-regional negotiations need to press for more inclusions in the list of crops and forages or else the IU will be an empty treaty.
- The IU should not be subordinate to other agreements in general and the WTO in particular.

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For further information, official texts, CSO papers, media reports and so on, see:

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 "Profit for a Few or Food for All" was the title of the NGO Declaration to the 1996 World Food Summit.

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GOVERNING GENETIC RESOURCES

Profit for a Few or Food for All?

A legally-binding treaty that will safeguard free access to genetic resources to ensure food security, is about to be agreed by 180 governments at the United Nations Food and Agriculture Organization (FAO) Conference, to be held at the time of the World Food Summit - Five Years Later, in November 2001: The International Undertaking on Plant Genetic Resources (IU).



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WHAT IS THE INTERNATIONAL UNDERTAKING?

The International Undertaking on Plant Genetic Resources is a voluntary agreement of FAO member governments signed in 1983. Negotiations to make it into a legally binding treaty have been ongoing over the last seven years. The agreement is needed, not least, to counter the rapid loss of crop varieties from farmers' fields, but also to protect the genetic resources stored in public gene banks; and to limit the increasing use of intellectual property rights (IPRs) to claim sole ownership over crop seeds and genes, which is further restricting farmers' and breeders' access.

International Undertaking

The International Undertaking on Plant Genetic Resources (IU) covers major food crops and forages. It aims to ensure the conservation, sustainable use and 'free flow' of the genetic resources of these crops and forages and, when they are used commercially, that farmers in developing countries receive a fair share of the benefits.

A Multilateral System is foreseen in which a list of food and feed crops is freely accessible to the countries that sign the treaty. A governing body will oversee the International Undertaking, and a financial mechanism will ensure its working.

The IU is the only international agreement with the objectives to:

- Protect the rapidly eroding genetic resources which underpin global food security, and encourage their sustainable use;

World Trade Organization

The World Trade Organization (WTO) agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) of 1995 requires that all inventions are patentable. It allows the exemption of plants and animals (not microorganisms) but requires a form of national Intellectual Property Rights (IPR) protection for new plant varieties (a sui generis system).

- Put pressure on governments to keep these genetic resources in the public domain, and facilitate access to these resources for present and future generations;
- Ensure the implementation of Farmers' Rights - that farmers, especially the world's smallholder farmers on whom the food security of billions of people rests, can save, use, exchange and sell seeds and other propagating materials; and
- Ensure farmers receive a reasonable share of the benefits from the commercial use of these resources.

The IU is due to be adopted by the FAO Conference in November 2001; however, it will be adopted only if the following three decisive issues can be resolved in time:

- Whether genetic resources for food and feed covered by the IU are excluded from Intellectual Property Rights (IPRs) restricting access, like patenting, keeping the resources in the public domain
- The relationship between the IU and other international agreements, most notably the World Trade Organization (WTO) agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs)

- The list of food crops, forages and their 'wild' relatives that are to be included in the IU.

FARMERS' ACCESS AND BENEFIT SHARING

According to many Southern governments, supported by Civil Society Organisations, genetic resources for food and agriculture should be kept free of IPRs and hence any limitations to access. This exemption from IPRs should apply not only to seeds and other vegetatively reproducing material, but also to the genes they contain which express the special traits that farmers have bred into these crops and forages.

The seed industry, in contrast, is interested in patenting genetic material and would want the IU to specify that any material (e.g. varieties, genes and gene sequences) derived from crops included in the IU, could be subjected to IPRs.

Is the International Undertaking on "Plant Genetic Resources" about seeds or genes? This confusion is indicative of the fast changing context in which the IU has been negotiated. Due to its objective to protect genetic resources for the public good, the IU will provide a better alternative to excluding genetic resources for food and agriculture from IPR systems, than the WTO TRIPs agreement that protects inventions for the private interest.

If the compromise treaty text stands and the IU can be agreed in November, the issue of the privatisation of genetic resources will continue to dominate the first meetings of the Governing Body of the IU.

PATENTLY PERVERSE

Percy Schmeiser, a Canadian farmer, is the victim of Monsanto's contamination of his fields and crops by round-up-ready canola (oil seed rape) plants. This canola has spread involuntarily into his fields but Monsanto claim that they own his crops because their intellectual property is contained in them. As a consequence, they claim his crop and all profits from it. He is appealing a decision by the Canadian courts that he is guilty of patent infringement. If Monsanto wins, it could claim any crop that becomes contaminated.

INCREASING THE PIE TO BE SHARED:

Equally controversial is the issue of benefit sharing which is yet to be defined. So far, only if patents are allowed can there be mandatory commercial benefit sharing. Given this condition, many communities and governments question the value of these benefits.

Benefits in-kind and through the financial mechanism will anyway exceed those from this mandatory commercial benefit sharing. Other mandatory ways of benefit sharing from the commercial use of plant genetic resources for food and agriculture must be explored. It is, e.g., estimated that the food industry's global annual turnover is in excess of \$2 trillion - all of this is based on genetic resources - and more benefits should be provided to poor farmers as the principal developers and managers of these resources, proportional to the massive benefits rich people get from food.

"GOLDEN RICE": GRAINS OF DELUSION

Vitamin A deficiency is part of poverty in developing countries, affecting around 140 million children. In most regions sufficient vitamin A rich foods are available. According to the United Nations, supporting multiple cropping, improving access to food, promoting healthy eating habits in view of adverse corporate advertising, are approaches that are more sustainable than enriching food. The seed corporations deliberately leave questions unanswered as to how, e.g., poor people can afford to buy food based on genetically modified organisms (GMO), if they can't afford enough food in the first place. GMOs for the poor are a means of achieving social acceptance, as GMOs and patenting are widely rejected in North and South. Golden Rice has therefore been dubbed the "grains of delusion" by CSOs.

FROM A HERITAGE TO NATIONAL SOVEREIGNTY

In 1972, the United Nations Conference on the Human Environment, held in Stockholm acknowledged biodiversity as being the "common heritage" of humankind, with unrestricted access for everybody. Twenty years later, the Convention for Biological Diversity (CBD) adopted at the United Nations' Conference on Environment and Development in Rio de Janeiro 1992, reaffirmed national sovereignty over genetic resources. But Rio left unresolved the unique problem of crop germplasm critical to world food security, the status of genetic resources collected before the CBD, and the central role of Farmers' Rights.

DON'T EMPTY THE TREATY

The IU presently only covers a list of 35 food crops and 29 forages. These represent a too small proportion of the 105 food crops of importance to food security, the many others that have nutritional significance and some 18,000 forages of value to food and agriculture. This list is important not only for food security, per se, but also to ensure that international public research as well as gene banks can continue to work on these crops and continue to gain access to the wild relatives of these crops. Not being on the IU list gives a signal that this crop or species is unimportant to food security- and research on the crops will cease. High-level bilateral and inter-regional negotiations need to press for more inclusions in the list of crops and forages or else the IU will be an empty treaty and it will not be agreed in November.

WILD WEST WHEELING-AND-DEALING: Some developing countries rich in genetic resources, especially Brazil, prefer bilateral deals, within the scope of the CBD, despite the fact that the purpose of this renegotiation has been to bring the IU into harmony with the CBD. These governments need to be convinced that interdependence is a key to food security and food sovereignty.

TRADE LIBERALISATION BEFORE FOOD SECURITY: Pressure from some of the powerful Cairns group, for example, Australia and Argentina, is trying to make the IU subordinate to the World Trade Organization (WTO) and its TRIPs agreement in its move to push through IPRs. This is part of an attempt to further weaken the IU. The European Union, among others, will