

The International Undertaking on Plant Genetic Resources for Food and Agriculture: is it now or never?

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For a number of years now FAO negotiators have struggled to revise the International Undertaking on PGRFA (Plant Genetic Resources for Food and Agriculture) into a legally binding agreement. Many people feel that as we enter the year 2000 we are also reaching a "now or never"-situation for these negotiations.

A revised Undertaking would constitute an essential element of FAO's "Global System" for PGRFA. It would help the world community achieve the closely related goals of food security and sustainable agriculture. At the same time, the Undertaking is to be harmonized with the Convention on Biological Diversity (CBD) and serve as an instrument for the conservation and sustainable use of plant genetic resources and the fair and equitable sharing of the benefits arising from the use of such resources.

The Undertaking would establish legally binding rules to secure facilitated access to – and exchange of – PGRFA within a multilateral system. In addition, the Undertaking would also establish effective ways of cooperation to ensure conservation of agrobiodiversity and the further development of PGRFA. To conform with the CBD, it will also have to contain effective provisions for benefit-sharing, including articles on funding and Farmer's Rights (to benefit small farmers that have been the traditional custodians of PGRFA, particularly in developing countries).

We need the Undertaking for continued open access to and exchange of PGRFA. Given the high level of PGRFA interdependence between regions – convincingly shown in a number of FAO documents – such an open access and exchange regime is crucial for research and development in agriculture and consequently for further agricultural progress.

Perhaps more fundamentally, conditions affecting agriculture – pests, climate etc. – are continually evolving, sometimes in ways that we are not fully aware of (cf. the debate on climate change). We can say with certainty, however, that food security and sustainable agriculture will be impossible to achieve without a sufficiently wide genetic base for food and agriculture. A revised Undertaking will be crucial for the conservation and further development of agrobiodiversity as well as for making it available to countries.

What will happen if these negotiations fail? No one should comfort themselves by believing that status quo will prevail. Obviously there will be a lot of confusion. It is clear that *ex situ* collections from before the entry into force of the CBD are not covered by that convention. In many cases it is not clear where such pre-CBD PGRFA originated. For all PGRFA exchange after the entry into force of the CBD, the conditions of the CBD will generally apply.

This means that unless the world community manages to create multilaterally agreed, legally binding rules for germplasm exchange in this field, we could be moving towards a situation where general CBD principles would apply. In addition, we would be faced with grey zones where it is difficult to tell which rules should apply. The CBD was obviously drafted with other kinds of biodiversity as a primary focus, in particular biodiversity where the question of origin is less complex than for agrobiodiversity. Managing agrobiodiversity exchange on a bilateral basis would be a nightmare, not only in practical terms, but also with regard to equity considerations (what would be "fair and equitable" benefit-sharing in cases where a seed contains material from 50 sources?!). Benefit-sharing in this field must, therefore, be clearly regulated by multilateral mechanisms, and for this we need the Undertaking.

In fact, confusion as well as obstacles to open PGRFA exchange are already visible. Several countries are developing access legislation in line with CBD principles, and it is not clear that sufficient loopholes are created to safeguard the need for open exchange of PGRFA. At the

same time, intellectual property rights (IPR) protection over PGRFA is increasing, and some forms of IPR protection – in particular patents – also pose limitations to the accessibility of PGRFA. Consequently, the real alternative to a legally binding Undertaking would not be *status quo*, but rather an increased polarisation between providers of genetic resources and industries using these resources to create new products. To put it differently, instead of an agreement where PGRFA is managed from the perspectives of food security and sustainable agriculture, PGRFA management would be split between CBD and World Trade Organization (WTO) provisions, and an increasing number of conflicts over PGRFA would be one likely outcome of such a situation.

Both developed and developing countries will benefit from a system of open access. Open access is in itself an important benefit to be shared among all parties to a revised Undertaking. However, developing countries demand some commitments – in line with CBD provisions – from developed countries as regards the commercial benefits arising from access to PGRFA. This should not surprise anyone. CBD was negotiated in a situation where genetic resources were considered “freely available” while IPRs were increasingly established over industrial products based on these resources, even if the value of these products was developed on the basis of traditional knowledge or traits. Concerns about this situation resulted in the benefit-sharing provisions of the CBD. These equity issues are still with us: one delegate from a developing country to the CGRFA recently stated that without IPRs the question of benefit-sharing would not arise and all genetic material could be freely available in the same way as it was historically.

Given that benefit-sharing for PGRFA cannot be on a bilateral basis, the most logical starting point for operationalizing benefit-sharing provisions in the Undertaking would be the Global Plan of Action for PGRFA. One important reason to develop this plan was to get a better idea of funding needs related to the Undertaking (the International Fund). What we are talking about here is a plan with cost scenarios in the range of (from “rudimentary” to “comprehensive”) US\$ 150 – 450 million a year. These sums are not necessarily new and additional money, but it is essential that such funding should be predictable. These resources could be mobilized in several ways. Given, however, that PGRFA conservation and use ultimately benefits the whole society, governments will still have to bear the final responsibility.

Developed countries should realize that without some credible mechanism for benefit-sharing there will be no agreement on a multilateral system with open access to PGRFA. On the other hand, developing countries should realize that no OECD country will accept new obligations (for funding or otherwise) to a system where facilitated/open access applies only to a very limited number of crops. Consequently, countries from all regions must make some compromises in order to achieve a successful conclusion to these negotiations. The sacrifices countries would have to make seem rather modest, however, compared to what is at stake.