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Report on FAO's Gene Commission in Rome June 8-12, 1998

## Repeat the Term!

*Governments at FAO's Gene Commission fail to make  
the grade on Farmers' Rights and Benefit-Sharing.  
The class has to repeat the term.*

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There is nothing quite so unsightly as a herd of thundering diplomats who have outrun their briefs. The negotiating pace at the Fifth Extraordinary Session of the FAO Commission on Genetic Resources for Food and Agriculture (CGRFA, June 8-12, 1998) clearly exceeded and outstripped the briefs received from the capitals. Europe and the South could have passed (and even made the Dean's list) had they not flunked the oral examination. In the end, they spent the week talking past one another and only came to realize how close they really were to an agreement in the closing hours of the meeting. Agreement was closest on some key elements of Farmers' Rights. There was also a "breakthrough" (in understanding) on financial mechanisms for benefit-sharing. When Europe and the South repeat the grade next semester (last week of November?), they should be able to improve their marks as long as they don't get tongue-tied. Non-European OECD students, on the other hand, are on the verge of being expelled from school altogether. Even the seed industry had to tell them they were out of line.

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## Repeat the Term!

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Negotiations for a new International Undertaking took place on two fronts. The Commission Chair took a small regionally-representative group aside to discuss access and benefit-sharing in the Lebanon room while the Vice-Chair took on Farmers' Rights with the remainder of the delegations in the Green room. Both negotiating processes broke down when the North found itself without running room and the South presented "bottom line" positions in both arenas. Here's an overview of the dividing issues, what happened, and where diplomats can go from here.

### **"Nature-for-Debt" Swap?**

#### *On the yellow-brick road to Access and Benefit-sharing*

A rumoured proposal from ASSINSEL (International Association of Plant Breeders for the Protection of Plant Varieties) that would have the seed industry surrender a portion of their royalties on plant patents (not Plant Breeders' Rights certificates) to a fund under the revised International Undertaking did much to spice the early hours of the negotiations on benefit-sharing. The Chairperson's Contact Group met in FAO's Lebanon room most of the week and the ASSINSEL proposal was initially hailed as a "breakthrough" that clearly tied corporate profits and South benefits. As the week wore on, however, and ASSINSEL formally presented its proposal at a Wednesday lunch, G77 delegates realized that the sums involved were marginal and that some European countries were seeing the industry offer as a way of getting their own governments off the hook. In fact, the North had no firm offers on benefit-sharing and had not even come to Rome prepared to negotiate financial modalities. By midday Thursday, Malaysia's "bottom line" presentation on behalf of the South brought negotiations to a shuddering halt. Malaysia picked its fighting ground wisely. The issue facing the Contact Group strikes at the very basis of a legally-binding Undertaking.

**Bottom lines:** Put simply, the South sees access and benefit-sharing as a kind of "nature for debt" swap. The South has "nature" (the farmer nurtured and enhanced agricultural biodiversity that underpins the North's food security.) The North's "debt" includes their use of the South's seeds in their current food production as well as what they should contribute for their *ex situ* collections and the material they will receive through the multilateral system of exchange. This is a bill to be paid. It is not aid. It should not be paid through some accountant's slight-of-hand that merely transfers funds out of foreign aid into a trade or investment pocket.

The South also understands that the germplasm involved is extremely valuable. Indeed, it is worth many billions of dollars per year. The problem is to capture the South's rightful share of this benefit. A direct charge to the seed industry or the farmer or the food processor does not yield the real value of the genes. In fact, the traceable benefit to any single industrial link along the food chain turns up very small sums. The benefit to the North is actually distributed throughout the society and is highest at the level of the consumer. Logic, therefore, argues that the governments of the North should pay their dues to the South through the general tax base.

**Rock Bottom:** Such logic is hardly attractive to the North. There are two camps. Those (such as Australia, Canada, USA, and Japan) who maintain that the return flow of improved agricultural technology (including new plant varieties and biotech products and processes) are the best and most realistic form of benefit-sharing. In the second camp are the majority of Europeans (excluding the UK and France) who might privately acknowledge the justice in the South's position but know (as CSO's have said) that they have little to offer and that the initials for benefit-sharing aren't "BS" for nothing..

Europeans can offer a host of reasons why true benefit-sharing is not in the cards. First, governments are withdrawing from public research and, in fact, from their traditional social service role. Governments are trying to cut taxes and reduce deficits. They are hardly going to agree to impose a new tax now. A second (closely-related) reason is that neither European consumers nor their politicians have a clue what negotiators in Rome are talking about. PGR is not a household term and there is no political base for forcing governments to act. Third, the conservation and exchange of crop germplasm cannot be valued on the basis of gene flows in a single year - not even in a single decade - perhaps not even in several decades. Most of agribusiness and most North scientists believe they already have access to enough germplasm to last them well into the next century - or farther. They could be wrong in the short-term and they could be starving in the long-term but there is no immediate and obvious reason for any government to adopt unpopular new taxes now.

This leaves even the "good guys" in Europe with only three uninviting possibilities: (1) They can rob other parts of their dwindling foreign aid budgets to pay for germplasm; (2) they can redirect modest sums within their equally-dwindling domestic ag research budgets as part of their re-allocation to the Leipzig GPA; (3) they can take the seed industry up on its offer to tithe itself an undisclosed percentage of the royalties earned on plant patents. In off-the-record conversations, RAFI has gleaned sufficient information as to anticipate that the total sums that might reasonably flow from the cobbling of these three approaches together is in the range of U.S.\$30-\$70 million per annum. (The industry contribution would likely be U.S.\$5-\$7 million.) A very far cry from Keystone's 1991 suggestion of \$300 million and the similar indicative budget set out for the GPA in 1996.

**Whose pound of flesh nearest whose heart?** The reality we are left with is immoral, unethical, and commonplace. Were we not negotiating the fate of the diminishing genetic stock for the world's food supply, the South's response to the North's woes should simply be to walk away from the table. No new agreement. No further germplasm exchange. Repatriation of all *ex situ* collections. In fact, this isn't such a bad idea. The risk is that Northern countries and companies will walk away as well - and then turn around and bargain the poor into oblivion through a series of unmanageable bilateral arrangements. Bilateralism serves the interests of big governments and multinational corporations very well.

But, if the South doesn't walk - but *marches* - away from the table and establishes its own South-South initiative (including all the demands above), their bargaining position could improve substantially. Few are so deluded as to believe in the formation of a genetic "OPEC" - or even that South solidarity can remain intact for long in this era of rampant globalization. But well-timed and coordinated action this November - on the eve of the WTO's TRIPS and Agriculture reviews - could significantly raise the political profile of PGR and force the North into a more "political" negotiating posture. A truly "undiplomatic" breakdown could attract the media and gain greater public awareness and empathy.

**What is there to lose?** One thing we could lose is genetic diversity and long-term food security. It is one thing to force the breakdown of negotiations as a political tactic. It is another thing for governments (South or North) to revenge themselves by cutting a pound of flesh from their own hearts. Crop germplasm is the

lifeblood that pumps through our common heart. The negotiations in the Lebanon room have brought us to the brink of a true crisis.

CGIAR is the forgotten benefit. The CG has 16 research centres (13 in the South) with a total of more than 600,000 germplasm accessions. Fourteen of the centres have gene banks and/or large germplasm data bases. The CG's total budget in 1998 will come in at around U.S.\$328 million. Ostensibly, the CGIAR does not exist. The only legal personality of the System is found in the incorporation of each of the 16 centres. In reality, however, the CGIAR is funded by 41 donor countries - 21 of which are in the North and 20 in the South. Nevertheless, about 98% of the annual budget comes from the North with the largest contributor being the European Union followed by the World Bank, USA, and Japan.

The CGIAR (see point 4 in adjacent box) embodies the IU's mission to conserve and enhance agricultural germplasm. Most CG germplasm is already attached to the Commission as part of the FAO-CGIAR Trust Agreement that gives policy oversight to the Commission. There is simply no good reason why the CGIAR - as a whole - should not be part of the negotiations over benefit-sharing in the framework of the GPA.

These are tough choices for every delegation when next they meet. The North - specifically many of the individuals that gather in Rome - can move to alter the fate and role of the CGIAR and can - with a little innovation and courage - put the future of the CG on the bargaining table for benefit-sharing. The South should demand nothing less.

### **A Kinder, Gentler Kleptocracy**

*The fight for Farmers' Rights is not over... yet*

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Meanwhile, in the FAO's large (and ugly) Green room, Switzerland, as Vice-Chair of the Commission, conducted the negotiations on Farmers' Rights. This was to be the "off-Broadway" debate. The real action was to take place in the semi-secrecy of the Lebanon room while delegates consigned to the Green room allowed Farmers' Rights to be whittled and bartered away in return for benefit-sharing. Prior to the meeting, RAFI had warned that the Commission might even forsake the right of farmers to save, exchange, and enhance seed (See RAFI *Occasional Paper* Vol.5 No.1 June, 1998) and that such a cowardly act - combined with Terminator Technology would bring about a "Silent Spring" for poor farmers around the world.

But, if the Green room were to witness the "Silence of the Lambs", nobody told the lambs. Syria quietly

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*What to do? The South has hard decisions to make. The suggestions below are more a list of protective steps that could be taken regardless of the course of action chosen...*

1. *Whatever decision the South takes in November (reject the North's offer or grant it conditional acceptance) such a move should be only a first tactic in a well thought-out strategy that is widely-supported in the South.*
  2. *Whatever financial agreement is reached (if any), it should be conditional and subject to clear review processes and/or "sunset" clauses.*
  3. *The IU should not entrench formulae for voluntary contributions from industry or any other non-member.*
  4. *The CGIAR (Consultative Group on International Agricultural Research) and its U.S.\$328 million per annum budget should be part and parcel of the final agreement.*
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announced that Farmers' Rights were "sacred" and that the traditional right of farmers and their communities to save, exchange, and develop plant varieties - including varieties bought commercially - was non-negotiable. Ethiopia, Philippines, Zambia, India, China, Libya, Iran - virtually every South delegation in the room including, on this rare occasion, Brazil, Mexico, Peru, and Colombia - championed Farmers' Rights.

*Saving Seed:* On the critical clause concerning "seed-saving", Norway and the European Union came within a hair of the South's position. Speaking on behalf of the EU, the UK tied itself in knots trying to fairly represent views it obviously did not share. At one point the delegation insisted that it had difficulty understanding the significance of traditional or collective agricultural practices since there were none in the UK. With admirable timing, the Australians chimed in saying that their country was "too young" to have traditional agricultural practices. Aboriginal communities back home would have found the intervention interesting.

*A Kinder Kleptocracy?:* As the debate wore on, it became evident that Australia, Canada, USA and Japan (Japan called Farmers' Rights "blah, blah, blah") thought they were defending the concerns of their seed industries. They were wrong. RAFI went to ASSINSEL (as the key private breeding consortium in the room) and CGIAR (as the largest public breeding consortium in the room) and proposed that the three make their positions clear to governments through consecutive interventions. To the amazement of the non-European North, ASSINSEL's statement was more supportive and less-ambiguous than CGIAR's. ASSINSEL explicitly endorsed the right of poor farmers (and the word "poor" was liberally defined) in any country to be able to save, replant, exchange, sell, and market plant varieties including commercial varieties. ASSINSEL did say that this right should conform to traditional practices and that it should not be seen as a license for a farmer to go into the seed business selling other peoples' seeds. Naked without their briefs to cover the issue, the North had nothing more to say. Neither, however, did they capitulate.

*The Concept of [Australia]:* Talks finally broke-down altogether Thursday with two stunningly ill-conceived interventions. First, a novice on the Canadian delegation muscled up to the microphone with the announced intent of making his views on Farmers' Rights clear to the room. Canada, he warned the more-experienced negotiators around him - did not have Farmers' Rights or fishers rights or foresters rights or rights for any special constituency of people. Canadians, he announced, had human rights and everybody is equal. He was quickly advised that Canada does have Plant Breeders' Rights and that these rights are protected in Canada by special legislation and administrative agencies of the government. Canada also allows farmers to save and exchange

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*A Solution? Its important to be clear here. ASSINSEL did not journey to Rome via the Road from Damascus. The seed industry is as keen as ever to subsume the value-added contribution of the South's farmers in snaring their varieties. But the industry also knows that resource-poor farmers in developing countries are not soon to be a market for "protected" varieties. If it facilitates a cooperative exchange environment and doesn't constrain markets, the industry is more than willing to show benevolence. Likewise, the Europeans are also completely willing to let the South's traditional farming communities manage seed in their traditional ways. The problem comes around the language of "market" and the difficulty (solely for the North) of trying to describe "traditional farming practices" in the context of "marketing" seed. This should not be a problem. Like ASSINSEL, Europe should relax and live with the South's language and allow practice and precedent - and, eventually, annexed "agreed interpretations" to manage the rare minority situations that might worry them in the future.*

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seed. Why won't Canada agree that farmers everywhere can do the same? The mood of the room had turned angry and sour. Then the Australians took the floor to insist that the phrase "concept of" be added to a chapeau paragraph in front of "Farmers' Rights"...

That did it. The South drew a line in the sand. Delegation after delegation demanded that the Aussies withdraw the text. The Aussies refused. The Philippines and Ethiopia - soon joined by others - called upon Australia to "reserve" on the paragraph in a footnote to the text. This would allow the negotiations to continue without square brackets. Australia refused. The legal counsel had to be brought in. Quite properly, he advised that, in a consensus-building process, every country is normally allowed to retain its bracketed text until the final round of debate. The offensive text remained. The South announced there was no need to continue discussions and the meeting adjourned.

The Australian position amounted to a filibuster. There had been modest progress until that point. When the Aussies refused to back down, that progress ground to a halt. There is no longer any sympathy in the South or in Europe - for Australia's continued participation in the negotiations.

### **The Deal - Toward a New International Undertaking (IU)**

*If FAO diplomats were fluent in any one of the UN's official languages, here's what they'd say*

In reality, governments are much closer to an agreement than they realize. Not that there aren't some tough issues still to fight and some gritty details that still have the potential to derail consensus, but the basic frame and rationale for a strengthened multilateral system of germplasm exchange and benefit-sharing is now broadly accepted. Here are 21 key issues and what governments would say to each other about them if they had been granted the power of conventional human discourse...

### **The Commission's "Agenda 21"** *The Emerging Consensus*

<i>Issue</i>	<i>Comment</i>
<b>Multilateral System</b>	
1. Legally-binding.	With the possible exception of the Non-European OECD states, everybody else wants an intergovernmentally-enforceable agreement.
2. CBD compatible.	The new deal must be in harmony with the Biodiversity Convention. Whether or not the CBD has to "approve" the deal is disputed. CBD Secretary Calestous Juma says yes but there is no legal reason why a decision by one intergovernmental body has to be admitted by another. There is also lingering disagreement on what "harmony" implies. Some African states argue that sections of the CBD should be photo-copied into the new IU. The majority are in favour of a two-part harmony that allows the IU and the CBD to sing the same song without necessarily mouthing all of the same words.

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3. Both exchange and benefit-sharing.	Although non-European OECD states argue that the South's benefit from free germplasm exchange comes abundantly from the North's breeding and biotech spin-offs, the rest of the world agrees that the North must provide financial and other benefits in return for the flow of agricultural germplasm.
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**Membership**

4. Only governments are Members.	The Europeans have confused this issue but in fact, everyone agrees that governments must be signatories to the deal and that they alone will comprise its governing bodies. OECD countries, however, want a special (though lesser) status for the private sector.
5. Other social sectors such as farming and indigenous communities, the private sector; CSO's; and public institutions such as the CGIAR can be associated with the System (assuming attendant responsibilities).	OECD states want the seed industry to have a special consultative status (even junior partnership) but they agree that industry would have to obey the rules and pay dues. The South will go along with pressure from Africa to give similar status to farmers' organizations and communities. What all this actually means is still unclear - but it is not a threat to sovereignty.

**Scope and Access**

6. System must support the most open-possible cooperation for the widest-possible range of ag. species.	There is a growing consensus that the wider the range of ag. species included in the deal the better for world food security. There is also agreement that some high-value (i.e. industrial) plants can only be exchanged through bilateral arrangements.
7. There will be two or even three "species/kinds" annexes subject to differing access and benefit-sharing arrangements ranging from "unrestricted" to varying levels of "restriction" (for members).	At the moment, there is only one annexed list and germplasm not included would be handled through bilateral agreements. This is not entirely realistic and may change with the next meeting. The species that are already widely-dispersed around the globe will be exchanged among "members" with little or no constraint. Less widely-diffused germplasm may fall into a second or even third category with ever higher barriers to exchange and conditions for monitoring and profit-sharing. Countries may move species from one category to another from time to time.
8. Pre- and post-CBD material are treated the same within each annex.	With the exception of a few African states, countries agree that it is impractical to distinguish between pre- and post-CBD germplasm. Anyone who wants to argue "country of origin" is in for a migraine of monumental proportions.

**Finance and Benefit-sharing**

**The Commission's "Agenda 21"**  
*The Emerging Consensus*

<p>9. The System implements the rolling Global Plan of Action adopted in Leipzig.</p>	<p>The only country that seems to have a problem with this is Canada. However, there may be some legal concerns about a specific reference to a static GPA. Solution: refer to "a rolling GPA in keeping with that adopted in Leipzig".</p>
<p>10. Members will ensure that financing is predictable, sustainable, and at levels commensurate with the requirements of the GPA.</p>	<p>Only Norway is ready to approve a mandatory fund right now. However, the EU will back "predictable and sustainable" and some countries (Germany and Netherlands among them) are actively seeking funds. Even the USA is ready to offer cash. The problem is that the total will run between U.S.\$30 and U.S.\$70 million per annum. Compounding the problem is that this will be "aid" and not "investment" funding. This is a far cry from the South's rightful demand that the North pay for access to the South's germplasm. (See discussion earlier in this paper.)</p>
<p>11. Financial support requires both the reallocation of existing resources in keeping with the GPA and the provision of new and additional funds.</p>	<p>This is well-accepted within the South and the European Region. Other non-European OECD states disagree although even the USA is actively looking at ways to comply with the GPA and to create modest new funding. Unfortunately, the South has not yet recognized the financial and political import of reallocated funds. This could prove much more useful than the new money. It has special implications for CGIAR spending if they are brought into association with the Deal.</p>
<p>12. Members will establish an independent financial mechanism managed by its own governing body.</p>	<p>While governance models are not yet well-developed, all parties concur that FAO will not be "handed a big sack of money to squander on bureaucracy" (not that it would). FAO will most likely be asked to create a Trust Fund controlled by an intergovernmental body (a "COP" or "CROP"?) - either the Commission itself or the "members" of the Deal - if the membership differs.)</p>
<p>13. Contributions will be guided by members' GDP.</p>	<p>This is disputed in part because there is no formal agreement on "mandatory" contributions. However, most agree that any other formula would be a frivolous fiction. Clearly a Secretariat study of intergovernmental financing and management mechanisms is needed.</p>
<p>14. Non-member contributions (when they are untied or are compatible with, and do not distort, the rolling GPA) will be accepted.</p>	<p>Germany and many other OECD states are ecstatic that ASSINSEL's industry members are prepared to pay a percentage of their patent royalties (on plant germplasm) to the GPA. The South (Africa in particular) is less thrilled given the sums will be miniscule (U.S.\$5-7 million per annum) and many are unwilling to either let governments off the hook or give formal recognition to patents through this "donation". The way out of course, is to accept non-distorting contributions to the GPA from any and all sources. If the industry wishes to tax itself on a percentage of royalties, it's industry's business and means no concession by others.</p>



**The Commission's "Agenda 21"**  
***The Emerging Consensus***

<p>15. Fund distribution will be based upon the priorities of the rolling GPA and will be made on a programme and project basis.</p>	<p>There is growing (but not universal) realization that the financial mechanism cannot and should not dispense funding on the basis of germplasm or other contributions. Possibly a small advisory panel of experts, acting under the COP, could meet occasionally to recommend grants on the basis of the quality of the proposals within the context of the GPA. Nothing else works.</p>
<p>16. Criteria will be: need; priority within the GPA; and proposal merit.</p>	<p>There is agreement that the "need" criterion will inevitably exclude OECD proposals and ensure that funding will flow South. This is where the re-allocation of existing funds becomes interesting. Warning: there is also a need to ensure the holistic implementation of the GPA. This is not a paint-by-number task for bean-counters. A scientifically and politically-astute advisory panel will be needed.</p>
<p>17. Within the framework of points 15 and 16 above, a fixed percentage will be available for the direct benefit of farming and indigenous communities.</p>	<p>This is not universally accepted but is a logical conclusion from the negotiations on Farmers' Rights (see below) and the Leipzig GPA's acknowledgment that some measure of realization for Farmers' Rights would be through the GPA. It may prove useful to establish a second small COP advisory panel to evaluate programmes associated with this funding.</p>

**Farmers' Rights**

<p>18. System will strengthen and safeguard the traditional right of farmers and farming communities to save, exchange, and enhance plant genetic resources, as is their custom, regardless of the origin of the germplasm.</p>	<p>It appears that this is only opposed by non-European OECD states. The South, the seed industry, and Europe have no fundamental problem here.</p>
<p>19. Beyond this, the System will give priority to the wider rights and needs of farmers and their communities in continuing their irreplaceable role.</p>	<p>There is not agreement on the litany of rights in the negotiating text. There is agreement that the Deal - and the GPA - should be pro-active in deeping and advancing the interests of farmers and their communities. Whether more specifics will be adopted or the negotiators will opt for a general statement remains to be seen.</p>

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<p>20. In addition to the implementation of Farmers' Rights within the IU, the System will promote and monitor the further elaboration of Farmers' Rights in other appropriate fora such as the Right to Food; and within the UN/FAO Committee on World Food Security.</p>	<p>This is not agreed. However, one logical solution to an impasse is to defer some of the wider elements of Farmers' Rights to the Human Rights Commission's work on the Right to Food (the rights of food producers should be part of this) and the wide-ranging work of the high-profile Committee on World Food Security. In fact, if all the text for Farmers' Rights were adopted in the Deal, it would still make sense to promote the issue in other fora.</p>
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**Intellectual Property**

<p>21. Intellectual property is a matter of national legislation and sovereignty. Members will ensure that their national legislation and regulation does not, in any way, compromise their obligations to the System with respect to the exchange requirements determined by the three annexes .</p>	<p>There is not - and will not be - an agreement on intellectual property. Negotiators will likely choose to avoid the issue in the annex for the most openly-circulated germplasm by adopting language that surrenders the matter to national sovereignty. Here, however, it will be necessary to ensure that the South's material flowing North will not be appropriated in any way that inhibits the South's use of that germplasm. This will be possible most of the time. When abuses take place, the parties involved will have something to fight about and the South will have the useful weapon of international public opinion. As weak as this will be, it's better than the present situation.</p>
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**Future Negotiations**

*and the need to respect "tradition"*

There were two "bottom lines" drawn in Rome. The Contact Group broke down over the G77's bottom line (forcefully presented by Malaysia) on the nature-for-debt swap. The Green room negotiations also collapsed when the Australians tried to drive back the debate over Farmers' Rights to the Leipzig dispute over "the *concept* of Farmers' Rights" and other governments asked the Aussies to "reserve" on the contentious para rather than to stall the negotiations. When the Australians refused, and the Legal Counsel had to be brought in to mediate, the game was over.

There is no doubt that Australia had every right to insist that the term "concept" (encased in square brackets) be inserted in the contentious paragraph. Normal protocol would have kept the brackets intact until the closing moments of the negotiations when the majority would have been within their rights to force Australia to reserve in a footnote at the bottom of the text. That the South - quietly applauded by Europe - tried to force the Australians out was not a breach of etiquette but a stunning indication of the overwhelming frustration of the Green room with the obnoxious Aussie strategy. The accumulated Aussie

sins - going back to Leipzig and marching (remorselessly unrepentant) through the Food Summit, all the manifestations of the Biodiversity Convention, and all the encounters in Rome - were just too much. Combined with the country's inexcusable string of public sector biopiracies, there is no longer any credible support for allowing the delegation to remain in the negotiations. Neither the European Region nor the South would want to join any club that would admit Australia as a member. Given that Australia - more than any other industrialized country - needs access to the South's germplasm, this leaves the next negotiating round two choices: either force the Aussies out early in the session - or establish an IQ test for IU membership.

Indeed, the issue is no longer "whither Australia" but "dither Canada and the USA". Neither country wants to be isolated. The U.S., especially, is struggling in Washington (apparently unbeknownst to the Happy Gang in Rome) to become a team-player. The Canadians - without noticeable political guidance - are the rudderless captives of a handful of Ottawa bureaucrats. Nevertheless, Canada won't fly far from the American nest - and the Japanese follow so closely behind the USA as to be charged less with mimicking than molesting. So, the question is - with Australia gone - is it worth compromising to keep North America and Japan in?

When in doubt look to tradition. As much as the South is calling upon the North to respect the traditional rights of farming communities, these governments are asking the Commission to respect their traditional right to drag their feet. None of these countries rushed to join the Commission and some are still not members of the IU. The USA has still not ratified the CBD. Traditionally, these countries hold back to see how new treaties perform in practice before signing on. This is a legitimate tradition that needs to be respected.

But not coddled. Acknowledging their traditional rights, the large majority of states in Rome should go on about their business of creating a just and equitable IU. In the final moments, Canada will clamber on board. Within the decade, the USA and Japan will finally join (although they will have been adhering to the guidelines of the IU from the outside from the beginning.) And Australia will come home when it gets hungry. All this should be understood at the opening of the Commission's next extraordinary session in November.

### **Same Time Next Season**

*But, first - summer school in Scandinavia?*

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Even as the Commission was collapsing about their ears Friday evening, delegations were talking - publicly and privately - about the need for another extraordinary session later this year. The most likely occasion is the last week of November immediately following the FAO Council. Most representatives also recognized that to leap from a failed June session straight into a November negotiation would be to invite disaster unless the way to the next round is guided by some informal consultations. The Europeans have their own opportunity to lick their wounds in Braunschweig the last week of June when governments and scientists gather to evaluate their progress in implementing the Leipzig GPA. (Here's a meeting that could end early!) The remaining Northerners (the 'bad-attitude' kids) can rap whenever they want to mug somebody on a street corner.

Its not so easy for the South - and still more difficult to put together the kind of small, informal South-North exchange that can really make a difference. Realizing this, some delegations were pressing the Chair

to gather up a handful of friendly foes to discuss the true meaning of life - perhaps on a Swiss mountain. A good idea, others agreed, but one that could compromise the Chair's vital independence at a time when he is most needed. Then there was the Canadian initiative. Pooh-poohing moderation and mediation as over-rated nonsense for sissies, the Canadians were buttonholing South diplomats and proposing to drag them off to Canada for a little arm-wrestling. If Canada was too far, they suggested, Switzerland could provide a neutral venue for their version of "extreme diplomacy". Just to make the Canadian offer more tempting, the Aussies let it be known that they too might want to invite a few select countries to break heads with them Down Under. Given that the Aussies can't seem to find Samoa for a regional meeting, the chances of such a meeting are thankfully remote.

Strangely silent, in these last-minute ruminations, were the Norwegians. It was Norway, after all, that took a handful of respected negotiators for a walk in the woods last autumn. That led to the best Commission round ever when countries convened in Rome in December. A number of countries - including several that did not journey to Norway - were dismayed when this June session was not preceded by a second Nordic stroll. In retrospect, Norway's failure to follow the logical sequence from last year made progress this year that much more difficult. Has Norway lost interest, diplomats worried?

The case for summer school in Scandinavia (it doesn't have to be Norway) is persuasive. ... Accepting that virtually everyone sees an urgent need for informal dialogue, that meeting should take place without jeopardizing the Chair or endangering the lives of dissident delegates at odds with their host. The Scandinavians have both the reputation and the precedent of last summer's outing. They have a process that has been proven to work. The fiasco in Rome should be a clear sign to everyone that this is not the time to mess with a winning formula - or to back away from a responsibility rightfully earned.

## The Numbers Game

### The quality of global governance in the FAO Commission

There were 275 delegates from 118 countries present in Rome. Beyond governments, the meeting drew another 55 observers from CSO's (Civil Society Organizations), industry, and intergovernmental bodies. Although more than two-thirds of the governments were from the South, they barely comprised half of the total delegates. Governments in the North averaged 3.3 persons per delegation while South delegations averaged 1.9 persons. The sharpest contrast was between non-European OECD states (with an average of 6 persons each) and African countries (who averaged 1.5 persons).

### Class Roster

Category	Countries/ Institutes		Delegates/ Observers		
	No.	%	No.	%	Avg.
<b>North</b>	38	32	125	45	3.3
Europe	32	27	94	34	2.9
North America	2	2	13	5	6.5
(Developed) Asia	2	2	11	4	5.5
(Developed) SW Pacific	2	2	7	3	3.5
<b>South</b>	80	68	150	55	1.9
Africa	33	28	51	19	1.5
Asia-Pacific	14	12	26	9	1.9
Latin America/ Caribbean	19	16	50	18	2.6
Near East	13	11	22	8	1.7
SW Pacific	1	1	1	0.4	1
<b>TOTAL</b>	118		275		2.3
UN/Intergov.	6		8		1.5
NGO	12		25		2.1
CGIAR	3		22		7.3
<b>GRAND TOTAL</b>	118		330		2.8

The number of delegates per country is important. The Commission conducted most of its work in an "open-ended" Working Group (on Farmers' Rights) and a Chairperson's Contact Group (on access and benefit-sharing). While the Contact Group meeting in the Lebanon room was formally limited to three representatives from each region, every state was free to send observers to ensure that their regional reps were defending their interests. North America with only two countries and an average of 6.5 delegates each - had the bases covered. Southwest Pacific - a cute Aussie contrivance - also had the bases loaded since Australia and New Zealand were only slightly behind North America in delegate strength. Meanwhile, most African states had only one representative and found themselves in the wide-open Farmers' Rights debate in FAO's Green room without access to the access negotiations several corridors away.

The net effect of this configuration, of course, was that the North's intransigent "hard-liners" (Australia, New Zealand, Canada, and the USA) all had seats in the Contact Group. Most disadvantaged of all was the delegate of Samoa who was forced into the Southwest Pacific alongside Australia and New Zealand. Despite sincere attempts by Samoa to meet with his

regional colleagues, the OECD states have managed to sidestep every meeting while still pretending to carry the banner and interests of the people of Southwest Pacific. The situation has grown to one of general embarrassment for FAO and the Commission. The Aussies act as though they are oblivious to the

absurdity.

Class Report Card:

## 21 Countries that Made a Difference

(For better or worse)

Country	Comment
<b>Angola</b>	Together with Ethiopia, Angola continues to be an African leader in the benefit-sharing debate. Although the delegation has gradually become more pro-multilateral system during the course of negotiations, it continues to see an unnatural divide between pre- and post- CBD germplasm - and to expect windfall profits from crop material.
<b>Australia</b>	Without doubt the least popular delegation in Leipzig, Bratislava, and Rome, the Australians best blooper was to tell the Commission that they were too new to have agricultural traditions in the context of Farmers' Rights. Tell that to Aboriginal communities! The Aussies have offended others with their ostrich-like avoidance of the UPOV (Plant Breeders' Rights) scandals at home. To top this off, the Aussies continue to move far to the right of the world seed trade in refusing to accept Farmers' Rights or even their right to save, exchange, and develop plant varieties obtained commercially. Europe and the South tried to force the Australians to "reserve" on key paragraphs but the delegation preferred to filibuster the negotiations rather than to let the majority move along.
<b>Brazil</b>	Except for a last-minute temper-tantrum at the close of negotiations, the Brazilian delegation ranked among the most constructive in the meeting. No one has ever denied the Brazilians their professionalism but this is perhaps the first time the delegation has come out strongly on the side of Farmers' Rights and in favour of a multilateral mechanism of benefit-sharing.
<b>Canada</b>	In the Chair's Contact Group on Access and Benefit-sharing, the Canadians were diligent, persuasive, and on the far right of Europe and the South. A fair and honourable position when argued intelligently. In the Working Group on Farmers' Rights, however, the delegation embarrassed itself by offering clumsy and widely unacceptable formulae for the right of traditional communities to save and trade seed that seemed to suggest they had lost touch with reality. When an Ottawa "homey" took the floor to lecture his diplomatic brethren on the fine points of human rights policy in Canada - no farmers' rights, no fishers' rights, no special rights for any special grouping of people - others had to remind him that Canada did legislate Plant Breeders' Rights and even raised these rights to the level of an intergovernmental convention (UPOV). Canada's National Farmers' Union immediately protested the delegate's intervention and wrote to the Ottawa cabinet complaining that the delegation's statements went beyond policy and beyond the Canadian seed trade.
<b>China</b>	When the Chinese delegation appeared in force - for the first time - at this fifth extraordinary negotiating session, many delegations feared the worst. In fact the Chinese were careful and constructive, only speaking out passionately in defence of Farmers' Rights. If their involvement continues, China could become a major factor in the closing rounds of the IU.

<b>Colombia</b>	With Ethiopia and Malaysia, Colombia took a leadership role in the Contact Group on Access and Benefit-sharing and won high marks for its energy and commitment. Somewhat surprisingly, Colombia also took a constructive lead on Farmers' Rights - not usually its favourite topic. For the first time in years, the voices coming from GRULAC were harmonious and helpful.
<b>Denmark</b>	A delegation rarely heard from in FAO, Denmark continued to be low-key and cautiously EU-loyal but, for the first time, its diplomats won praise from all quarters for positive negotiating skills and a willingness to talk with - and listen to - opposing factions. Understandably, Denmark was especially strong on Indigenous Knowledge and Farmers' Rights.
<b>Ethiopia</b>	Armed with an unusually large and strong delegation, Ethiopia comfortably covered the issue waterfront and was central to the debates on Farmers' Rights and Benefit-sharing. While Ethiopia proved it had thought through the myriad interrelationships between CBD and the IU, it continues to hope for a percentage share of commercialized germplasm payable directly to the (mythical) country of origin.
<b>France</b>	Suddenly at the CBD's COP IV in Bratislava, France blossomed into an energetic, articulate, and progressive negotiator. Its interventions were constructive and it was a team player in EU meetings. This, after years of inertia and irrelevance. Delegations in Rome - who were almost waiting to greet the French on the Commission's doorstep - were disanointed. Back to the <i>ancien regime</i> ?
<b>Germany</b>	Still one of the clearest heads on benefit-sharing and the future form of a multilateral system, Germany has been a crucial buffer, within the EU, to the conservative temperament of the British and French.
<b>India</b>	It's never quite clear whether India is sending a negotiating delegation or if a visiting lecturer got off at the wrong metro stop. The thrust of India's interventions were perfectly alright but listeners were always left with the impression that, something like Eliza Doolittle in <i>My Fair Lady</i> , it wasn't what was said that counted but that it was said with as many words as possible.
<b>Iran</b>	Part of the Rise of the Near East in gene debates, the Iranian delegation is always soft-spoken and substantive.
<b>Japan</b>	Coming up fast behind Australia and Canada as the most objectionable negotiators, the Japanese distinguished themselves in the Working Group by referring to Farmers' Rights as "blah, blah, blah." Most other delegations believe the Japanese will follow the U.S. lead, so there is little need to listen to them anyway.
<b>Malaysia</b>	OECD governments generally view Malaysia as both the toughest and most rational negotiator from the South. While the focus has been on establishing a multilateral system for germplasm exchange and benefit-sharing, the Malaysians never seem to lose perspective and manage to keep the whole outcome in sight.

<p><b>Netherlands</b></p>	<p>The UK may have assumed Presidency of the EU but the political leadership on genetic resources came unquestionably from its immediate predecessor across the channel. Working hard on access and benefit-sharing, The Netherlands was caught off-guard by the pace of change within the South. Nevertheless, it tried its best to catch up in the final hours and did much to set the stage for a better round in November.</p>
<p><b>Norway</b></p>	<p>Far and away the most popular European delegation in the Commission (although the competition is seldom intense), Norway bluntly called for a mandatory fund and gave outspoken support to Farmers' Rights. As some U.S. diplomats were quick to point out, it might have just been North Sea oil talking - but, then again, Norway isn't a quarter of the world's economy either. The delegation performs consistently in both CBD and FAO fora and comes to negotiations with representation from both environment and agriculture ministries. This makes a constructive difference.</p>
<p><b>Philippines</b></p>	<p>Arm-in-arm with Ethiopia, the Philippines led the South on Farmers' Rights and provided the best-reasoned and practical description of the traditional rights of farmers and their communities in germplasm conservation and enhancement. Not surprising really since the diplomat - despite more than a decade's experience in intergovernmental fora, is also from a grassroots Civil Society Organization.</p>
<p><b>Syria</b></p>	<p>"Farmers' Rights are sacred," said the delegate simply - and those words were repeated in the meetings and corridors for the remainder of the week. The issue that was to be sacrificed on the alter of benefit-sharing suddenly became the cause celebre of the Commission.</p>
<p><b>United Kingdom</b></p>	<p>It's hard to watch diplomats argue against their personal opinions without feeling some sympathy for their thankless plight. Yet the UK delegation - on behalf of all their diverse colleagues in the EU - had to argue against their own views and the views of their country - and did so in a manner that generally earned the respect of not only the EU but everyone in the room. One blooper - the UK seems to be unique among European countries in not understanding collective or community rights, and said so.</p>
<p><b>United States</b></p>	<p>U.S. delegates won rare praise from their colleagues in other countries for their pleasant and positive approach to negotiations. After years of sending mean-spirited pugilists with conflicting or inadequate instructions, this time the USA sent nice guys with conflicting or inadequate instructions. Since two variables only offer a limited number of combinations, the odds are improving that another negotiating round could actually see the USA arrive with nice guys and an intelligible brief.</p>
<p><b>Venezuela</b></p>	<p>The Commission is chaired by the Venezuelan delegate. Without question the right person at the right time in these tense negotiations he is also the best Commission leader in a decade.</p>
<p><i>Sowing and Weeding</i></p>	
<p><b>Germinating</b></p>	<p>Denmark warrants special mention along with Libya - lost to the Commission for these many years - now back to provide scientific and political acumen. Switzerland and Poland are becoming Northern Lights while Mexico (perhaps spurred on by Via Campesina) and Zambia are forces to be reckoned with.</p>



**Terminating**

Although it always ranked high among the movers and shakers, Sweden was invisible at this Commission meeting. Some who met the delegation think this is the "good news".

### **Class-outings**

*There's no such thing as a free lunch - except at FAO*

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ITDG (Intermediate Technology Development Group, UK), RAFI, and ASSINSEL all held lunchtime seminars during the Commission. Here's a report on two of the sessions.

#### **Moribund Moratorium**

*Whither the Aussie-UPOV Scandal?*

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Notably absent in the crowd of delegations in the Austria room Tuesday lunch was Australia, although ITDG made it clear that the meeting was not "target practice" for the Aussie-UPOV scandal but a wider-ranging opportunity to discuss BioPiracy and the joint FAO-CGIAR call for a voluntary moratorium on intellectual property claims concerning CG germplasm. One European delegate, in fact, suggested that the Australians had received explicit instructions to stay away from the session. The meeting began with RAFI's account of developments since the last Commission meeting. Several countries - New Zealand, Israel, Italy, and the USA included - were involved in allowing inappropriate PBR claims on plant varieties. RAFI had uncovered instances where public institutes had violated the FAO-CGIAR accord. Five varieties from two CG centers claimed by one Australian agency had been abandoned under pressure from the international community. In total, however, more than 118 inappropriate PBR claims were being reviewed involving germplasm that appeared to have been collected in more than thirty countries. In some cases, public agencies had violated Material Transfer Agreements that obliged them to seek the permission of the country of collection before proceeding with PBR applications. In other cases, public bodies had received finished varieties from a center such as CIMMYT and applied for PBR in New Zealand, for example, without undertaking any breeding work or even informing CIMMYT of their actions. In yet other cases, MTAs that allowed a public body to take out PBR in its own country but prohibited claims in other countries had also been violated. RAFI was surprised to find that public institutions in Australia had obtained germplasm from a CG centre and then granted exclusive licences for the identical material to private companies - even though the public body had no legal claim to the material. In the end, RAFI reported, every State in Australia except the Northern Territory was involved in the possible abuses along with several universities and national research centres.

RAFI approached the Chair of the CGIAR suggesting a voluntary moratorium. The Chair agreed and the call was joined by FAO. FAO's legal counsel also played an active role in making various institutions aware of the legal realities surrounding the FAO-CGIAR Trust Accord. In response, the representative of CGIAR reported that - together with FAO - work was underway to strengthen the SINGER database system. CG centres have also adopted a common MTA and have agreed upon measures to be taken when violations of these MTAs occur. FAO and CGIAR are working to review other elements of their cooperation that could safeguard trust germplasm.

The CG representative and FAO's Legal Counsel congratulated CSOs for their work in monitoring the Trust Accord. Perhaps the most provocative comment during the lunch came from the representative of UPOV who confessed that countries such as Australia, New Zealand and Israel, because they are dealing with less-developed tropical species, might find themselves in such situations from time to time. He went on to suggest that the next generation of breeding work would be more conventional. As RAFI noted immediately, this implied that UPOV and countries should be content with allowing biopiracy until such time as the pirates had obtained everything they needed. In fact, UPOV should be taking the lead in fighting such piracy and in developing monitoring and other procedures that would halt the practice.

But what of the moratorium? A full debate on the moratorium may not arise until the next ordinary session of the Commission in 1999. RAFI is urging OECD gene banks to follow the lead of the Netherlands in voluntarily amending their own MTAs to oblige seed recipients to comply with the FAO-CGIAR Trust Accord when they suspect that the germplasm they receive is part of that Accord. While some governments are actively considering this possibility, RAFI was surprised to learn that the Nordic Gene Bank - a Bank that works closely with germplasm networks in East and Southern Africa - had refused to comply with the FAO-CGIAR Trust.

### **Talking Terminators**

#### *Making an offer farmers can't refuse?*

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On Friday, RAFI and the Vice-President for Technology Transfer of the Delta and Pine Land Company (USA) co-sponsored a debate on Terminator Technology. The technology renders seed sterile in the second generation so that farmers cannot save seed for replanting. RAFI - and many other CSOs - have called for the technology to be banned by governments and public research institutions such as the CGIAR.

Delta and Pine Land Company is a large cotton seed enterprise that has just agreed to be acquired by Monsanto - one of the world's largest life industries. Monsanto, in turn, has agreed to be bought by American Home Products - a still larger multinational chemical, drugs, and consumer goods conglomerate. The representative of the company argued that Terminator technology would help solve world food problems and be a boon to farmers. The company believes that farmers have been misled into believing that they should save old seed rather than buy the best new varieties every year. Farmers, the company insists, don't have to buy the technology if they don't want to.

RAFI disagreed. According to the company's own releases and interviews, they see a market of one billion acres (more than 400 million hectares - an area approximating the land mass of South Asia) within the next few years and are targetting the development of wheat and rice for such countries as China, India and Pakistan. The president of the company has suggested that the value of their patent could be as high as US\$1.50 per acre. RAFI argued that farmers who save seed are also developing improved varieties adapted to their specific land and needs. To deny farmers this ability is to destroy genetic diversity and threaten the lives and livelihoods of the 1.4 billion people who now depend upon farm-saved seed. Further, RAFI is concerned that the Terminator trait could "leak" into neighbouring fields and cause sterility among the crops of other farmers. Since there is no agronomic benefit to the technology there is no need to take the risk, RAFI claims. Finally, RAFI believes that a variety of regulatory and commercial pressures could



force farmers to adopt Terminator technology even if they have no wish to do so. Similar interests combined to destroy much of the genetic diversity of Europe, RAFI notes, and to impose the Green Revolution on some groups of reluctant farmers.

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