ETC group

Translator

http://www.etcgroup.org/documents/trans_treaty_dec2001.pdf

Volume 3, No. 1 December 2001

The Law of the Seed!

I remind all of those present and especially our authorities that the FAO recently recognized on 3 November the role of seed stewards and custodians and the incalculable contribution that they have given to all of humanity. Although we know that the recognition approved is insufficient. How many of those here knew about this contribution? How many realize that traditional knowledge about seeds should not only be respected, but also protected?

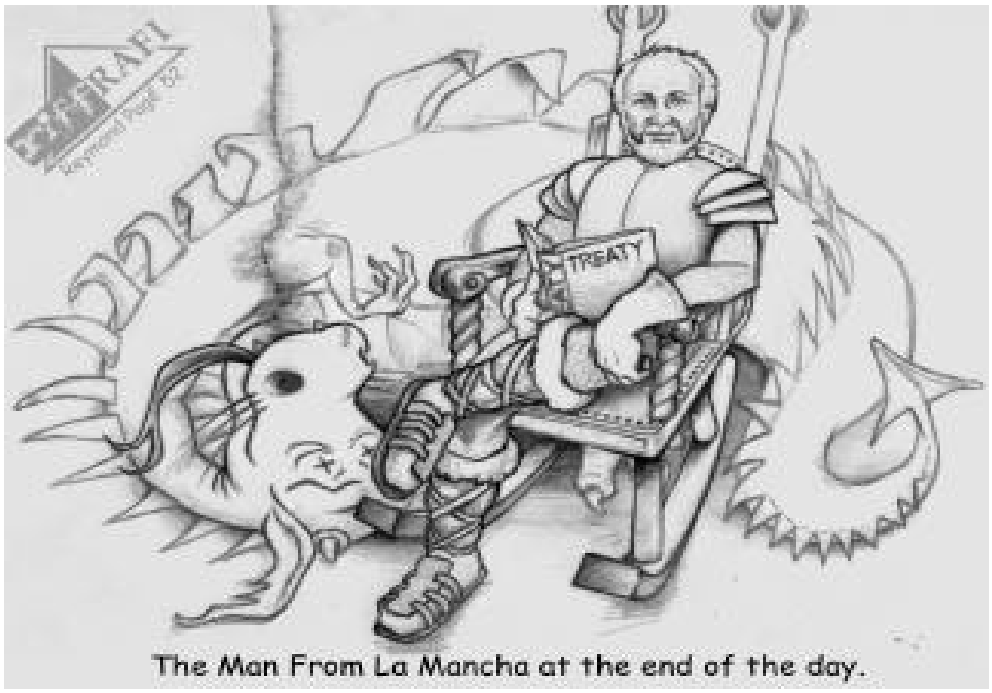
Eris Coronado, farmer and representative of Mapuche women "curadoras" (stewards) of the seeds, Temuco, Chile, 29 November 2001

The first global accord of the 21st century, the International Treaty on Plant Genetic Resources for Food and Agriculture, was adopted by consensus on November 3rd, 2001. After seven years of acrimonious debate, the convoluted text can't be read without recourse to the Rosetta Stone. Seen as a "white elephant" by some, and as the "mouse that could roar" by others, history will come to know it as "The Law of the Seed" - a major step toward food sovereignty and justice.

The Biocrats - some of the key participants in the Chair's Contact Group

Is it a White Elephant…
Or the Mouse that could roar?

Issue: For the first time, the world has a legally binding treaty to govern the conservation and exchange of vital crop germplasm. Its central component is a Multilateral System that assures member states "facilitated access" to 64 food crops accounting for about 85% of global human nutrition. However, the treaty very broadly covers *all* genetic material for food and agriculture and encourages governments to adopt Farmers' Rights and support a rolling Global Plan of Action for germplasm security and use. Constraints are placed on intellectual property over seeds in the Multilateral System and obligations are imposed for benefit sharing when accessed seed is commercialized. The treaty is explicitly *not* subordinated to other trade or environmental protocols. That's the good news. The bad news is that you could ride a tractor through the patent provisions; there's no real money on the table; Farmers' Rights is still an uphill struggle; and some crops vital to poor people will not easily be shared.
Impact: This is a "platform" treaty. The legal foundation is firm and the Governing Body can use its scaffolding either to build a very powerful convention for food sovereignty and seed conservation – or to hang themselves along with the world's farmers. However, the potential for good should not be underestimated.
Policies: Governments must ratify this treaty quickly - if possible, by the World Food Summit in June 2002, so that the Governing Body can meet during 2002 or early in 2003. If the Interim Committee tangles itself in negotiating Material Transfer Agreements or benefit-sharing percentages, the ratification process could be slowed.
Fora: The June 10-13 World Food Summit in Rome should highlight the treaty as a major contribution to Agenda 21 and governments should present their instruments of ratification at the Summit. The UN Food and Agriculture Organization (FAO) is about to begin a series of regional meetings that should spur governments to ratify.



Special note: This issue of the ETC Translator contains cartoons drawn by Reymond Page that commemorate the seven-year negotiation. Few – other than those delegates directly involved – will be able to fully appreciate the light-hearted humour intended. Nevertheless, for the historical record, we felt they should be included.

The "Seven Year Bitch":

After so long, is it a victory… or has it just stopped hurting?

The negotiations took seven years, but the battle to create a legally binding global commitment to conserve crop genetic diversity and entrench a mechanism for the equitable sharing of agricultural germplasm and benefits took 20 years almost to the day. After all that, the treaty's fate was sealed with two quick votes. The first ballot came on a U.S. motion to strike Article *12.3.d* from the accord, thus omitting any negative reference to intellectual property concerning so-called "facilitated access" to seed. By axing the clause, the Americans hoped to leave the "patent" issue subject to national interpretation. When the delegations sorted out their green buttons from the reds and yellows, the electronic scoreboard at the side of the plenary permitted no ambiguity: 97 against the U.S. proposal and ten for (and three delegations pleading colour-blindness). That done, the ballot to adopt the treaty was immediate - 116 in favour, two abstentions (the USA and Japan) and two delegations lost in the toilet. There were no contrary votes. The room erupted in applause. To the pleasure of everyone, Jacques Diouf, FAO's energetic Director-General, bounded into the hall and embraced the podium potentates, virtually dancing his delight.

What's in it for Food Sovereignty?

The treaty:

- *Re-affirms* the right for germplasm of food crops to be exchanged without constraint among farmers and scientists, safe from intellectual property restrictions;
- *Confirms* (though ineffectively) the right of farmers to save, breed, or exchange any seed under any conditions;
- *Presents* (but does not protect) Farmers' Rights as Human Rights;
- *Affirms* that those profiting from seed exchange owe payment to farmers through a common fund to be used to conserve and enhance seed, especially in the South;
- *Asserts* intergovernmental control over the world's most vital agricultural resource - the gene banks of the CGIAR;
- *Subordinates* intellectual property for the good of free exchange;
- *Ensures* that The Law of the Seed is not subordinate to the WTO or anyone else;
- *Establishes* a legally binding international platform upon which additional protocols and codes can be erected to strengthen food sovereignty.

Then followed hours of congratulatory speeches. Self-adulation is *pro forma* at such diplomatic watersheds. It is also customary to treat any and every step in any direction as the biocrat's equivalent of the Sandinistas entering Managua. This was something more. There was an unmistakable genuineness when the most trusted delegate in the hall, Jan Borring of Norway, moved thanks to the most feared and respected delegate in the room, Fernando Gerbasi (dubbed "San Fernando di Spoleto" after one grueling battle), for chairing the long negotiations. Then, too, the constant naming of Prof. Pepe Esquinas and Clive Stannard – sometimes seeming to be the only two people in FAO who believed in the treaty – went well beyond courtesy to something akin to cult worship. At a party thrown by Gerbasi that night, most of the biocrats expressed astonishment at their own delight with the final text.

Even the Americans – garrulous, charming, and in no way muted by their loss - seemed impressed by the achievement.

The Inconsistent Gardener: Two days before the vote – scrounging for food at 2am, and waiting for a fractious plenary to resume – many of the Europeans likened the embattled treaty to a "white elephant" – big, gaudy, and a blight on the landscape. If it passed, would it be worth having? Was it not so full of holes and ambiguities that it would be better to let it die? If a "spectacular failure" could be arranged some argued, wouldn't that create a better political environment than a mediocre success?

Sufficient time has now passed since the vote that it may be possible to offer a more balanced analysis. We would not argue that this is a wondrous treaty. Nor is it, as some now maintain, the "best that could be achieved under the circumstances." The international community – including CSOs (Civil Society Organizations) - could have done better. The handling of Farmers' Rights, the list of crops for facilitated access, and the financial aspects of benefit sharing was shameful. Despite this, the legally binding treaty, with an access list including most of the world's major food crops, offers a good platform upon which to rebuild international cooperation and public sector agricultural science. In the years ahead, the treaty will be a platform to be proud of as long as governments ratify it quickly and as long as the FAO realizes it has a horse it should run with.

Here is how it all played out in the final days and hours and our translation for farmers and policy-makers…

A *Durian* by any other name:

The patent provisions are thorny on the outside, stink when you open them, but may be easy to swallow;

The durian is a fruit highly prized in Southeast Asia. It is famous for its inhospitable and prickly skin, it smells like a toilet once it is cut open, but tastes very sweet once you screw up the courage to bite into it. The same could be said of the intellectual property elements of the treaty – or, maybe, about the treaty *in toto*?

From the outset, it was understood that intellectual property would rival financial benefit sharing as the really tough treaty roadblock. The G77 – with varying degrees of dissatisfaction – knew all along that there would be no treaty – and no point in negotiating for one – unless they ultimately allowed some level of intellectual property related to some forms of derivative inventions arising from seeds within the exchange system. Some in the South hoped that they would be able to bargain patent rights for financial commitments. Even within Africa and India where the militancy against monopoly is highest, biocrats knew that some concessions would have to be made if for no other reason than to keep the G77 unified.

But there was disagreement as to *where* the concession should be made. Every country (and company) agreed that any germplasm exchanged under the wing of the Multilateral System (of seed exchange) should remain forever in the public domain "in the form received" – meaning that no one should be allowed to slap a patent on a seed they just got in the mail through the System.

The Intellectual Property Fight

(italicised text indicates disputed language.)

Article 12.3.d. "Recipients shall not claim any intellectual property or other rights that limit the facilitated access to the plant genetic resources for food and agriculture, *or their genetic parts or components, in the form received* from the Multilateral System; "

And this is where agreement ground to a halt. The United States insists that the simple acts of isolating and purifying a gene extracted from a seed is sufficient to make it an invention. It is no longer "in the form received."

Europe and the South disputed the U.S. interpretation. The G77, with the EU's nervous agreement, included the phrase "parts and components" to emphasize that individual genes or fragments of DNA siphoned from an exchanged seed could not be patented. By merging the two caveats – "parts and components" "in the form received" – room was discreetly made for breeders to take exchanged germplasm, extract commercial genes, insert them into other plant varieties, and claim a patent either on the new variety or on the extracted genes as adapted to the new varieties. The original material – including all its bits and pieces – would remain in the public domain for others to use and even commercialize.

The Americans demurred. Knowing full well that many governments would accuse them of violating the treaty if they attempted to simply isolate and patent genes, they either wanted specific recognition of their "right" to do this, or they wanted the entire discussion removed from the treaty. They lost. In fact, it later turned out that three of the ten states that voted with them had pressed the wrong button.

Seedy solutions: The final text solves little. While there is space to argue that under some conditions and after considerable additional breeding work, exchanged germplasm could be incorporated into products that are attached to intellectual property, there is no clarity as to how much breeding work has to be done for this to be permissible. Having run out of negotiating time (and space) on October 31st, governments wisely opted to pass the buck onto the treaty's Governing Body.

Action Translation: No attempt to resolve the ambiguities of the text should be made by any non-party to the treaty. Action must await the Governing Body. That body may choose to convene formal meetings with WIPO and the WTO to discuss areas of potential problems between the Multilateral System and Farmers' Rights on the one side, and patents and Plant Breeders' Rights on the other side. If ambiguities remain, the parties to the treaties involved could seek resolution before the International Court of Justice.

From IU to IOU:

Not many benefits to share

Somewhere along the way, the International Undertaking (IU) became a Treaty, and benefit sharing became an IOU. Everyone knows that plant genetic resources are the first link in the food chain and consequently worth untold billions of dollars per year. FAO's member governments know that Farmers' Varieties – the stuff found in Third World fields and major gene banks – will be our best defense against Global Warming, agro-terrorism, and the normal whims and caprices of nature. Grudgingly, even OECD states acknowledge that there has been a highly profitable flow of the South's seeds into the North's fields and even the U.S. Government has conceded that this value runs to billions of dollars over the years.

Despite this, there is no real money on the table as a result of the treaty. Norway was prepared to vote for mandatory funding. It was prepared to pay an annual sum, based on the UN formula, or on an industry calculation, that would go into a trust fund to finance the Global Plan of Action for crop germplasm. The Plan had been adopted during the 1996 Leipzig Conference. Although European governments clearly have the intent to commit more funds to the conservation and enhancement of plant germplasm through the treaty, they were unable to commit to a mandatory formula. For their part, the United States was prepared to admit that it should pay, but was not ready to set a price or a process.

The talks had been stalemated over the issue of benefit sharing for years. The South was being asked to abandon thoughts of demanding that their seeds be repatriated and traded bilaterally in favour of a free exchange mechanism that would promise nothing. The North was being asked to pay for research seed they either already had – or that they could have through international gene banks. Hardly the best basis from which to achieve agreement.

In an attempt to break the deadlock, the seed industry came to the Tehran meeting of the Contact Group in August 2000 and offered to pay a percentage of the royalties they earn from germplasm they obtain through "facilitated access" that has been incorporated into patented products. Although everyone knew the actual amounts would be small, industry's willingness to establish the principle of sharing profits and paying for access was treated as a major breakthrough. The proposal was adopted in principle.

However, at the next meeting in Neuchatel, Switzerland in November 2000, the USA came out against the proposal and hinted darkly that some companies were being strong-armed into the deal by others. Norway proposed to toughen and broaden the industry offer. By May of this year, the seed industry was pulling back further, but governments had determined that industry payments would be mandatory. To the relief of CSOs, it was agreed that the payments would be tied to "commercialization" not (at least explicitly) to royalties.

The IOU

The Contracting Parties agree that the standard Material Transfer Agreement referred to in Article 12.4 shall include a requirement that a recipient who commercializes a product that is a plant genetic resource for food and agriculture and that incorporates material accessed from the Multilateral System, shall pay to the mechanism referred to in Article 19.3f, an equitable share of the benefits arising from the commercialization of that product, except whenever such a product is available without restriction to others for further research and breeding, in which case the recipient who commercializes shall be encouraged to make such payment.

The Governing Body shall, at its first meeting, determine the level, form and manner of the payment, in line with commercial practice. The Governing Body may decide to establish different levels of payment for various categories of recipients who commercialize such products; it may also decide on the need to exempt from such payments small farmers in developing countries and in countries with economies in transition. The Governing Body may, from time to time, review the levels of payment with a view to achieving fair and equitable sharing of benefits, and it may also assess, within a period of five years from the entry into force of this treaty, whether the mandatory payment requirement in the MTA shall apply also in cases where such commercialized products are available without restriction to others for further research and breeding.

An I.O.U.: Nevertheless, the final language – still opposed by the United States – *de facto* anchors industry payments to patented material. It also leaves the percentage payment for the Governing Body to resolve. So, no billions… but for the first time, OECD acceptance that payment has to be made for something that is given that profits the OECD.

The negotiations had to confront three truths:

1. No one knows what the world is going to need. Germplasm flows are usually only invaluable *over time* and *in large quantities;*
2. The benefits of germplasm exchange do not accrue solely or especially to the seed industry, or farmers, or processors and retailers – but to the whole society. Trying to tie payment to any single sector means to either bankrupt that sector or under-price the resource;
3. Whatever the text, the treaty establishes a political obligation on OECD states to directly and indirectly provide financial benefits.

Action Translation: Governments, especially in OECD countries, need to document the real progress they have made in supporting plant genetic resources since the 1996 Leipzig Conference. Progress *has* been made. Then delegations to the Governing Body need to get real about what they can provide in the years ahead. Once the treaty is in force, the rolling Plan of Action can be reviewed and begin to roll. ***Warning***: the review process should not delay action based on the Leipzig agreement.

Farmers' Rights Wronged:

But the hypocrites will have another chance

One of the worst moments for the negotiations came about in 1999 when late one night the Contact Group adopted the treaty's article on Farmers' Rights. The article contained language filled with praise for farmers and stirring resolve that their right to save and sell seed should be unconstrained. However, the final wording failed by subjecting all the good language to national legislation and offered no avenue for international action. For the first time since Farmers' Rights was raised by CSOs at FAO in 1985, the South accepted that its realization would be "national" and allowed its international Human Rights dimension to be ignored. Only Norway, the Philippines, and Poland were alarmed by the sudden agreement, and urged delegations to sleep on the deal before agreeing. They were over-ruled.

Farmers Wronged

In the preamble *(emphasis added)***:**

Affirming also that the rights recognized in this treaty to save, use, exchange, and sell farm-saved seed and other propagating material, and to participate in decision-making regarding, and in the fair and equitable sharing of the benefits arising from, the use of plant genetic resources for food and agriculture, are fundamental to the realization of Farmers' Rights, as well as the promotion of Farmers' Rights at *national and international* levels;

Where it counts *(emphasis added***:**

9.3 Nothing in this Article shall be interpreted to limit any rights that farmers have to save, use, exchange, and sell farm-saved seed/propagating material, *subject to national law and as appropriate*.

Hearing about the result still later in the night, CSOs called hotel rooms to awaken delegates to the failure. Early in the morning, delegates were confronted during their regional caucuses and urged to re-open the text. Some claimed that they didn't understand the problem. Others averted their eyes and said their hands were tied.

There was never any real chance that civil society would get what it wanted for Farmers' Rights in the treaty. Rhetoric aside, Latin America was against Farmers' Rights and even Ethiopia and Malaysia played coy. The best hope had been to use Farmers' Rights as a bargaining chip either in benefit sharing or in intellectual property negotiations. If Farmers' Rights could remain in the treaty as an international Human Right, possibly with a resolution attaching it to the UN's wider work on The Right to Food, farmers would get all they could. But the card was played unforgivably, and the international dimension of Farmers' Rights seemed lost.

In the countdown to adoption (as if by magic), a new paragraph appeared in the preamble that although it lacks the political force

of an article, strongly presented Farmers' Rights as an international right and claimed the right of farmers to save, exchange, or even sell any seed they access.

Action Translation: Farmers' Rights should be discussed within the framework of Food Sovereignty at the June 2002 World Food Summit. The Commission on Genetic Resources for Food and Agriculture could forward the issue of Farmers' Rights to the UN Office of the High Commissioner for Human Rights. When, the Commissioner is reviewing the Right to Food next July-August, the rights of food producers must be considered. CSOs will also be able to return to the Governing Body to develop interpretations and extensions to Farmers' Rights within the operations of the treaty. Supplementary protocols – supported by some or all countries – could be possible.

Serf 'n Turf:

The crop list is poor for farmers and the CG is listing poorly

The treaty encompasses all plant genetic resources for food and agriculture. However, only the 64 food crops in Annex I of the treaty will receive "facilitated access" as part of the Multilateral System.

Depending on whom you talk to, the list of crops in the Multilateral System designated for "facilitated access" amounts to either 80 or 90% of the crops most vital to world food security.

Much depends on where you are hungry. If you are hungry in South Asia or the Middle East for example, you will not be happy to learn that "minor millets" have been kept off the list. If you are hungry in Sub-Saharan Africa, the absence of cassava's wild relatives – the ones that scientists are trying to use to increase crop protein – is certainly bad news. If you are among the world's pastoralists – always among the poorest and most exploited – then the absence of almost all the tropical forages from the list means that just about nobody is going to be doing any breeding work for you in the years ahead.

Then there are some major crops that have been kept off. Soybeans, groundnuts, and sugarcane are excluded. Most vegetables are also excluded. In some cases, the commercial potential for bilateral deals for specialist germplasm makes it understandable that certain material is being withheld. In many other cases, the logic is obscure.

Biocrats offer two theories to explain the relatively short list of agreed upon crops. The standard argument is that the North has so little on the table in terms of benefit sharing that the South got fed up. No more money no more crops. It would be difficult to dispute this except the South could easily have come up with a more effective list of species that might have attracted the North. Unless you are Australian – or deeply pessimistic about global warming - tropical forages hold little interest for OECD states.

The Great "Crop Out"

19.2 All decisions of the Governing Body shall be taken by consensus unless by consensus another method of arriving at a decision on certain measures is reached, except that consensus shall always be required in relation to Articles 23 and 24.

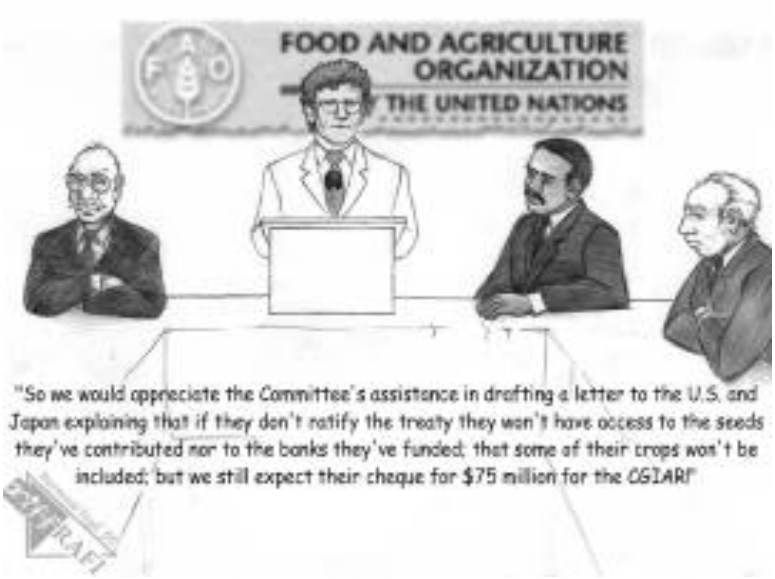
Turf battles: The second argument is closer to reality. Inter-regional haggling – between Africa and Latin America over forage grasses and legumes, for example, led to many exclusions. Colombia blocked cassava's related species. Iran "did in" some relatives of wheat. Angola, Brazil, and Colombia couldn't agree on forages. Brazil and China wouldn't swap soybeans and groundnuts.

In closed-door negotiations, some OECD states sat back astonished as the interests of the poor got pushed aside while their governments horse-traded. In the style urged on by the Convention on Biological Diversity (CBD), the G77 states planted their national sovereignty on specific crops and seeds and bargained with one another. It was not a pretty scene. When CSOs criticized the list as "shameful" during the last negotiations October 31st, they infuriated Iran, Brazil, India, and others who were embarrassed by

the disclosure. Persistent rumours that Brazil, China, and the USA – perhaps together with Monsanto, were cobbling together a series of bilateral germplasm deals did not improve the mood.

Some governments coyly asserted that the crop list annexed to the treaty would allow governments to give the Multilateral System for facilitated access a "test drive." If it worked well, other crops could be added later. This overlooks Article 19.2 of the treaty, which requires that any additions to the species list will have to receive unanimous consent by all member governments. In many cases, any crop additions would also require parliamentary changes to national legislation. This is not likely to happen any time soon.

Crop outs: The short list poses interesting challenges for the Consultative Group on International Agricultural Research (CGIAR) and its 16 International Agricultural Research Centres. The 16 quasi-independent centres have little choice but to participate in the treaty and to manage their vast stocks of crop germplasm under the terms and conditions laid down by the agreement. The problem is that only about 15% of the forages the International Livestock Research Institute (ILRI, Nairobi) works with are part of the designated list. CIAT (International Centre for Tropical Agriculture) has to somehow go on developing high-protein cassava at its headquarters in Colombia even though the species it must work with have been kept off the list by its Colombian host. Other centers from India to Nigeria have similar problems.



Not to mention, of course, that the CGIAR's two largest national donors, responsible for about 25% of the budget – the USA and Japan – abstained on the treaty.

Action Translation: There is nothing to prevent the Governing Body from establishing – or encouraging its members to establish – supplementary agreements covering any number of additional species agreed to by some or all of the member states. The conditions applying to these additional crops could be identical to those applying to crops under the Multilateral System. Annexed to the treaty, these accords would not necessarily have to be legally binding or require national legislative approval to be effective. Once the treaty comes into force and the Governing Body convenes, work should begin immediately on these supplementary arrangements.

The Virtues of Abstinence:

The U.S. is 'precluded' while Japan is deluded

That the USA and Japan abstained and did not vote against the treaty was initially interpreted as a sign of goodwill and an indication of the countries' willingness to eventually come on board. Several days after the treaty vote at the close of the 31st FAO Conference, the future of the treaty was back on the table. In the plenary hall, the U.S. delegation objected to the draft Conference report that stated that "one country" had said that the absence of a "national security clause" made it difficult for it to ratify the treaty. Since that "one country" had been the United States, the Americans wanted to make it clear that the missing clause did not make it *difficult* to ratify – it "*precluded*" them from doing so.

This is not an irrelevant diplomatic distinction. By admitting that they would not ratify, the U.S. was denying itself any pretext for participation in the interim committee that would act for the treaty until it comes into force. In the Biodiversity Convention for example, the United States has remained an energetic observer in all its processes on the grounds that it has signed the Convention, intends to ratify it, but hasn't got around to that yet. It will be able to make no such case with The Law of the Seed.

For the G77 and Europe, this clears the way for a much faster and more positive implementation of the treaty. Issues such as benefit-sharing, financial support, Farmers' Rights, and intellectual property can be addressed from a much more progressive position. Since it usually takes 8–10 years for the chronologically challenged Americans to catch up and ratify, the treaty platform has ample time to establish a treaty culture that the U.S. will find hard to change later on.

Seeds as weapons: But there is more to the American's missing clause. One country's security can be another country's embargo. In asking that the treaty specifically introduces a notwithstanding clause that would allow it to sidestep the treaty in the event of national security considerations, the United States was seeking the right to deny seeds to certain countries on the grounds that such countries threatened U.S. security. Only the treaty's requirement for "facilitated access" could possibly be construed an issue of security. In October 1981 on the eve of the first FAO Conference fight over a seed treaty – ETC group (then RAFI) obtained confirmation from the U.S. Government that it did indeed embargo gene bank accessions. This corroborated a January 1977 letter from the United States to FAO stating that embargoes were imposed on occasion for reasons of national security. In effect, twenty years later the U.S. delegation was affirming that it would not join the treaty and the Multilateral System unless it could continue to embargo Cuba, specifically, and any other countries it might not like from time to time.

Unfortunately for the U.S., (Oh, the caprice of history!) Cuba was chairing the G77 that Halloween night of October 31st, 2001 when the U.S. asked for consensus to add the embargo clause. Trick or treaty?

Majority vote? If Halloween was tough on the U.S. delegation, dawn did not make the world any brighter. On November 1st, thanks to the skills and diplomacy of the Institute for Agriculture and Trade Policy (IATP) in Minneapolis, FAO delegates began receiving copies of a letter addressed to the U.S. delegates from the U.S. Senate Majority Leader, Tom Daschle. The letter urged the delegation to support the treaty. More than that, it contradicted the delegation's constant refrain that it could not act on Farmers' Rights and could not accept any constraints to intellectual property by expressly supporting Farmers' Rights, attacking plant patenting, and – among other things – rejecting Terminator technology. The Americans – like the storied Emperor – were left without clothes. Worst of all by some mistake, most other delegations got to read the letter (see attached) before the Americans did. Many believe the decision to "abstain" on the treaty came because of the Senator's strong letter.

Deluded or excluded? Japan's future in the treaty is less clear. There were rumours in Rome that Japan's abstention was more due to time zones and the delegation's inability to get answers from Tokyo over a weekend than it was because of a fundamental problem with the text. If so, the Japanese will come on side quickly. Indeed, since that country aspires to replace the outgoing Venezuelan Ambassador as chair of the FAO Commission, support of the treaty is essential.

Musical Chairs? In fact, if Japan does not declare its acceptance of the treaty, the next session of the FAO Commission – which is to be held in tandem with the treaty's interim committee – has a leadership problem. By custom, the chair would rotate to North America or one of the developed Pacific states. If Japan and the USA distance themselves from the treaty their candidacies would be unacceptable. Meanwhile, the Canadian delegation rivals Brazil for unpopularity. Depending on who is at the desk, Australia was sometimes even less popular than Brazil and Canada.

Action Translation: If the "security" clause is standard treaty practice, why did the U.S. wait until the eleventh hour to propose it? Why, too, has the United States argued that "rights" should not be included in the treaty and that they have no space to negotiate on intellectual property when the U.S. Congress's Senate Majority Leader insists otherwise? The delegation blundered badly when it said it was "precluded" from ratifying the treaty. However, they should not be allowed a seat on the Interim Committee. In recent months, the United States has either withdrawn from, or threatened to block the Kyoto protocol, the nuclear weapons treaty, a small arms treaty, the Criminal Court, the Biological and Toxin Weapons Convention, the International Undertaking, and still has not ratified the Biodiversity Convention. Let them hide inside Washington's Green Belt if they wish.

The Three R's of Treaty-making:

Ratify, ratify, ratify – and don't mess with the deal

Given the text's troubled history, most governments were relieved when FAO's Director-General appeared so completely enthusiastic about the treaty and by his clear commitment to speedy ratification and enforcement. The three "R's" of any treaty are "ratification, ratification, ratification." Although difficult, with the Director-General's backing, letters to Heads of State, and active presentations at the FAO's upcoming regional conferences, 40 states could ratify the treaty by the June 10-13 World Food Summit.

The big risk for governments is that FAO will doublethink itself into incautious action. Any effort to have the Interim Committee (provided for until the treaty comes into force) try to conclude an MTA or negotiate "agreed interpretations" on intellectual property will only delay ratification. Some governments could decide to await the outcome of such deliberations before enacting legislation. It would also create a political opportunity for states that have no intention of ratifying to impose restrictions that will burden those that do. The Interim Committee is not a negotiation forum. It should confine itself to arranging the first meeting of the Governing Body.

Non-subordination

Understanding that the above recital is not intended to create a hierarchy between this treaty and other international agreements;

Civil Society Organizations will be pushing hard for ratification at each of FAO's regional conferences during the first half of 2002. In addition to these obvious opportunities, FAO should offer information briefings to governments at each of the PrepComs leading to the World Summit on Sustainable Development in Johannesburg, at the CBD's sixth COP in The Hague, and at every other significant forum where governments meet to discuss issues associated with biodiversity, food security, or poverty eradication.

The Bottom line:

In Temuco, Chile, on November 29th, Eris Coronado, who represented Mapuche women *Curadoras*, summed up the treaty at a unique dinner organized to celebrate the seed diversity and conservation practices of the Mapuche. The *Curadoras* had worked with the leading chefs of Chile to create new recipes drawn from the traditional vegetables, herbs, and fruits bred and/or nurtured by generations of women farmers. In praising the treaty, she warned governments that their task was not yet done – that Farmers' Rights still had to be protected. She was right.[1]

The Law of the Seed is a good platform and a great podium. It can become much more. The first 40 governments to ratify the treaty will set its course for the future.

[1] The event was organized by CET SUR, the Chilean CSO as part of the work of the Community Biodiversity Development and Conservation Programme – CBDC. A video of the Curadora/Chef initiative is available from CET SUR. ETC group is also a member of the CBDC.

Tom Daschle
South Dakota

United States Senate
Office of the Majority Leader
Washington DC 20510-7020

November 1, 2001

Ms. Barbara Tobias
Director OES/ETC
Department of State
Washington DC 20236

Dear Director Tobias:

I am writing to express my concerns regarding negotiations related to rights of farmers in the use of agricultural seed. I urge you to do all that you and the U.S. delegation can to oppose any provision that limits farmers' right in this regard.

Specifically, I support proposals to exempt farmers from paying royalties on patented farm animals and technical fees on seeds that have been genetically modified. We support their right to plant seed derived from proprietary organisms on their own land, and a prohibition on the development and selling of seed that are sterile. Additionally, patent holders or owners of genetically modified organisms and related technology should be liable for health, safety and environmental impacts. Finally, any damages caused to farmers through lower prices, lost markets or contamination due to genetically modified products should be reimbursed by the company producing any such product.

In sum, I believe, like many of my colleagues in the Congress, that agricultural research and resulting products or processes funded by and conducted in the public domain, should remain in the public domain.

Thank you for your assistance on this important matter.

Sincerely,

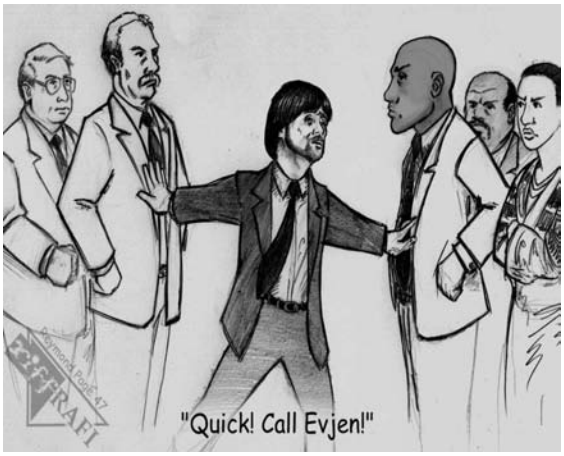
Tom Daschle

The Global Governance Report

25 Governments and Others Who Made a Difference – for Good or Ill – in Seven Years of treaty Negotiations

Participant	*Comment*
Angola	With Ethiopia and India, Angola brought political passion to the debates. The delegation was hard working (almost to exhaustion) but could not see the logic of expanding the crop lists to include many species most important to the poorest people.
Argentina	Flag-bearer for the Cairns Group (and/or the USA), the delegation rarely bothered to pretend membership in the G77.
Australia	Unbearably obnoxious until near the end when more senior people took charge, the delegation finally demonstrated civility and constructive diplomacy. Australia sided with the USA but was determined to have a treaty. When Europe wondered why Africa opposed listing tropical forages, the Aussies kept low.
Belgium	It inherited the unenviable task of herding the EU in the final round. Despite the French breathing down their necks, the Belgians worked hard and demonstrated strong personal support for the treaty.
Brazil	Having got what it wanted via abusive and devisive theatrics, Brazil used its diplomatic prowess constructively at the end. With Canada, Australia, and Colombia, Brazil did more to delay the treaty than any others.
Canada	After a "7 year bitch," the Canadian delegation was disarmingly helpful in the final days. Canada's academic acumen was always admired. Its diplomatic charms were not. Many G77 countries were astonished by Canada's unsympathetic and uncompromising posture.
CGIAR	CGIAR's IPGRI reps (Cary Fowler and Gerald Moore) watched the CG's life pass before their eyes several times. Maligned and sometimes distrusted, IPGRI played a critical and professional role throughout and deserves thanks from everyone and apologies from some.
China	Never an energetic participant, China still proved that elephants don't have to move much to be felt. When China refused to list soybeans, the EU scurried uselessly to Beijing. Soybeans almost unglued European support for the treaty.

Colombia	With Angola, India, Malaysia, and Ethiopia, Colombia fought the South/North battle. Unlike Ethiopia and Malaysia, however, it didn't know how to negotiate. The most inconsistent delegation, Colombia was mostly manipulated by Brazil and greatly delayed the process.
Ethiopia	Tewolde, Ethiopia's negotiation guru won The Right Livelihood Award in part for his championing of farmers. While Tewolde unnerved OECD countries with his articulate attacks, he was essential to any deal. Sidelined by illness in the debate's later stages, Tewolde was ably represented by his countryman Abebe.
France	From the summer of 2000 onward, the French delegation devoted itself to panicking its own seed industry and creating confusion in the EU. When senior officials in Paris were asked to bring their delegation in line with Brussels – or even Paris – they seemed incapable of doing so.
India	After a shaky start, the delegation proved effective and consistent through the long process. Often India served to counter-balance Brazil and Colombia to offer a truly "South" perspective. Its move to legislate Farmers' Rights also impressed many delegations.
Iran	Iran played a helpful role in the Leipzig Process and hosted the Contact Group's Tehran meeting. Although much respected, Iran lost its balance toward the end and came close to dismantling the deal with Europe.
Malaysia	If the charismatic leader of the G77 was Ethiopia's Tewolde, the South's unsung hero was Lim Eng Siang of Malaysia. Constantly between the abusive tactics of Brazil and the demands of Africa, "Lim" was professional and pragmatic.
Netherlands	When led by Peter Vermeij, the Dutch offered invaluable diplomatic expertise. Afterward, it muddled its CBD interests with its agriculture interests and confused the EU for some time.
Norway	The most respected OECD delegation – favouring mandatory fees and taxes – Norway initiated informal consultations in Norway, Sweden, and Denmark. When Jan Borring (famous within the Contact Group) was joined by Grethe Evjen, they were the most effective country in the room.



Philippines	Led by a CSO rep (Rene Salazar) with long experience in farm communities and CGIAR, this was the only South government that identified the Farmers' Rights blunder and fought to reverse it. When Salazar relinquished his government role and joined CSOs at the side of the hall after the vote, he was warmly applauded.
Poland	Ostracized by Brazil and others in the G77, Zofia Bulinska Radomska represented all economies in transition and was among the few defenders of Farmers' Rights. Her scientific and diplomatic skills ultimately won respect.
Secretariat	From the extended applause, the professionalism and dedication of Pepe Esquinas and Clive Stannard won the minds and hearts of FAO's membership. Now for a treaty on livestock genetic resources?
Seed Industry	Industry was pivotal in the Tehran Contact Group, when it offered to pay a share of patent royalties on treaty germplasm. When it withdrew their proposal in Sun City, South Africa, industry looked incompetent. In the final negotiations it was silent and irrelevant.
Sweden	Like the Dutch and the Norwegians, Sweden played a highly constructive role with Johan Bodegard chaired the EU. As usual however, the tendency for governments to move players around and self-lobotomize was too much to resist.
Switzerland	Obviously committed to the treaty, the Swiss hosted two crucial negotiating rounds and worked hard to keep its unruly components in line.
United Kingdom	The delegation's passionate insistence that the treaty be in no way subordinate to earlier accords such as the WTO made them heroes to CSOs and many in Europe.
United States	From the get-go, it was clear that the USA would not be an early ratifier. Nevertheless, in later years U.S. negotiators won admiration for their constructive sincerity. Many countries would have offered them political asylum.
Venezuela	Fernando Gerbasi, as Chair of the Commission and of the Contact Group, was far and away the single most important factor in the success of the negotiations and his country should have him canonized.

ETC Translator – "The Law of the Seed"

The Action Group on Erosion, Technology and Concentration (formerly RAFI) is an international civil society organization headquartered in Canada. The ETC Group (pronounced Etcetera Group) is dedicated to the advancement of cultural and ecological diversity and human rights. All RAFI / ETC Group's publications are available at: **www.etcgroup.org**

The ETC group is a participant in the Community Biodiversity Development and Conservation Programme (CBDC). The CBDC is a cooperative initiative of civil society organizations in Africa, Asia, Latin America, as well as OECD countries to strengthen the role of rural communities in both conserving and enhancing biodiversity vital to food, agriculture and health, including through community seed security and plant breeding.

ETC group International Office, P.O. Box 68016 RPO Osborne Winnipeg MB R3L 2V9 CANADA
Tel: 204 453-5259 Fax: 204 925-8034 www.etcgroup.org