Chapter 10

International Non-governmental Organizations

The Hundred Year (or so) Seed War – Seeds, Sovereignty and Civil Society – A Historical Perspective on the Evolution of ‘The Law of the Seed’

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A half-century lapsed between 1911 when Nikolai Vavilov joined the Bureau of Applied Botany in St Petersburg and when Erna Bennett and Otto Frankel convened the first international technical conference on plant genetic resources in 1961. Twenty years after that, crop genetics suddenly grew into a political intergovernmental debate during an FAO conference that, two years afterwards, created the International Undertaking and Commission on Plant Genetic Resources (IU). It took another couple of decades before the voluntary IU became a legally binding Treaty. When the Treaty’s Governing Body convened in Bali to assess its progress in 2011, it had an entire century, ‘a 100 Year Seed War’, for review and reflection.

Most of this past century is a story of scientists and policy makers – ‘courageous and farsighted leaders’ like Nikolai Vavilov and his Russian colleagues, Harry and Jack Harlan, Erna Bennett, Pepe Esquinas, Melaku Worede, Fernando Gerbasi, Tewolde Berhan Gebre Egziabher, Jan Borring, and some others less courageous (some downright cowardly) best unnamed and forgotten.

The place and the perspective of civil society, in this century-long history, are less certain. I can only offer this account as a personal remembrance of the past 35 years or so full of the ‘mismembering’ and myopia of one witness. It is a human weakness that we tend to see ourselves always at centre stage and we forget who was standing there alongside us. My apologies for all of these weaknesses.
It is tempting to outdo Vavilov by beginning the story with a Polish-American farmer, David Lubin, and his almost single-handed construction of the International Institute for Agriculture in Rome in 1905. Angered by the grain cartels of that era, Lubin marched off his California farm back to Europe where he somehow arm-twisted the King of Italy into convening the world’s first international intergovernmental agricultural meeting. Certainly, Lubin’s story is as gigantic and heroic as Vavilov’s, but he died in 1919 and there is no evidence in his poorly studied memoirs to indicate that he knew anything at all about plant genetic resources. David Lubin, however, knew something about Farmers’ Rights; would easily understand food sovereignty; and would have no difficulty identifying the new integrated multinational cartels that dominate food and agriculture today. Throughout the decades of colourful controversy (from the Green room to the Red room to the Blue room in FAO’s building A over the initial IU and later Treaty), David Lubin’s legacy has been all around us and most especially in the library named after him on the ground floor of building A. If Lubin were alive today he would be a member of the ‘Via Campesina’ and he would be preparing to fight for Farmers’ Rights and food sovereignty in Bali.

However, in the mid-1970s, when Cary Fowler first told me about crop genetic erosion, there was no ‘Via Campesina’. When civil society’s food researchers first met together in Saskatchewan’s Qu’Appelle Valley, in November 1977, there were no farmers among us, and the topic of seeds seemed alien to the much greater interest in monitoring the grain trade, ocean fisheries, the expansion of the dairy industry in Asia, and the campaigns against infant formula. Only Cary and I wanted to talk about seeds. Through his research on ‘Food First’, Cary had figured out genetic erosion and the links to mergers between seed and pesticide companies. Following his trail, I stumbled on plant breeders’ rights. Others did not seem to think it was important.

In March 1979, Erna Bennett herself came out to the Saskatchewan prairies to confront the seed trade; do battle against intellectual property over seeds; and advocate for plant genetic resources conservation. Until then, Cary and I had only talked with her on the telephone. No one who attended the packed meeting in Regina will forget her Irish eloquence.

By the summer of 1979, I had tortured a long pamphlet into a small book titled *Seeds of the Earth* but reluctantly concluded that my original target, FAO’s World Conference on Agrarian Reform and Rural Development later that year would not yield a sympathetic audience and opted instead, to take the book for its unveiling to the UN Conference on Science and Technology for Development in Vienna. The book ‘launch’ was singularly unmemorable. I did, however, press a copy into the hands of M. S. Swaminathan who – as Independent Chair of FAO – raised the issue in his speech at FAO’s conference a few months later. Knowing that Indira Gandhi would address the next FAO conference in 1981, we opted to try again pushing ‘seeds’ at FAO.

In the summer of 1981, Cary Fowler and I were subcontracted via Art Domick at American University (and an old admirer of Erna Bennett’s) to do some work on food policies for the Mexican government. That gave me an opportunity to
go to Mexico City in September and meet with government officials to propose that Mexico take up ‘seeds’ at the upcoming FAO conference. A former Mexican minister of agriculture, Oscar Brauer, who had moved on to FAO had already contracted me (through ICDA – the International Coalition for Development Action) to write a report on the implications – if any – of my book for FAO seed policy. Brauer’s support probably helped us with the Mexican government.

History records that FAO’s 1981 conference agreed to consider the formation of a body to study plant genetic resources. The contentious paragraphs were to be considered by the COAG (Committee on Agriculture) at its 1983 meeting and would then be passed on to the next FAO conference in November 1983 (see Annex 1 of this volume for the list of all Commission and Treaty meetings). However, that is getting ahead of things. My own memories of the 1981 FAO Conference are more kaleidoscopic. Cary and I had managed to convince allies at ICDA to join us in Rome for the campaign. We met outdoors in the café across from FAO on the ‘Aventino’ before the opening session and prepped for the unfamiliar encounter ahead. We were being followed everywhere by a Japanese film crew and when we took our seats in the Observer section of the Blue room for Gandhi’s speech, we gathered embarrassing attention. The battery of cameras, trained on the speaker’s podium, was interrupted by the Japanese crew’s singular focus on our little civil society group off in the corner. The Japanese film crew gave us our first global media coverage. They were unrelenting. Before Rome, they ventured to the ICDA offices overlooking Covent Garden (in the cheap days before the restoration) in London only to find the office door absent and the lone filing cabinet empty. In 1981, we were not impressive.

The champion of the 1981 conference was the Mexican delegation led by the very pleasant and charming son of Mexico’s former president Luis Echeverría. However, the delegation was intellectually strengthened by Francisco Martínez Gómez (Pancho) who took on the issue as a personal ‘cause célèbre’. As civil society, we intervened in the debates as best we could but spent much of the time wringing our hands and anxiously passing notes to the Mexican delegation. Much more effective, I am sure, was Pepe Esquinas who – as a member of the FAO Secretariat in the International Board for Plant Genetic Resources (IBPGR) – seemed to know everybody in Latin America and had his own clandestine avenues. I had met Pepe at FAO either earlier that year or perhaps even the year before – while being berated by Trevor Williams (then, the head of IBPGR) in his office doorway at the time; however, we had not had many opportunities to talk. Most of my links to the internal machinations of the FAO Secretariat were through Erna Bennett who was in the process of being fired. It was only after she left that we realized how strong and important Pepe Esquinas was as an ally and leader.

Also in 1981, the IBPGR hosted another International Technical Conference on Plant Genetic Resources at FAO. Cary and I were determined to attend and were made to feel distinctly unwelcome. Erna Bennett had sent me an interoffice memo from Trevor Williams to Dieter Bommer, the ADG for agriculture, warning that I was planning to come and advising that I would not be allowed to enter the building. When I entered, I was confronted by an official who told me I would
not be allowed in. I showed him my copy of the memo and pointed out that the meeting was public and that I would go immediately to the media if I was kept outside. I was allowed in. On reflection, it probably would have been more fun to stay outside although we were entertained by Trevor Williams’ discourse on the various venues for a world gene bank: the arid south of Argentina, the basement of FAO, or on the frozen island of Svalbard. His best shot: a cupboard on a space station.

In March 1983, ICDA scraped together enough funds for me to return to Rome to attend the Committee on Agriculture where the 1981 decision was to be debated again. COAG had set aside one or two hours for the discussion on a Thursday afternoon. Long conversations with Pepe Esquinas persuaded us that we needed to press for three things: the formation of an intergovernmental committee to take on the politics and practice of plant genetic resource conservation at FAO; the formation of a global fund to collect and conserve plant genetic diversity (we thought around $350 million); and (this was at Pepe’s insistence) the construction of a World Gene Bank as a backup to other national and regional gene banks.

I was the lone NGO observer but, unbeknownst to governments, I had a secret weapon – one of the original IBM PCs. A young high school student named Beverly Cross (whose farm was near my own) painstakingly typed in the entire IBPGR germplasm databook into a spreadsheet. It was miraculous. Suddenly, we were able to identify exactly how much germplasm of which crops every country in the world had either donated or received. I was able to go to literally every delegation in Africa, Asia and Latin America and hand them a note that clearly showed how much germplasm that country had donated and how much it had received – including a list of the countries to which their germplasm had gone. Of course, the figures showed overwhelmingly that the South was a massive contributor of free germplasm and that the North was actively using the germplasm to develop new varieties protected by intellectual property. What was supposed to be a one-hour discussion on a Thursday ran through the afternoon and early evening on to all day Friday and then onward to the following Monday afternoon. Highlights: the Bolivian ambassador demanded that the UN flag be planted on every gene bank and the American delegate advised the other countries present to follow the dictum of Mark Twain ... ‘if it ain’t broke, don’t fix it’. The North was furious. Genetic resources were a non-issue being handled perfectly adequately by existing scientific institutions. They could not understand why the South was insisting that intergovernmental control be asserted over the world gene banks. Manoeuvring in the background all the time was the Mexican delegation led by another son of another former Mexican president – José Ramon Lopez Portilo who later became the Independent Chair of the FAO Council. José Ramon was brilliantly backed by Pancho Martinez, and Pepe Esquinas was everywhere talking to everybody.

In the end, COAG produced a report that called for the creation of an intergovernmental FAO committee and Undertaking to address plant genetic resources. The report was to go to the FAO conference at the end of the year.
About the time of the COAG, I had a telephone call from Sven Hamrell, the director of the Dag Hammarskjöld Foundation in Uppsala, Sweden. Sven, who I had met once or twice since 1981, wondered if I would write an article for his journal, Development Dialogue, that could be published later in the year. I enthusiastically agreed knowing that the Journal was mass-distributed free to around 18,000 policy and opinion makers around the world.

Following the COAG, I devoted most of my time (leaning heavily on Cary Fowler and Hope Shand for advice and research) writing the article that evolved like the pamphlet four years earlier – into a kind of book that the Dag Hammarskjöld Foundation finally agreed to title The Law of the Seed.

FAO’s November conference was to be the big battle. More than 20 friends from European civil society organizations agreed to join Cary and I in Rome to press for the COAG recommendation as well as for funding and for a global gene bank. I had met Henk Hobbelink earlier in the year and Henk turned into an invaluable colleague and one of the key organizers of our November campaign.

We had another secret weapon for the November meeting – Olle Nordberg, Sven Hamrell’s accomplice of the Dag Hammarskjöld Foundation who flew to Rome on the opening day of the conference with boxes of The Law of the Seed that he managed to place directly into the box of every government delegation at FAO. Although it seemed unlikely that busy delegates would take the time to read a couple of hundred pages about the politics of genetic resources in the midst of the conference, many of them actually did. On the second day of the conference, we were invited to meet with M. S. Swaminathan who was still Chair of the FAO Council. M.S. had clearly marked out passages he wanted to discuss. Later that morning, we met Mohamed Zehni, Libya’s ambassador to FAO who I think was chairing the G-77. Zehni is also a geneticist. He had a copy of the book in his hand when we had coffee and I asked him what he thought of it. He delicately offered the advice that it was ‘perhaps a little rich for delegates here …’. Nevertheless, he had read it! And so had FAO’s imperious Director-General, Edouard Saouma. Later in the conference, Saouma’s secretary appeared at my elbow cryptically commenting ‘the director general is not unhappy with your activities’.

The events of the two-week conference are something of a blur. First we fought in the Green room, trying to enlarge the original COAG proposals and then we carried the Commission report to the Blue room where it was debated again.

I never fully understood an almost-violent encounter between José Ramon and the FAO Legal Council on the podium of the Green room, which ultimately led to the upgrading of the recommendation to create an intergovernmental committee into an intergovernmental Commission.

The plenary battle in the Blue room is probably remembered differently by different folks depending on whether you were sitting on the podium as part of the Secretariat, as was Kay Killingsworth, for example, or if you were ensconced in the NGO cheap seats on the sides (Cary, Henk and me), or if you were in the middle of the fray among the delegates like Zehni and Lopez Portilo. Pepe Esquinas – who never sat – was buttonholing delegates, writing bits of text and stalking the corridors outside – sometimes simultaneously.
My fractured memory does recall José Ramon on his feet challenging John Block, the US Secretary of Agriculture who was chairing the Conference session. Block was trying to gavel the issue away but Lopez Portilo was having none of it. The Mexicans wanted a Commission and Block wanted nothing but was prepared to go along with a lower-level committee instead. Block kept calling for a show of hands and concluding that his side had won. The Mexicans kept challenging the count. There may have been as many as six rounds of voting before Block conceded that he had lost. Before that concession, however, he actually called for a timeout, advised government delegations to consult their capitols, and darkly advised delegations to inquire into any undisclosed paragraphs of any bilateral agreements or treaties that they had signed recently. It was all a bit remarkable. At the end of the conference, Mexico had won and I flew happily to Barcelona for the annual meeting of ICDA, leaving Cary Fowler alone to track the FAO Council that immediately followed the conference and was to practically dispose of the conference decisions.

Cary called me from Rome while I was in Barcelona reporting that the fight had continued through the Council, with the US and other governments in the North trying to undermine the conference’s decisions. Throughout it all, José Ramon – with a growing number of riled-up South governments – held his ground with tactical support from Cary and Pepe. Every few years since that memorable 1983 meeting, I have run into old friends who were in the room at the time. Each adds an anecdote or two and I have noticed that the anecdotes tend to become a little more dramatic and bizarre as the years go by. My own included, I am told.

Immediately following the FAO conference – and at Cary Fowler’s inspiration – Hope Shand, Cary and I established the Rural Advancement Foundation International (RAFI) and formally set about working together with plant genetic resources as our one and only issue. When I left ICDA, they wisely went straight to Henk Hobbelink and asked him to take over their seeds campaign. Now, the ICDA Seeds Campaign has broadened its work and reputation enormously since then and has become Genetic Resources Action International (GRAIN) – with Henk still brilliantly at the helm. Renée Vellvé joined Henk a couple of years later and immediately became a key player in Commission negotiations.

In 1985, Cary and I were given two plane tickets to travel around the world talking to governments about the issues before the first meeting of the FAO Commission. We went first to Rome to talk with Pepe Esquinas before travelling onward through Africa and Asia.

Coming out of the 1983 conference, we had both an intergovernmental Commission and an International Undertaking. The Undertaking had some influence but no legal authority and was ambiguous in several areas including the issue of intellectual property. We knew that pressure would be on at the Commission’s first meeting to accept plant breeders’ rights and to insist that, what we called ‘farmers’ varieties’, and what most scientists preferred to call ‘landraces’ or even ‘stone-age seeds’, were to be exchanged freely.

Literally en route to the first Commission meeting in Rome, we concocted the idea of Farmers’ Rights which we simplistically saw as a counterweight against
plant breeders’ rights. We wanted to insist that farmers varieties were the product of farmer genius and should not be treated in any way as being less than varieties produced by the public or private sector. We were not quite sure what to do with the idea beyond presenting it as a threat and possibly a barrier to accepting plant breeders’ rights. With Henk Hobbelink, we agreed to vet the idea at a news conference in downtown Rome early in the Commission’s first meeting. We also wanted to find a way to introduce it into the intergovernmental debate. We had not had a chance to talk about the idea with the Mexican delegation or any of our other friends in other countries.

In the end, from the back of the Green room, we got the microphone and proposed Farmers’ Rights as part of the IU. The lack of interest was deafening. It did not seem that anybody was going to pick up our proposal. Then, Jaap Hardon, the head of the Dutch Gene Bank and Netherlands delegate to the Commission, literally as he was preparing to leave, decided he couldn’t resist and took the floor to ridicule Farmers’ Rights as romantic and naive. Beside him, the Mexican delegation exploded. Suddenly Jose Ramon was on his feet staunchly defending Farmers’ Rights and attacking his good neighbour, Jaap. With Mexico in full rhetorical flight, the Bolivians, Venezuelans, Cubans, Nicaraguans, Ethiopians and many others began waving their flags and championing the cause. Through a messenger, I sent Jaap a note thanking him for his intervention and I heard his hearty laughter as he raced off for his airplane. Although we have often disagreed, Jaap was then and still remains one of my heroes. For that matter, so does his hand-picked successor, Bert Visser.

The first meeting of the Commission maintained the ambiguity around intellectual property but included Farmers’ Rights. We saw it more as a place marker from which we could launch other battles in the years ahead.

At most, the first four sessions of the Commission were heavily influenced by civil society. Governments were still trying to come to grips with the creature they had let others create and those of us at the back of the room still had the advantage in terms of computerized data and political strategy. In 1987, we were able to press for a Code of Conduct on Germplasm Collection and for a study of the possible impact of biotechnology on genetic resources. It seemed that whatever we suggested would be taken up and – more or less – adopted.

In 1988, the Keystone International Dialogue on Plant Genetic Resources got underway in Keystone Colorado bringing together 40 or 50 protagonists from various governments, scientific organizations, and a couple of us from civil society. Hope actually attended a preliminary discussion about the dialogue in Washington some weeks earlier but Cary and I were not invited to the first formal meeting until a week or two before it happened. It was clear that many governments in the North were not at all sure they wanted us to be there. Cary could not attend for personal reasons. Chaired by M. S. Swaminathan, the first meeting went surprisingly smoothly as we realized that none of us actually had horns or tails and we could have a decent conversation. It was even pleasant … sometimes.

In the summer of 1989, Don Duvick (the vice president for research at Pioneer Hi-Bred) and Henry Shands (of the US government’s genetic resources
programme) proposed a small meeting in Washington to discuss the possibility of US entry into the Intergovernmental Commission. Much to my surprise and, largely due to the Keystone dialogue process, I was invited to join along with Pepe (representing FAO), Jaap and Melaku Worede. Camila Montecinos (who now works with GRAIN in Chile) also attended at my specific request. Camila is one of the toughest people I know and I did not want to be the sole NGO at the small meeting.

Don Duvick was clearly the ‘mover and shaker’ with the US government and his big concern was that if the North were to join and to eventually provide funding, the South had to guarantee to make all of its germplasm available. There was no way that the South was going to – or should – agree to this. However, in the far-from-perfect IU there was the notion that public and private researchers could identify a category of germplasm that they hoped eventually to commercialize that could remain exclusive. Companies argued that they might have material in the nursery trial stage that was a generation away from being commercialized that should not be just taken by somebody else at the last minute. We argued that the same held true for the South. For example, if Ethiopia has naturally occurring caffeine-free coffee trees that it knows to be invaluable but is still some years away from entering the international coffee trade, it would be unfair to force Ethiopia to surrender such obviously invaluable material. We were all sitting out in Henry Shands’ yard when we made our case. Don looked at us, and nodded. The battle was over – hardly even engaged – before it started. We typed up a half page statement and took it to the US undersecretary of Agriculture the next day for his agreement. Don did the talking and the deal was done. The USA joined the Commission. I knew it was not good to have the US ‘inside’ at that point in the development of the Commission but I could not see how to keep them out. If CSOs had not been there, a deal would have been reached that would have let the United States come in and would not have been in any way to the advantage of the South. As it turned out, both sides were left with ‘plausible denial’, for virtually any germplasm they wanted to argue was ‘still under development’. I received a cheque for the reimbursement of my plane ticket to Washington and my hotel stay from the US Department of Agriculture. That will never happen again, I thought. And it has not.

The Keystone process had many important moments as we met in larger or smaller groupings from Colorado to St. Petersburg (then Leningrad) to New York, Madras, Ottawa, Rome and finally Uppsala and Oslo. The process created bonds of cooperation and, sometimes, comradeship that have held up over the years. It did not really cause people to change positions so much, but to at least be able to understand one another’s positions and find common ground where common ground was occasionally useful.

Three anecdotes stand out: Melaku Worede, Jaap Hardon, Don Duvick, Henry Shands and I were all in the car somewhere in the countryside beyond St Petersburg. It was hot and we had run out of petrol and were waiting impatiently for a Russian host to solve the problem. We had been talking a lot and suddenly Don accused me of not being interested in plant genetic resources at all but just wanting to bash multinational corporations. He was angry. Jaap leaned forward
from the back seat and calmly said that whatever I felt about multinational corporations, I was dedicated to diversity. Don liked the answer. We got along much better afterwards. A year or so later in Madras, Don and I had been asked to write anonymously about different approaches to funding plant genetic resources. The papers had been circulated to the group a few days before the meeting. At one point in my proposal, I had written that the seed industry's arguments, that farmers should happily give up their own varieties in return for commercial varieties, was like saying that the Greeks should give up their claim on the Elgin marbles in return for the Rolling Stones. Don announced to the room that he was the author! A few minutes later Jaap, who learned nothing from his assault on Farmers’ Rights five years earlier, attacked our opposition to the word ‘landrace’ by insisting that no one named their cars after people either. John Peano jumped in with one word, ‘Volkswagen’, and I followed with ‘Land Rover’ and Jaap did what he does best, dissolve into laughter. At another encounter (either Madras or Oslo, I forget) Cary, Pepe and I walked away from a long drafting session where we’d left John Deusing, a lawyer with what was then Ciba-Geigy, to clean up the text for presentation to the whole group the following morning. The sun was already coming up when we realized we had left the final delicate wording to our corporate ‘enemy’. We shrugged – knowing that we trusted him to complete our task fairly. The morning proved us right.

Of the 1980s, there are still tales that probably should not be told. We all felt sometimes like Jedi warriors taking on the Evil Empire – variously identified as IBPGR, Monsanto or the US government. When Erna left FAO, she shipped us boxes of papers that took weeks to cipher. Other documents were got through US Freedom of Information requests and a few more appeared mysteriously under hotel room doors, behind mirrors in FAO washrooms, pushed across a table during a furtive airport meeting, or passed openly and anonymously via smiling messengers in the Red room. Most of the best information came, however, from Hope Shand’s number-crunching through germplasm collections, seed catalogues and plant patent lists. Throughout it all, Pepe Esquinas was an amazing presence – a hybrid somewhere between Don Quixote and Machiavelli (with a pinch of Rasputin), challenging and charming. I have emblazoned in my memory, Pepe, very very late at night in the semi-darkness of his office after a day of Commission drafting trying to cajole a nuance out of the Oxford dictionary that the stuffy volume just could not conjugate. Among us, Pepe Esquinas was ‘Wiley Quixote’. Even at his ‘wiliest’, however, Pepe remained passionately loyal to the loftiest principles of the United Nations and FAO.

‘Us’ in the early days, was a small group. Throughout these years, ‘civil society’ included both Henk Hobbelink and Renée Vellvé at GRAIN, Camila Montecinos (then at CET now at GRAIN), Rene Salazar at Searice, Vandana Shiva (wherever she wanted to be at), Andrew Mushita at CTDT (Community Technology Development Trust) and Cary, Hope and I at RAFI. In addition, many friends we could call upon if things got tough. Around the time of the Leipzig Technical Conference, ‘us’ expanded wonderfully to include Patrick Mulvany, Liz Hoskins, Neth Dano, Edward Hammond and many many others.
At one point, visiting IBPGR as part of the Keystone process, Dick van Sloten expressed disbelief when I mentioned that I had not been to their offices since they moved to the old cheese factory a few kilometres from FAO. ‘Well, not in daylight, anyway’, I added. I think he took me seriously!

When the curtain came down on the Keystone Dialogue in 1991, the clearly unfinished business was intellectual-property. Jaap Hardon – a glutton for punishment – approached Henk Hobbelink and me about the formation of a second dialogue when we were all in Zimbabwe together in late 1992. A few days later, the three of us were in Nairobi at a CGIAR meeting involving Geoff Hawtin. The final shape of what became known as the ‘Crucible Group’ was formed in the bar late one night while Geoff and Henk danced on a tabletop secured by Jaap and me. It was Jaap’s idea but I claim the name and I spent much of the next several years explaining what a crucible is. Over most of a decade, the Crucible Group produced three books but not much progress. Perhaps because we had already gone through the Keystone Dialogue, Crucible did not have the same spin-off effects.

In the almost-intuitive move from Undertaking to Treaty, the 1993–1994 CGIAR stripe reviews of genetic resources suddenly became important. I was invited to join the review and Henry Shands became its Chair. The big change was IBPGR (en route to becoming IPGRI (and, now, Bioversity International) where the palace coup had led to the selection of Geoff Hawtin as the organization’s second-ever director. By any definition, Geoff was/is the CGIAR systems best advocate and smartest strategist. He was a breath of fresh air in FAO Commission meetings and became a critical ally (and, sometimes, opponent) from 1991 onward. At Geoff’s quiet insistence (from the sidelines), the stripe review came up with the remarkable conclusion that the CGIAR’s gene banks should be placed under the auspices of the Undertaking and that gene bank policies should be guided by its Commission. The report was presented to the CGIAR mid-term meeting in New Delhi in May 1994. I attended the New Delhi meeting as a member of the review panel. It was Ismail Serageldin’s first meeting as Chair of CGIAR and, of course, as a Vice-President of the World Bank. I was furious when Henry presented our report and then stepped aside from his role as Chair to advise that maybe the CGIAR should rethink the key recommendation of surrendering policy control to FAO. I immediately wrote to Serageldin urging him to move quickly to implement the review’s principal recommendation. My letter was followed by a month of silence.

Then, as I passed through RAfi’s Ottawa office en route to Uppsala (for Sven Hamrell’s retirement party at the Dag Hammarskjöld Foundation) and then Nairobi for an organizational meeting of the newly created Convention on Biological Diversity, Bev Cross handed me a fax from Serageldin. I read it standing in the doorway and realized that the World Bank vice-president was saying that it would be ‘foolhardy’ for the CGIAR to implement the stripe review’s recommendation and that he wanted to talk with lawyers at the Bank about other possibilities. I faxed the letter to Henk at GRAIN and to Geoff Hawtin at IPGRI and then headed for the airport. At Sven’s party in Uppsala, I met up with Carl-Gustaf
Thornström and showed him the letter. He was alarmed and asked to make a copy. On my onward flight from Stockholm via Amsterdam to Nairobi I encountered Norway’s Jan Borring and several other delegates flying to the same meeting and handed out copies of the letter. Everybody was shocked. In Nairobi, Henk Hobbelink and I grabbed Geoff Hawtin and persuaded him to attend a news conference on the topic that had been hastily arranged by GRAIN. It is a testimony to Geoff Hawtin’s integrity that he agreed to attend.

In the intergovernmental biodiversity convention meeting, Sweden and Malaysia joined forces to accuse the World Bank of the ‘dawn raid’ on the CG’s gene banks and of trying to take over the banks to orchestrate access to germplasm for multinational seed companies. Geoff Tansey wrote up the story for the Financial Times and New Scientist, blasting the Bank for the attempted coup. Within two days, Geoff Hawtin read out a letter from Ismail to the Nairobi meeting announcing that he would personally sign the policy turnover to the FAO Commission on behalf of each of the 11 gene banks by the time the CGIAR held its annual meeting in Washington in October.

Did the World Bank really intend to take over the CG gene banks? The sequel to the story played out in August 1994 when Serageldin invited me to Washington for lunch to talk about our differences. In a preparatory phone call, it was clear to me that senior CGIAR staff had not bothered to actually review the fax that I had received signed by Serageldin. I was even told that the fax I had received was not the fax they had sent. When I invited them to reread the critical paragraphs, there was a pause on the line as they looked for a copy, and then the quiet comment, ‘I can see how you might have formed the impression’ from the deeply chastened official. I am not sure if the coup was intended. I am sure that if we had not acted quickly, the agreement between FAO and CGIAR would not have been signed. I am also sure that it would have left the door open to other forces inside the bank and out, and that it might have understood the potential value of the gene banks and sought to use them in other ways. The bottom line is that FAO’s weak and voluntary Undertaking and Commission suddenly had high profile responsibility for the world’s 11 most important gene banks. The logic of moving from Undertaking to Treaty was becoming more apparent.

Many of the most dramatic events had nothing to do with CSOs. Dick van Sloten’s own courageous efforts to restore order at IBPGR – a palace coup in fact – remains for others to tell. Rene, Hank and I sat dumbfounded another time as the Brazilian Ambassador accused his American counterpart of ‘terrorism’. She broke into tears. There are other stories, I am sure, that we, in civil society, never heard of.

If not sooner, the 1991 Commission meeting was certainly the last that was dominated by civil society. By the time governments met again in 1993, the Commission was thoroughly institutionalized and government delegations coming to Rome had marching orders from their capitals that demanded obedience. We could still cajole and tease but we could not decide.

Pepe Esquinas consulted widely over the idea of turning the IU into a legally binding treaty. He had the idea that the negotiation of the Treaty could be done
in tandem with negotiations leading to a new International Technical Conference on Plant Genetic Resources including a State of the World report and rolling Plan of Action for genetic resources work. It was a bold and complex agenda. I was enthusiastic about the Plan of Action and saw the negotiation of the Treaty as a problematic but useful way to maintain a high profile political agenda for genetic resources work. Cary Fowler, my old comrade-in-arms, with his razor wit and laser focus on genetic resources, had moved to Norway to work with Noragric around the end of the Keystone Dialogue, and was the logical person to take on the Technical Conference and Plan of Action.

Cary’s so-called ‘technical’ conference in Leipzig in 1996 brought together the largest number ever of civil society organizations – South and North – in support of plant genetic resources. By then, however, we were more cheerleaders than controllers and we accepted our more traditional role of acting as clarifier’s of issues and supporters of the more progressive positions of South negotiators. Our overall influence was modest although our involvement was appreciated. For many at FAO, CGIAR and in governments, we were hard to categorize, since we had the sometimes-unnerving capacity of being ‘spoilers’ – able to make or break a move or idea or to turn a minor into a major issue unexpectedly. Nevertheless, as useful or concerning as this role is, we were not in the driver’s seat anymore.

By the time of the 1998 Commission meeting, neither GRAIN nor RAFI were sure we should even be present. All of a sudden, however, two major developments changed at least RAFI’s view. First, in March, Hope Shand discovered a joint USDA/Delta and Pine Land patent granted on what they described as a ‘Technology Protection System’ that rendered GM seeds sterile at harvest time. We quickly called the new technology, ‘Terminator’. We wanted FAO and the Commission to condemn the technology. Second, friends inside the CGIAR told us of two plant breeders’ rights claims made by Australian agencies on CGIAR gene bank accessions. The two claims presented the first clear examples of ‘biopiracy’ concerning gene banks. We took both issues to the Commission and eventually got strong support for both. The Australians quickly abandoned their patents and Jaque Diouf, FAO’s Director-General, roundly condemned Terminator technology. With enormous help from Geoff Hawtin and Cary, CGIAR also announced that it would never touch the suicide seeds.

NGOs were invited into the closed Treaty ‘contact group’ negotiations because governments wanted industry present and they could not really invite industry without inviting their civil society watchdogs. Ultimately, seed companies would either be required – or ‘volunteered’ – to pay a proportion of their profits, royalties or revenues so OECD states demanded that they be at the table and the global South knew that no consensus was possible without industry acquiescence. We had no illusions – but participation gave us the opportunity to blow whistles and apply pressure to both our friends and foes around the table.

The need to be present was made painfully evident in one of the first meetings of the contact group. Before we – or industry – were invited, the North moved to sideline Farmers’ Rights by imposing a ‘chapeau paragraph’ that rendered the strong affirmative language beneath almost irrelevant. We had always understood
that Farmers’ Rights would be sacrificed by the South as a bargaining chip but we had hoped it would be better used and carefully positioned for post-Treaty negotiations. I was sharing a hotel room with René Salazar who found himself as an NGO on the Philippine delegation. Returning to the room very late that night, René woke me up, alarmed by the last-minute manoeuvres in the contact group. Only Norway and Poland – and the Philippines – expressed concern over the sudden text changes. Very early in the morning, we both knocked on hotel room doors trying to convince our allies to return to the issue. They all claimed innocence or ignorance and they all advised us not to worry. The deal was done. René – who was powerless to stop it – was heartbroken.

Either Silvia Ribeiro (who joined us at RAFI in 1999) or I attended the contact group negotiations. They were usually the worst meetings of our lives.

Here and there, we were able to use our civil society independence to speak bluntly and give clarity to points and positions that governments dared not say publicly. This clarifying role was especially helpful during the Spoleto negotiation where the Commission’s Chair, Fernando Gerbasi of Venezuela, managed a breakthrough making the final Treaty possible (see Annex 3 of this book for details on the main provisions of the Treaty).

Following the adoption of the Treaty at the FAO Conference in 2001 (see Annex 2 of this volume for the contracting parties per FAO regional groups), I was happy to accept Fernando Gerbasi’s invitation to a celebration party at his home in Rome. The room was filled with old friends and old enemies but the times had changed – I felt less like Darth Vader and more like Art Deco standing in the corner.

What role did civil society really play? Henk and Hope and Camilla and Rene and Renée and Cary and I could debate this to a draw among ourselves. It is a matter of perspective. If I had been in the audience – as most governments were most of the time – I think I would have seen us on the stage all right – stage left, I hope – clowning and conspiring, sometimes loud and pontificating, sometimes in the shadows, often tangled in the curtains or messing with the lighting, and sometimes mischievously inserting text into the teleprompters of other actors.

Cary, the inspirational architect behind the now-famous Doomsday Vault, invited me to the Vault’s opening in Svalbard at the end of February 2008. There, I began to feel more comfortable with the changes. It was an emotional occasion. I picked up a box of the International Center for Tropical Agriculture (CIAT) bean seeds (appropriate, given our shared legal action with CIAT defending the Mexican yellow beans – first evidence that the FAO/CGIAR agreement could have legal weight) with Clive Stannard and walked down into the vault to place them in storage. Many of us carrying the boxes had tears in our eyes. Ditdit Pelegrina (who had replaced Neth Dano who had replaced Rene Salazar as head of Searice) and I had an opportunity to speak at the seminar that preceded the formal opening of the vault and I recalled our three objectives when civil society first came to FAO pressing the seeds issue back in 1981: we wanted an intergovernmental organization to address the issues; we wanted $350 million a year for genetic resource conservation; and we wanted a World Gene Bank. With the Governing Body of the
Treaty (and the new enlarged FAO Commission on Genetic Resources for Food and Agriculture), creation of the Global Crop Diversity Trust, and the establishment of the Svalbard Vault, we had come a fair way to achieving our original goals. Not all the way – but some ways. Amid the good feelings, remains the feeling that we had not asked for enough in the first place. There are other seed wars looming – some bigger than any we have seen before.

As a civil society organization, ETC Group (we changed our name from RAFI in 2002) is back to where it was in the late 1970s/early 1980s. We are outsiders once again – with a new agenda that neither FAO nor most governments understand. Our concerns about genetic resources now cover everything from mammals to microbes and our concern about multinational corporations – the ones we’ve loved to call ‘Gene Giants’ – and their efforts to monopolize seeds has moved on to include Synthetic Biology, the effort to monopolize biomass, and our opposition to the new ‘Biomassters’. We are not only concerned about fighting intellectual property monopolies but also fighting biological and technological monopolies. With climate change, the biggest battle of all is to support the efforts of peasant producers around the world to use the genetic diversity at their fingertips to respond to the changes ahead. There is lots to do. It feels like old times.

However, the real change – a century in coming – is David Lubin’s legacy. He is no longer alone – a single peasant fighting the grain trade. Now there is ‘Via Campesina’ – a massive farmers’ movement around the world – that is clearly in the lead in civil society and among social movements and has its own plans. Via Campesina has moved us firmly from our narrow focus on Farmers’ Rights to food sovereignty. The seed wars have new seed warriors!