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Organización  
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para la  
Agricultura  
y la  
Alimentación

## COUNCIL

**Hundred and Twenty-first Session**

**Rome, 30 October - 1 November 2001**

**REPORT OF THE SEVENTY-SECOND SESSION OF THE  
COMMITTEE ON CONSTITUTIONAL AND LEGAL  
MATTERS (CCLM)**

**Rome, 8 - 10 October 2001**

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## I. INTRODUCTION

1. The Seventy-second Session of the Committee on Constitutional and Legal Matters (CCLM) was held from 8 to 10 October 2001. All the Members of the Committee, as listed below, were represented:

**Democratic People's Republic of Korea, France, Iraq, Malta, Senegal, the United States of America and Uruguay.**

## II. AMENDMENTS TO THE AGREEMENT FOR THE ESTABLISHMENT OF A COMMISSION FOR CONTROLLING THE DESERT LOCUST IN THE EASTERN REGION OF ITS DISTRIBUTION AREA IN SOUTH-WEST ASIA

2. The CCLM recalled that the Agreement for the Establishment of a Commission for Controlling the Desert Locust in the Eastern Region of its Distribution Area in South-West Asia was approved by the Conference at its Twelfth Session in December 1963. At its Twelfth Session, in March 1977, the Commission adopted amendments to the Agreement which were approved by the FAO Council at its Seventy-second Session, in November 1977. These amendments entered into force for all parties to the Agreement upon approval by the Council. Current Parties to the Agreement are: Afghanistan, India, the Islamic Republic of Iran and Pakistan.

3. The CCLM further recalled that the Commission, at its Twenty-second Session, held in Tehran, in September 2000, adopted a number of amendments to the Agreement under the terms of Article XIV of the Agreement, which provides that *'any amendment (...) shall require the approval of the Council of the Organization unless the Council considers it desirable to refer the amendments to the Conference of the Organization for approval'*. Amendments not involving new obligations for Members of the Commission shall take effect with respect to all Members from the date of approval by the Council or Conference, as appropriate. Amendments involving new obligations for Members of the Commission shall, after approval by the Conference or Council of the Organization, come into force in respect of each Member only upon acceptance by it.

4. Consequently, the CCLM considered whether the amendments to the Agreement, as adopted in September 2000, would involve new obligations for the Members of the Commission. In doing so, the CCLM took into account the criteria, set down by the CCLM itself in October 1977 and consistently applied by it since that date, for determining whether amendments involved new obligations.

5. The CCLM reviewed the proposed amendments, as adopted at the Twenty-second Session of the Commission in September 2000 and as attached to this report as **Appendix I**, and was of the opinion that they did not involve new obligations for the parties to the Agreement and that, therefore, they would come into force once approved by the FAO Council. The CCLM found the amendments to be in conformity with the Basic Texts of the Organization and in proper

legal form and recommended that these amendments be submitted to the Council, at its Hundred and Twenty-first Session in October 2001, for approval.

### **III. AGREEMENT WITH THE ARAB ORGANIZATION FOR AGRICULTURAL DEVELOPMENT**

6. The CCLM recalled that the Arab Organization for Agricultural Development (AOAD) was established under an agreement approved by the Council of the League of Arab States on 11 March 1970 and that, in January 1974, the AOAD and FAO had concluded an Agreement under the terms of an exchange of letters. Current AOAD Members are all the twenty-one Members of the Arab League.

7. The CCLM took note that, over the years, cooperation between the two organizations had developed and covered a large range of fields of cooperation in agriculture, with exchange of information, consultation and exchange of experience on studies and projects, participation in meetings, organization of joint programmes and studies, setting up of a liaison mechanism with the Regional Office for the Near East in Cairo, as well as the use of personnel and exchange of scientific material.

8. The CCLM took further note that this extended cooperation between the two organizations did not exclude some shortcomings, in particular regarding the formal legal relationship between them. This had led FAO and AOAD to the conclusion that the Agreement of 1974 needed to be renegotiated, with a view to elaborating a more structured framework of cooperation that, at the same time, would improve effective collaboration between the two organizations at the working level.

9. In examining the draft Agreement, the CCLM took into consideration the provisions of Article XIII of the FAO Constitution regarding cooperation with international organizations, as well as the guidelines for formal relationship agreements between FAO and other intergovernmental organizations, which are set out in the Appendix to Conference Resolution 69/59 (Part N of the Basic Texts of the Organization).

10. The CCLM reviewed the text of the draft Agreement, as attached to this report as **Appendix II**. It was of the opinion that Article I.3 was not required, as the provisions were already contained in the preceding paragraphs of Article I. It moreover noted that the provisions of Article I.3 were not used in other FAO agreements, and therefore recommended its deletion after consultation with AOAD. With these considerations, the CCLM found the draft agreement to be in conformity with the FAO Constitution and with Conference Resolution 69/59, and forwarded it to the Council, at its Hundred and Twenty-first Session in October 2001, for approval and subsequently to the Conference, at its Thirty-first Session in November 2001, for confirmation.

#### **IV. ARREARS OF THE FORMER SOCIALIST FEDERAL REPUBLIC OF YUGOSLAVIA**

11. The CCLM recalled the main decisions of the General Assembly of the United Nations (UNGA) and the Security Council as well as of the FAO Council regarding Yugoslavia, in the period between the Socialist Federal Republic of Yugoslavia's becoming a Member Nation of FAO on 16 October 1946 and the Government of the Federal Republic of Yugoslavia's formal application for FAO membership, sent to the Director-General on 21 November 2000. The CCLM further recalled that, on matters regarding succession and recognition of States, FAO has always followed the practice of the United Nations, and that this was the case with respect to Yugoslavia.

12. The CCLM noted, in particular, that the formal application for membership, received by the Director-General from the Government of the Federal Republic of Yugoslavia on 21 November 2000, will be considered by the Conference, at its Thirty-first Session in November 2001. The Hundred and Nineteenth Session of the Council, held in November 2000, agreed that, pending the decision of the Conference on the application, the Federal Republic of Yugoslavia might be invited to send observers to meetings of the Council and regional and technical meetings that are of interest to it, and might also be asked to designate participants in seminars, workshops and training courses.

13. The CCLM noted that, in line with the well established practice of FAO, the issue of the arrears accumulated by the former Socialist Federal Republic of Yugoslavia would be dealt with by taking into account the decision taken on the matter at the United Nations. No decision has yet been taken at the United Nations on this complex matter, which involves both political and legal considerations. Furthermore, the matter may not be resolved speedily.

14. Without prejudging the content of any decision that may be taken at the United Nations, the CCLM considered that a number of legal considerations might be of some relevance. These included: (i) the fact that it was considered that the State formerly known as the Socialist Federal Republic of Yugoslavia had ceased to exist on 27 April 1992, following a process of dissolution that lasted a number of years; (ii) the provisions of Part IV of the Vienna Convention on Succession of States in Respect of State Property, Archives and Debts; and (iii) any arrangements on succession issues entered into by the successor States of the former Socialist Federal Republic of Yugoslavia.

15. The CCLM considered the above and recommended to the Council that, should the Federal Republic of Yugoslavia be admitted to membership of FAO before a decision on the arrears of the former Socialist Federal Republic of Yugoslavia is taken at the United Nations, the matter be decided by the Council in the light of the decision taken at the United Nations and upon advice of the CCLM and the Finance Committee, subject to confirmation by the Conference.

## V. INTERNATIONAL UNDERTAKING ON PLANT GENETIC RESOURCES

16. The CCLM recalled that the **International Undertaking on Plant Genetic Resources** (the Undertaking) had been adopted by the Conference in November 1983 and that a number of agreed interpretations of the Undertaking had subsequently been adopted by the FAO Conference as Conference Resolutions in 1989 and 1991 and annexed to the Undertaking. It also recalled that the Council had, in November 1983, on the authority of the Conference and in implementation of Article 9 of the Undertaking, established the Commission on Plant Genetic Resources, whose mandate had been broadened by the Conference in 1995, and whose name was, since the same year 1995, the Commission on Genetic Resources for Food and Agriculture (the Commission). The Commission had since its establishment monitored the implementation of the Undertaking.

17. The CCLM also recalled the background to negotiated revision of the Undertaking, in particular the fact that, in adopting the text of the Convention on Biological Diversity in 1992, countries had also adopted Resolution 3 of the Nairobi Final Act, which recognized that access to *ex situ* collections not acquired in accordance with the Convention, and Farmers' Rights, were outstanding matters which the Convention had not addressed, for which solutions should be sought within FAO's Global System on Plant Genetic Resources for Food and Agriculture, of which the Undertaking was the corner-stone.

18. The CCLM further recalled that, at its session of November 1993, the Conference had adopted Resolution 7/93, which requested "*the Director-General to provide a forum for negotiation among governments: (a) for the adaptation of the International Undertaking on Plant Genetic Resources, in harmony with the Convention on Biological Diversity, (b) for consideration of the issue of access on mutually agreed terms to plant genetic resources, including ex situ collections not addressed by the Convention, as well as (c) for the issue of the realization of Farmers' Rights ... through regular and extraordinary sessions of the Commission*"<sup>1</sup>.

19. The CCLM noted that the negotiations in the Commission had begun in November 1994 and continued until 30 June 2001; that progress in the negotiations had regularly been reported to the Conference of the Parties to the Convention on Biological Diversity; and that the Council and the Conference had monitored the process of the negotiations and had stressed the high priority given to completing them. It recalled that, in June 2001, the Commission had "*adopted the text of the International Undertaking on Plant Genetic Resources*", and had "*requested the Director-General to transmit it, through the Seventy-second session of the Committee on Constitutional and Legal Matters (8-9 October 2001) and the Hundred and Twenty-first session of the Council (30 October-1 November 2001), to the Thirty-first Session of the Conference (2-13 November 2001), for its consideration and approval*"<sup>2</sup>. The CCLM also noted the two declarations of the European Union and the statement made by Japan<sup>3</sup>. The CCLM also recalled that, "*in adopting the text of the International Undertaking, the Commission also forwarded to the Thirty-first session of the Conference the draft of a resolution, to be considered for adoption in parallel with the International Undertaking, regarding interim arrangements for its implementation*"<sup>4</sup>. It was noted that the text before the CCLM was not yet finalized and that the bracketed text and other

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<sup>1</sup> Twenty-seventh Session of the FAO Conference, Rome, 6-24 November 1993, C 93/REP, paras 105-108.

<sup>2</sup> *Report of the Sixth Extraordinary Session of the Commission on Genetic Resources for Food and Agriculture* (Rome, 25-30 June 2001), para 6.

<sup>3</sup> *Report of the Sixth Extraordinary Session of the Commission on Genetic Resources for Food and Agriculture* (Rome, 25-30 June 2001), Appendix C, and footnote in Appendix E.

<sup>4</sup> *Report of the Sixth Extraordinary Session of the Commission on Genetic Resources for Food and Agriculture* (Rome, 25-30 June 2001), para 8.

issues raised in country comments would need to be resolved before the Undertaking came before the Conference.

20. On the assumption that the Undertaking will be concluded within the framework of FAO, the CCLM reviewed the text of the Undertaking and the text of the draft Conference Resolution, adopted at the Sixth Extraordinary Session of the Commission in June 2001 and attached to its report as Appendixes B and F respectively. In reviewing these texts, the CCLM took into special consideration the principles contained in Article XIV of the FAO Constitution, Rule XXI of the GRO, and Part R of the Basic Texts of the Organization, and restricted its work to aspects of a specifically legal nature.

## MODIFICATIONS TO THE TEXT OF THE UNDERTAKING

21. The CCLM proposed a number of modifications to the text of the Undertaking adopted by the Commission at its Sixth Regular Session. The following notes provide information, where necessary, on the reasons for the CCLM's proposed modifications and on other matters that it wished to bring to the attention of the Council. Textual corrections and amendments for consistency between the parts of the agreement have also been introduced. All these changes have been incorporated into the text contained in **Appendix III** to this Report.

22. Establishment of the Undertaking within the framework of FAO. Rule XXI.1c of the GRO provides that the Conference "... may approve only such conventions, agreements, supplementary conventions or agreements as contain provisions to the effect that: (i) any international body or machinery to be set up or any activity to be undertaken under such convention, agreement, supplementary convention or agreement is within the framework of the Organization; ..." This mandatory provision is reinforced by Part R of the Basic Texts, which provides that "*the preamble shall always specify that the convention or agreement is established within the framework of the Organization*"<sup>5</sup>. The CCLM decided that it would systematically conform the text to the requirements of Article XIV, noting that, should the Undertaking not be an Article XIV agreement, neither the CCLM nor the FAO Governing Bodies would be involved in its adoption.

23. Name of the Instrument. The CCLM recommended that, in accordance with Part R of the Basic Texts, Appendix, A.1, the instrument should be entitled "*The International Convention on Plant Genetic Resources for Food and Agriculture*". The term "*Undertaking*" is not one normally used in respect of a binding international agreement. Furthermore, Part R of the Basic Texts states that "*such treaties concluded under Article XIV of the Constitution as are of a worldwide scope shall in future be designated by the term 'convention', while the others shall be designated by the term 'agreement'*"<sup>6</sup>. This would also assist in avoiding confusion between the old status of the Undertaking, as a voluntary instrument, and its new status, as a binding international instrument. In addition, given the objectives of the future instrument as set out in Article 1, as well as the frequent reference in the text to "*plant genetic resources for food and agriculture*", the scope of the Convention should be apparent from the title.

24. Preamble. The CCLM inserted a final clause within the preamble, establishing the Convention under Article XIV.

25. Article 4. The CCLM was of the opinion that the use of a "*savings clause*" — one example of which could be found in the bracketed text — was compatible with an Article XIV

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<sup>5</sup> Part R of the Basic Texts of the Organization, Appendix, A.5.

<sup>6</sup> Part R of the Basic Texts of the Organization, Appendix, A.1.

agreement. It was also of the opinion that a “*savings clause*” was not absolutely necessary. It considered that the final formulation and position of the text in brackets was a matter for negotiations.

26. Article 13.3a. The CCLM recognized that there was an inconsistency amongst the languages regarding the use of the prepositions “*in*” or “*for*”, in the first sentence. It decided to standardize on “*for*” in all the languages.

27. Article 13.5 (old 14.2d (iii)). The CCLM decided to move paragraph 14.2d (iii) to become new Article 13.5, because it related to the Material Transfer Agreements that were the subject of Article 13.4. Article 13.5 was therefore renumbered as Article 13.6.

28. Article 14.1 For clarity, the CCLM recommended changing the phrase “*within the Multilateral System*” to read “*which are included in the Multilateral System*”.

29. Article 14.2a. The CCLM decided to add a final clause specifying that the information system of the Multilateral System is that “*provided for in Article 18*”.

30. Article 20.2 states that all decisions of the Governing Body shall be taken by consensus. This does not in itself raise a fundamental legal problem, but the CCLM recommended adding the following phrase, “*unless by consensus another means of arriving at a decision on certain matters is reached*”. It noted, for instance, that the Rules of Procedure, to be approved by consensus, could foresee matters on which a decision could be taken by a majority or by a qualified majority. This would provide the means to avoid deadlock in its decision-making processes, at least in some matters (for example, in elections).

31. Article 20.3d. The CCLM noted that a function of the Governing Body is to adopt a budget. The Governing Body could not, however, adopt a budget for that part of its resources that was under the authority of the FAO Conference. In this respect, it noted that, under Article XIV, there were three possible sources of funds for the Governing Body: (1) that it be entirely financed by the Organization; (2) that, in addition to being financed by the Organization, it may undertake cooperative projects financed by contracting parties; and (3) that, in addition to being financed by the Organization, it have an autonomous budget. It therefore observed that the intention of the Article could only refer to the autonomous budget.

32. Article 20.6. The CCLM was of the opinion that the square brackets around this Article should be removed, as the text in question is compatible with Article XIV. It is found in other Article XIV agreements, such as the International Plant Protection Convention.

33. Article 21.1. The CCLM noted that square brackets had been retained in the first sentence of this Article, pending resolution of the question as to whether or not the revised Undertaking fell under Article XIV. It accordingly removed the brackets. It also noted that the approval by the Governing Body of the appointment of the Secretary, as provided for in the first sentence of Article 21, is conditional on there being an autonomous budget, in accordance with the provisions of Part R, Appendix B, paragraphs 32 and 33.

34. In the second sentence, it decided to delete the words “*... as the Governing body may decide*” and replace them with the words “*... as may be required*”, to allow for the Director-General’s authority to appoint the Secretariat’s staff.

35. Article 21.3. The CCLM decided to specify that the Secretary should communicate decisions of the Governing Body and information received from Contracting Parties to both the Contracting Parties and to the Director-General, in order to comply with Rule XXI.1(c) of the GRO which provides that the Conference “*may approve only such conventions, agreements, supplementary conventions or agreements as contain provisions to the effect that: ... (ii)*



*recommendations adopted and reports on activities carried out by any such body shall be transmitted to the Director-General of the Organization”.*

36. Article 21.4 and Article 36. The CCLM noted that, while Russian is one of the languages of the United Nations and not one of the languages of FAO, this Articles foresees its use. This has budgetary implications. In particular, in the absence of a decision of the Conference to the contrary, the costs connected with operating in Russian could not be met out of FAO regular budget resources.

37. Article 25. The CCLM decided to delete the first clause of Article 25.2 and the whole of Article 25.3, as being redundant.

38. Articles 28, 29 and 30.2. The CCLM noted that the provisions of these Articles are interlinked, and considered them together. It amended Article 28 to make clear that States that had not signed, in accordance with Article 26, might still accede to the Convention after the closure for signature. It amended Article 29 to ensure that instruments deposited by a Member Organization shall not be counted as additional to those deposited by its Member States. Moreover, the CCLM amended Article 30.2, to specify that it applied to instruments of withdrawal as well as to instruments of ratification, acceptance, approval or accession.

39. As regards the admission, as Contracting Parties, of States that are not FAO Members, the CCLM noted that Article XIV.3(b) of the FAO Constitution provides that agreements establishing commissions or committees require prior approval by at least two-thirds of the membership of such commissions or committees for the participation of non-Member States of the Organization that are members of the United Nations, any of its specialized agencies or the International Atomic Energy Agency or by regional economic integration organizations other than Member Organizations. It also noted, however, that the most recent agreements under Article XIV (which do not foresee, as their primary objective, the establishment of a commission or committee) provide instead for a Governing Body to which all Contracting Parties are automatically admitted as members. The agreements in question are: the Plant Protection Agreement for the Asia and Pacific Region (1955); the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (1993); the International Plant Protection Convention, in the new revised text approved by FAO Conference at its Twenty-ninth Session (November 1997). The International Convention on Plant Genetic Resources for Food and Agriculture could, in the opinion of the CCLM, follow these precedents.

#### MODIFICATIONS TO THE TEXT OF THE DRAFT RESOLUTION FOR CONSIDERATION BY THE FAO CONFERENCE

40. The CCLM noted that the draft Resolution was still in an early stage of formulation. It reviewed the text for consistency and made a number of editorial suggestions. These have been incorporated in the text contained in **Appendix IV** to this Report. The following notes provide information, where necessary, on the reasons for the CCLM’s suggestions and on other matters that it wished to bring to the attention of the Council.

41. Paragraph A.4. The CCLM noted that the draft paragraph contained a declaration of principle, which did not depend from a “*decision*” of the Conference, but from the Convention itself, once it has entered into force, and that it was applicable only to Contracting Parties. It therefore suggested that the word “*decides*” be replaced by the words “*notes with satisfaction*”.

42. Interim arrangements for the implementation of the International Convention on Plant Genetic Resources for Food and Agriculture. The CCLM discussed the legal implications of the proposal to establish an “Interim Committee”. It recommended that consideration be given to the

FAO Commission on Genetic Resources for Food and Agriculture acting as the Interim Committee, which has a number of advantages.

43. It noted that the Commission, by its mandate, will continue to monitor the Undertaking until the entry into force of the new Convention, and that it is common in international law that the body that negotiated a treaty act as the interim intergovernmental committee before its entry into force, which guarantees continuity and consistency. It noted that a number of provisions for the implementation of the Convention are required by the text of the Convention and the draft Resolution to be negotiated before the entry into force of the Convention. The Commission will also continue to oversee a number of related matters that will form part of or be closely connected with the Convention, namely: the agreements with the IARCs of the CGIAR; the *State of the World's Plant Genetic Resources*, the rolling *Global Plan of Action on Plant Genetic Resources* and the Global Information System on Plant Genetic Resources for Food and Agriculture. It also recognized that, with the entry into force of the Convention, the role of the Commission as the Interim Committee would cease.

44. The CCLM recognized that there was no legal impediment to the Commission both performing its normal functions and constituting itself, as required, to act as the Interim Committee. This would allow FAO to avoid potentially conflicting decisions between two different bodies, and would increase efficiency and avoid a duplication of effort.

45. The CCLM noted that the draft Resolution foresaw the participation of States that are not FAO Members in the work of the Interim Committee, consistent with applicable FAO rules.

46. With these considerations, the CCLM concluded that the text of the International Convention on Plant Genetic Resources for Food and Agriculture, and the associated Resolution, are consistent with the Basic Texts of the Organization, and are set out in a proper legal form. The CCLM accordingly recommended that the texts of the Convention, as set out in **Appendix III**, and the Draft Resolution, as set out in **Appendix IV**, be submitted with its comments to the Council, at its Hundred and Twenty-first Session in October-November 2001, so that they could be finalized by the Council, prior to their submission to the Conference.

## VI. OTHER MATTERS

47. As this was the last meeting of the CCLM with its present membership, its members wished to record their appreciation for the effective manner in which the Chairman had performed his task.

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APPENDIX I

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**AMENDMENTS TO THE  
AGREEMENT FOR THE ESTABLISHMENT OF AN FAO COMMISSION FOR  
CONTROLLING THE DESERT LOCUST IN ~~THE EASTERN REGION OF ITS~~  
DISTRIBUTION AREA IN SOUTH-WEST ASIA\***

as amended by the Commission at its Twelfth Session (9-17 March 1977) and approved by the  
FAO Council at its Seventy-Second Session (8-10 November 1977).

**PREAMBLE**

The Contracting Governments, having regard to the urgent necessity of preventing losses to agriculture in certain countries of central and western Asia caused by the Desert Locust, hereby establish within the framework of the Food and Agriculture Organization of the United Nations (hereinafter referred to as "The Organization") a Commission to be known as the "FAO Commission for Controlling the Desert Locust in ~~the Eastern Region of its Distribution Area in~~ South-West Asia", whose object shall be to promote national and international research and action with respect to the control of the Desert Locust in that Region. The Region is defined as consisting of the territories of Afghanistan, India, the Islamic Republic of Iran and Pakistan ~~and any territories adjacent to the above countries.~~

**ARTICLE I**

**Membership**

1. The Members of the FAO Commission for Controlling the Desert Locust ~~in the Eastern Region of its Distribution Area~~ in South-West Asia (hereinafter referred to as "the Commission") shall be such Member Nations and Associate Members of the Organization situated in the Region defined in the Preamble as accept this Agreement in accordance with the provisions of Article XIII of this Agreement.
2. The Commission may, by a two-thirds majority of its Members, admit to membership such other States, situated in the Region that are Members of the United Nations, any of its Specialized Agencies or the International Atomic Energy Agency, as have submitted an application for membership of the Commission and a declaration made in a formal instrument that they accept this Agreement as in force at the time of admission.

**ARTICLE II**

**Obligations of Members regarding National Policies and  
International Co-operation for the Control of the Desert Locust**

1. Members undertake to maintain through the Secretary and/or between members of the Commission a regular exchange of information on the current locust situation and the progress of control campaigns within their countries, and also to transmit such information regularly to the Desert Locust Information Service ~~in London~~ at FAO, Rome ~~in the light of the Agreement between the Organization and the Anti-Locust Research Center.~~

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\* Words struck out are deleted; words underlined are added.

2. Members undertake to carry out all possible measures ~~to control plagues~~ for preventive control of the Desert Locust within their countries and to reduce crop damage by adopting at least the following essential procedures:

- (a) maintaining a permanent locust information and reporting service;
- (b) maintaining an adequate permanent locust control service;
- (c) holding reserves of insecticides and application equipment;
- (d) encouraging and supporting such training, survey and research work, including where appropriate the maintenance of national research stations for the study of the Desert Locust, as may be considered desirable by the Commission and as are compatible with the resources of the country;
- (e) participating in the implementation of any common policy of locust control or prevention which may be approved by the Commission;
- (f) facilitating the storage of any items of anti-locust equipment and insecticides held by the Commission and permitting the duty-free import or export without hindrance of such goods and equipment as well as the free movement within the country of such goods and equipment;
- (g) providing the Commission with any information it may request to carry out its functions effectively.

3. Members undertake to submit to the Commission periodic reports on the action taken to fulfil the obligations specified in paragraphs 1 and 2 above.

### **ARTICLE III**

#### **Seat of the Commission**

1. The seat of the Commission shall be determined by the Commission.
2. Sessions of the Commission shall normally be held at its seat. Sessions may, however, be convened elsewhere, in consultation with the Director-General of the Organization, in pursuance of a decision of the Commission at a previous session.

### **ARTICLE IV**

#### **Functions of the Commission**

The following shall be the functions of the Commission:

1. Joint action and Assistance

The Commission shall:

- (a) plan and implement joint action for the survey and control of the Desert Locust in the Region wherever required and, to this effect, arrange means whereby adequate resources can be made available;
- (b) assist and promote, in any manner which it considers appropriate, any national, regional or international action relating to the control or survey of the Desert Locust;

- (c) determine, in consultation with the Members concerned, the nature and extent of assistance needed by such Members for implementing their national programs and for supporting regional programs;
- (d) assist, at the request of any Member whose territory is faced with Desert Locust situations beyond the capacity of its national services to control and survey, in any measures jointly agreed to that may become necessary;
- (e) maintain at strategic localities determined by the Commission, in consultation with the Members concerned, reserves of anti-locust equipment, insecticides and other supplies, to be used in cases of emergency in accordance with decisions of the Commission including supplementing of the national resources of any Member.

## 2. Information and Co-ordination

The Commission shall:

- (a) ensure that all Members are provided with current information in regard to Desert Locust infestations, and collect and disseminate information on experience gained, research conducted and programs adopted on the national, regional and international levels in connection with the control of the Desert Locust;
- (b) assist the national research organizations of Members and co-ordinate research in the Region by arranging visits of research and survey units and other appropriate means.

## 3. Co-operation

The Commission may:

- (a) enter into arrangements or agreements, through the Director-General of the Organization, with Nations in the Region that are not Members of the United Nations, for common action in connection with survey and control of locusts in the Region;
- (b) enter into or encourage arrangements, through the Director-General, with other United Nations Specialized Agencies or other international organizations concerned, for common action on the study and control of locusts and for the mutual exchange of information on problems concerning locusts.

## 4. Administrative matters

The Commission shall:

- (a) consider and approve the report of the Secretary on the activities of the Commission, the Program and Budget of the Commission for the ensuing financial period, and the annual accounts;
- (b) keep the Director-General of the Organization fully informed of its activities and transmit to him the accounts, the Program and the Budget of the Commission, the latter for submission to the Council of the Organization prior to implementation;
- (c) transmit to the Director-General the reports and recommendations of the Commission, for such action by the Council or Conference of the Organization as may be appropriate.

## ARTICLE V

### Sessions of the Commission

1. Each Member of the Commission shall be represented at sessions of the Commission by a delegate who may be accompanied by an alternate and by experts and advisers. Alternates, experts and advisers may take part in the proceedings of the Commission but may not vote unless authorized by the delegate to substitute for him.
2. A majority of the Members of the Commission shall constitute a quorum. Each Member shall have one vote. Decisions of the Commission shall be taken by a majority of the votes cast except as otherwise provided for in this Agreement.
3. A Member which is in arrears in the payment of its financial contributions to the Commission shall have no vote if the amount of its arrears equals or exceeds the amount of the Contributions due from it for the two preceding financial years.
4. The Commission shall elect, at the beginning of each regular session, a Chairman and a Vice-Chairman from amongst the delegates. These Officers shall hold office until the beginning of the next regular session and shall be eligible for re-election.
5. The Director-General of the Organization in consultation with the Chairman of the Commission shall convene a regular session of the Commission at least ~~once a year~~ once every two years in calm periods and at least once a year during Desert Locust upsurges. Special sessions may be convened by the Director-General in consultation with the Chairman of the Commission, if so requested by the Commission in regular session or by at least one third of the Members during intervals between regular sessions.
6. The Director-General of the Organization or a representative designated by him shall have the right to participate without vote in all meetings of the Commission or its subsidiary bodies.

## ARTICLE VI

### Observers and Consultants

1. Participation of international organizations in the work of the Commission and the relations between the Commission and such organizations shall be governed by the relevant provisions of the Constitution and the General Rules of the Organization as well as by the rules on relations with international organizations adopted by the Conference or Council of the Organization. All such relations shall be dealt with by the Director-General of the Organization.
2. Member Nations and Associate Members of the Organization that are not Members of the Commission may, upon their request, be represented by an observer at sessions of the Commission and of its subsidiary bodies.
3. States which, while not Members of the Commission nor Members or Associate Members of the Organization, are Members of the United Nations, any of its Specialized Agencies or the International Atomic Energy Agency may, upon request and subject to the concurrence of the Commission and in accordance with the Provisions relating to the granting of observer status to Nations adopted by the Conference of the Organization, be invited to attend sessions of the Commission and its subsidiary bodies in an observer capacity.
4. The Commission may invite consultants or experts to attend its sessions.

## ARTICLE VII

### Secretariat

The Director-General of the Organization shall provide the Secretary and staff of the Commission, who, for administrative purposes, shall be responsible to him. They shall be appointed under the same terms and conditions as the staff of the Organization. The Secretary shall prepare a draft annual report on the activities of the Commission for the approval of the Commission with the view to its transmission to the Director-General of the Organization and shall submit to the Commission draft programs of work and budget and annual accounts.

## ~~ARTICLE VIII~~

### ~~The Executive Committee~~

- ~~1. An Executive Committee shall be established and shall be composed of one representative (preferably a locust specialist) of each of the Members of the Commission. The Chairman and Vice Chairman of the Executive Committee shall be elected from amongst its Members and shall hold office for one year. They shall be eligible for re-election.~~
- ~~2. The Executive Committee shall meet at least once between any two successive regular Sessions of the Commission. The Chairman of the Executive Committee shall, in consultation with the Director-General of the Organization, convene Sessions of the Committee.~~
- ~~3. The Secretary of the Commission shall act as Secretary of the Executive Committee.~~

## ARTICLE IX

### Functions of the Executive Committee.

~~The Executive Committee shall:~~

- ~~(a) make proposals to the Commission concerning policy matters and the program of activities;~~
- ~~(b) ensure the implementation for the policies and programs approved by the Commission;~~
- ~~(c) submit draft programs of work and budget and annual accounts to the Commission;~~
- ~~(d) prepare the draft annual report on the activities of the Commission for the approval of the Commission with the view to its transmission to the Director-General of the Organization.~~
- ~~(e) carry out such other functions as the Commission may delegate to it.~~

## ARTICLE X VIII

### Rules of Procedure and Financial Regulations

The Commission may, by a two-thirds majority of its membership, adopt and amend its own Rules of Procedure and Financial Regulations which shall be consistent with the General Rules and the Financial Regulations respectively of the Organization. The Rules of Procedure and Financial Regulations of the Commission and any amendment thereto shall come into force upon

approval by the Director-General of the Organization, and as from the date of such approval, the Financial Regulations and amendments thereto being subject to confirmation by the Council of the Organization.

## **ARTICLE ~~XI~~ IX**

### **Subsidiary Bodies**

1. The Commission may, if necessary, establish sub-commissions, committees or working parties, subject to the availability of the necessary funds in the relevant chapters of the approved budgets of the Commission and of the Organization. The determination of such availability shall be made by the Director-General of the Organization. Before taking any decision involving expenditure in connection with the establishment of subsidiary bodies, the Commission shall have before it a report from the Director-General on the administrative and financial implications thereof.
2. Sessions of sub-commissions, committees and working parties shall be convened by the Chairman of such bodies in consultation with the Director-General of the Organization.
3. Membership in subsidiary bodies shall either be open to all Members of the Commission or shall consist of selected Members of the Commission, or of individuals appointed in their personal capacity, as determined by the Commission.
4. The procedure of subsidiary bodies shall be governed mutatis mutandis by the Rules of Procedure of the Commission.

## **ARTICLE ~~XII~~ X**

### **Finance**

1. Each Member of the Commission undertakes to contribute annually its share of the Budget in accordance with a scale of contributions to be adopted by a two-thirds majority of the membership of the Commission. The contributions of the Members of the Commission shall, initially, be calculated on the basis of the financial contributions worked out in respect of the Members in connection with the United Nations Special Fund Desert Locust Project, subject to such modifications as may be determined by the Commission as the result of acceptances of the Agreement in addition to those provided for in Article XVIII of the Agreement.
2. Contributions by Members may be made partly in cash and partly in kind, the proportion of each being determined by the Commission. For budgetary purposes, the cash value of contributions in kind shall be calculated by such means as the Commission may decide.
3. The Commission may also accept contributions and donations from other sources.
4. Contributions shall be payable in currencies to be determined by the Commission after consultation with each Member and with the concurrence of the Director-General of the Organization.
5. All contributions and donations received shall be placed in a Trust Fund administered by the Director-General of the Organization in conformity with the Financial Regulations of the Organization.



**ARTICLE ~~XIII~~ XI****Expenses**

1. The expenses of the Commission shall be paid out of its Budget except those relating to such staff and facilities which can be made available by the Organization. The expenses to be borne by the Organization shall be determined and paid within the limits of an annual budget prepared by the Director-General and approved by the Conference of the Organization in accordance with the Constitution, General Rules and the Financial Regulations of the Organization.
2. Expenses relating to attendance by one delegate of each Member Government of the Commission at sessions of the Commission or its subsidiary bodies shall be borne by the Commission. Expenses of alternates, advisers and observers, shall be borne by their respective governments or organizations.
3. Expenses of individuals invited in their personal capacity to attend sessions or participate in the work of the Commission or its subsidiary bodies shall be borne by such individuals except when they have been requested to perform a specific task on behalf of the Commission or its subsidiary bodies.
4. The expenses of the Secretariat shall be borne by the Organization.

**ARTICLE ~~XIV~~ XII****Amendments**

1. This Agreement may be amended by a two-thirds majority of the membership of the Commission.
2. Proposals for amendments may be made by any Member of the Commission in a communication addressed to the Director-General of the Organization not later than 120 days before the Session of the Commission at which the proposal is to be considered. The Director-General shall inform all Members of the Commission of all proposals for amendment, within 30 days of receipt of such proposals.
3. Any amendment to this Agreement shall require the approval of the Council of the Organization unless the Council considers it desirable to refer the amendment to the Conference of the Organization for approval.
4. Amendments not involving new obligations for Members of the Commission shall take effect from the date of the approval by the Council or Conference, as appropriate.
5. Amendments involving new obligations for Members of the Commission shall, after approval by the Conference or Council of the Organization, come into force in respect of each Member only upon acceptance by it. The instruments of acceptance of amendments involving new obligations shall be deposited with the Director-General of the Organization. The Director-General shall inform all Members of the Commission and the Secretary-General of the United Nations of such acceptance. The right and obligations of any Member of the Commission that has not accepted an amendment involving new obligations shall continue to be governed by the provisions of the Agreement in force prior to the amendment.
6. The Director-General of the Organization shall inform all Members of the Commission, all Members and Associate Members of the Organization and the Secretary-General of the United Nations of the entry into force of any amendment.

**ARTICLE ~~XV~~ XIII****Acceptance**

1. Acceptance of this Agreement by any Members or Associate Members of the Organization shall be effected by the deposit of an instrument of acceptance with the Director-General of the Organization and shall take effect on receipt of such instrument by the Director-General.
2. Acceptance of this Agreement by non-Member Nations of this Organization shall become effective on the date on which the Commission approves the application for membership in conformity with the provisions of Article I of this Agreement.
3. The Director-General of the Organization shall inform all Members of the Commission, all Members and Associate Members of the Organization and the Secretary-General of the United Nations of all acceptances that have become effective.
4. Acceptance of this Agreement may be made subject to reservations which shall become effective only upon unanimous approval by the Members of the Commission. The Director-General of the Organization shall notify forthwith all Members of the Commission of any reservations. Members of the Commission not having replied within three months from the date of the notification shall be deemed to have accepted the reservation. Failing such approval, the nation making the reservation shall not become a party to this Agreement.

**ARTICLE ~~XVI~~ XIV****Territorial Application**

The Members of the Commission shall, when accepting this Agreement, state explicitly to which territories their participation shall extend. In the absence of such a declaration, participation shall be deemed to apply to all the territories for the international relations of which the Member is responsible. Subject to the provisions of Article XVI-2, the scope of the territorial application may be modified by a subsequent declaration.

**ARTICLE ~~XVII~~ XV****Interpretation and Settlement of Disputes**

Any dispute regarding the interpretation or application of this Agreement, if not settled by the Commission, shall be referred to a Committee composed of one member appointed by each of the parties to the dispute, and in addition an independent chairman chosen by the members of the Committee. The recommendations of such a Committee, while not binding in character, shall become the basis for renewed consideration by the parties concerned of the matter out of which the disagreement arose. If as the result of this procedure the dispute is not settled, it shall be referred to the International Court of Justice in accordance with the Statute of the Court, unless the parties to the dispute agree to another method of settlement.

**ARTICLE ~~XVIII~~ XVI****Withdrawal**

1. Any Member may withdraw from the Commission at any time after the expiration of one year from the date on which its acceptance took effect or from the date on which the Agreement entered into force, whichever is the later, by giving written notice of withdrawal to the Director-General of the Organization, who shall forthwith inform all Members of the Commission, all Member Nations and Associate Members of the Organization and the Secretary-General of the United Nations. The withdrawal shall become effective one year from the date of receipt of the notification of withdrawal.
2. A Member of the Commission may give notice of withdrawal with respect to one or more of the territories for the international relations of which it is responsible. When a Member gives notice of its own withdrawal from the Commission, it shall state to which territory or territories the withdrawal is to apply. In the absence of such a declaration, the withdrawal shall be deemed to apply to all the territories for the international relations of which the Member of the Commission is responsible, except that such withdrawal shall not be deemed to apply to an Associate Member.
3. Any Member of the Commission that gives notice of withdrawal from the Organization shall be deemed to have simultaneously withdrawn from the Commission, and this withdrawal shall be deemed to apply to all the territories for the international relations of which the Member concerned is responsible, except that such withdrawal shall not be deemed to apply to an Associate Member.

**ARTICLE ~~XIX~~ XVII****Termination**

1. This Agreement shall be considered terminated if and when the number of Members of the Commission falls below three, unless the remaining two Members of the Commission decide to continue, with the approval of the Conference of the Organization. The Director-General of the Organization shall inform all Members of the Commission, all Members and Associate Members of the Organization and the Secretary-General of the United Nations of such termination.
2. On termination of the Agreement all assets of the Commission shall be liquidated by the Director-General of the Organization and after settlement of the liabilities the balance shall be distributed proportionately amongst Members on the basis of the scale of contributions in force at the time. Nations whose contributions are in arrears for two consecutive years shall not be entitled to a share of the assets.

**ARTICLE ~~XX~~ XVIII****Entry into force**

1. This agreement shall enter into force as soon as three eligible Members or Associate Members of the Organization have become parties to it by the deposit of an instrument of acceptance in accordance with the provisions of Article XIII of this Agreement.
2. The Director-General shall notify all Nations having deposited instruments of acceptance as well as all Member Nations and Associate Members of the Organization and the Secretary-General of the United Nations of the date on which this Agreement comes into force.

**ARTICLE ~~XXI~~ XIX****Authentic Languages**

The English, French and Spanish texts of this Agreement shall be equally authentic.

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**APPENDIX II**

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**DRAFT AGREEMENT BETWEEN THE ARAB ORGANIZATION FOR  
AGRICULTURAL DEVELOPMENT (AOAD)  
AND  
THE FOOD AND AGRICULTURE ORGANIZATION OF THE  
UNITED NATIONS (FAO)\***

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The Arab Organization for Agricultural Development and the Food and Agriculture Organization of the United Nations,

Recalling that the Arab Organization for Agricultural Development (hereinafter referred to as "AOAD") was established with the purpose of: (1) developing natural and human resources in the agricultural sector, and improving the means and methods of exploiting these resources on scientific bases; (2) increasing agricultural productive efficiency and achieving agricultural integration between the Arab States and countries; (3) increasing agricultural production with a view to achieving a higher degree of self-sufficiency; (4) facilitating the exchange of agricultural products between the Arab States and countries; (5) enhancing the establishment of agricultural ventures and industries; and (6) increasing the standards of living of the labour force engaged in the agricultural sector;

Recalling also that the Food and Agriculture Organization of the United Nations (hereinafter referred to as "FAO") was established for the purpose of raising levels of nutrition and standards of living of the peoples, securing improvements in the efficiency of the production and distribution of all food and agricultural products, bettering the conditions of rural populations, and thus humanity's freedom from hunger;

Recalling that AOAD and FAO have been cooperating in matters pertaining to, or connected with, food and agriculture in Africa and the Middle East under the terms of an Agreement in the form of an Exchange of Letters of 17 and 19 January 1974;

Realizing that, in light of the experience gained, it is in the interest of both organizations to reinforce and improve the legal and institutional framework for their cooperation;

Being desirous of coordinating their efforts in Africa and the Middle East with a view to achieving their common aims within the framework of the United Nations Charter, the Charter of AOAD and the Constitution of FAO;

Have agreed as follows:

**Article I  
Cooperation**

1. AOAD and FAO agree to cooperate with each other through their appropriate organs with respect to all matters of common interest that arise in the fields of food and agriculture. Specific areas of cooperation may include:

- (a) natural resources inventory using geographic information systems;

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\* Words struck out are deleted.

- (b) regional activities in animal and plant protection, including integrated pest management;
- (c) irrigation;
- (d) rangeland development and improvement;
- (e) women in rural development;
- (f) planning and training institutions for policy analysis and management of the agricultural sector;
- (g) Special Programme for Food Security and technical cooperation among developing countries that are Member States of both AOAD and FAO;
- (h) Such other areas of activity as AOAD and FAO may agree upon.

2. FAO and AOAD shall, as far as possible and in conformity with their constitutional or charter instruments and decisions of their competent bodies, give due consideration to requests for technical assistance made by either FAO or AOAD.

~~3. FAO and AOAD shall give due consideration to requests to enlist political, technical and financial support for the goals and objectives of both FAO and AOAD, in particular in their fora convened in Member States of both organizations.<sup>7</sup>~~

## Article II

### Mutual consultation

1. AOAD and FAO shall consult on all the matters mentioned in Article I that are of common interest to them.

2. AOAD shall inform FAO of any plans for the development of its activities in the fields of food and agriculture. It shall consider any proposals concerning such plans as may be made to it by FAO, with a view to securing effective coordination between the two organizations and avoiding duplication of activities.

3. FAO shall inform AOAD of any plans for the development of its activities in the fields of food and agriculture. It shall consider any proposals concerning such plans as may be made to it by AOAD with a view to securing effective coordination between the two organizations and avoiding duplication of activities.

4. When circumstances so require, AOAD and FAO shall engage in consultations with a view to selecting the best means for ensuring that their activities in matters of common interest are fully effective.

## Article III

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<sup>7</sup> The CCLM noted that the provisions of Article I.3 were not used in other FAO agreements, and therefore recommended its deletion, after consultation with AOAD (see paragraph 10 of this CCLM Report).

### **Reciprocal representation**

1. AOAD shall invite FAO to be represented at sessions of its Specialized Commissions and at technical conferences or meetings, at which questions of interest to FAO are to be discussed. The observer representing FAO may participate without vote in the deliberations of such sessions, conferences or meetings with respect to matters in which FAO is interested.

2. FAO shall invite AOAD to be represented at all sessions of the FAO Conference and the FAO Council and at other relevant conferences and meetings held under the auspices of FAO in which Member States of AOAD participate. The observer representing AOAD may participate without vote in the deliberations of such sessions, conferences or meetings with respect to matters in which AOAD is interested.

### **Article IV**

#### **Meetings**

1. AOAD and FAO may, in appropriate cases, agree to convene under their auspices, according to arrangements to be made in each particular case, joint meetings concerning matters of interest to both organizations. The manner in which measures proposed by such joint meetings may be put into effect will be determined by the two organizations.

2. In appropriate cases, meetings convened by one organization may call for the cooperation and participation of the other organization. The scope of such cooperation and participation will be subject to arrangements in each case, taking into account any relevant resolution approved by the organization responsible for the convening of the meeting.

### **Article V**

#### **Joint action**

1. AOAD and FAO may, through special arrangements, decide upon joint action with a view to attaining objectives of common interest. These arrangements shall define in detail all modalities for such joint action and specify the financial commitments, if any, that each of the parties is to assume.

2. AOAD and FAO may, when they consider it desirable, set up joint commissions, committees or other bodies, on conditions to be mutually agreed in each case, to advise them on matters of common interest.

3. The Executive Heads of AOAD and FAO may, at their request, be invited to address each other's Governing Bodies on issues related to food and agricultural development in Africa and the Middle East.

### **Article VI**

### **Assistance in technical, research and in other related fields**

1. Joint requests for aid from two or more Member States to either organization may, if the Governments concerned so request, be the subject of consultations between the two organizations.
2. Joint studies may be undertaken by AOAD and FAO and joint programmes established between them.

### **Article VII**

#### **Statistical and legislative information**

AOAD and FAO will concert their efforts to obtain the best use of statistical and legislative information and to ensure the most effective utilization of their resources in the assembling, analysis, publication and diffusion of such information, in particular in the Arabic language, with a view to reducing the burden on the Governments and other organizations from which such information is collected.

### **Article VIII**

#### **Exchange of information and documents**

1. Subject to such arrangements as may be necessary for the safeguarding of classified material, AOAD and FAO shall arrange for the fullest exchange of information and documents concerning matters of common interest.
2. AOAD shall be kept informed by FAO of developments in the latter's work which are of interest to AOAD.
3. FAO shall be kept informed by AOAD of developments in the latter's work which are of interest to FAO.

### **Article IX**

#### **Administrative arrangements**

The Director-General of AOAD and the Director-General of FAO shall make appropriate administrative arrangements to ensure effective cooperation and liaison between the Secretariats of the two organizations.

### **Article X**



### **Implementation of the agreement**

1. The Director-General of AOAD and the Director-General of FAO shall consult with each other on questions arising out of the present Agreement.
2. The Director-General of AOAD and the Director-General of FAO may make such supplementary administrative arrangements for the implementation of this Agreement as may appear desirable in the light of experience.

### **Article XI**

#### **Entry into force, amendment and termination**

1. As soon as it has been approved by the appropriate Governing Bodies of AOAD and FAO, the present Agreement shall be signed by the appointed representatives of the two organizations and shall enter into force on the date of such signature.
2. The terms of this Agreement may be amended by mutual agreement.
3. Either of the parties may terminate this Agreement by giving six months' written notice to the other party.

Done in duplicate, in the English and the French languages, both texts being equally authentic.

**For the Arab Organization for  
Agricultural Development**

**For the Food and Agriculture  
Organization of the United Nations**

**Name: Dr. Salem Al-Lozi**

**Name: Dr. Jacques Diouf**

**Title: Director-General**

**Title: Director-General**

**Date:**

**Date:**

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**APPENDIX III**

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**THE INTERNATIONAL CONVENTION  
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE****AS ADOPTED AT THE SIXTH EXTRAORDINARY SESSION  
OF THE COMMISSION ON GENETIC RESOURCES  
FOR FOOD AND AGRICULTURE  
(ROME, 25-30 JUNE 2001)  
AND REVIEWED BY  
THE SEVENTY-SECOND SESSION  
OF THE COMMITTEE ON CONSTITUTIONAL AND LEGAL MATTERS  
(ROME, 8-10 OCTOBER 2001)**

**THE INTERNATIONAL ~~UNDERTAKING~~ CONVENTION ON PLANT GENETIC  
RESOURCES FOR FOOD AND AGRICULTURE\***

**PREAMBLE**

**The Contracting Parties,**

*Convinced* of the special nature of plant genetic resources for food and agriculture, their distinctive features and problems needing distinctive solutions;

*Alarmed* by the continuing erosion of these resources;

*Cognizant* that plant genetic resources for food and agriculture are a common concern of all countries, in that all countries depend very largely on plant genetic resources for food and agriculture that originated elsewhere;

*Acknowledging* that the conservation, exploration, collection, characterization, evaluation and documentation of plant genetic resources for food and agriculture are essential in meeting the goals of the Rome Declaration on World Food Security and the World Food Summit Plan of Action and for sustainable agricultural development for this and future generations, and that the capacity of developing countries and countries with economies in transition to undertake such tasks needs urgently to be reinforced;

*Noting* that the Global Plan of Action for the Conservation and Sustainable Use of Plant Genetic Resources for Food and Agriculture is an internationally agreed framework for such activities;

*Acknowledging further* that plant genetic resources for food and agriculture are the raw material indispensable for crop genetic improvement, whether by means of farmers' selection, classical plant breeding or modern biotechnologies, and are essential in adapting to unpredictable environmental changes and future human needs;

*Affirming* that the past, present and future contributions of farmers in all regions of the world, particularly those in centres of origin and diversity, in conserving, improving and making available these resources, is the basis of Farmers' Rights;

*Affirming also* that the rights recognized in this ~~Undertaking~~ Convention 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;

*Aware* that questions regarding the management of plant genetic resources for food and agriculture are at the meeting point between agriculture, the environment and commerce, and convinced that there should be synergy among these sectors;

*Aware* of their responsibility to past and future generations to conserve the World's diversity of plant genetic resources for food and agriculture; ~~and~~;

*Recognizing* that, in the exercise of their sovereign rights over their plant genetic resources for food and agriculture, states may mutually benefit from the creation of an effective multilateral

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\* Words struck out are deleted; words underlined are added.

system for facilitated access to a negotiated selection of these resources and for the fair and equitable sharing of the benefits arising from their use; and

[Desiring to conclude an international agreement within the framework of the Food and Agriculture Organization of the United Nations, hereinafter referred to as FAO, under Article XIV of the FAO Constitution;](#)

**Have agreed as follows:**

## **PART I – INTRODUCTION**

### **Article 1 – Objectives**

1.1 The objectives of this Undertaking Convention are the conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of the benefits arising out of their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security.

1.2 These objectives will be attained by closely linking this Undertaking Convention to the Food and Agriculture Organization of the United Nations and to the Convention on Biological Diversity.

### **Article 2 – Use of terms**

For the purpose of this Undertaking Convention, the following terms shall have the meanings hereunder assigned to them:

“*In situ* conservation” means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated plant species, in the surroundings where they have developed their distinctive properties.

“*Ex situ* conservation” means the conservation of plant genetic resources for food and agriculture outside their natural habitat.

[“Plant genetic resources for food and agriculture” means any material of plant origin, including reproductive and vegetative propagating material, containing genetic parts and components, functional units of heredity, of actual or potential value to food and agriculture.

OR

“Plant genetic resources for food and agriculture” means any material of plant origin, including reproductive and vegetative propagating material, and its genetic parts and components containing functional units of heredity of actual or potential value for food and agriculture.]

[“Genetic material” means any material of plant origin containing functional units of heredity.]

“Variety” means a plant grouping, within a single botanical taxon of the lowest known rank, defined by the reproducible expression of its distinguishing and other genetic characteristics.

“*Ex situ* collection” means a collection of plant genetic resources for food and agriculture maintained outside their natural habitat.

“Centre of origin” means a geographical area where a plant species, either domesticated or wild, first developed its distinctive properties.

“Centre of crop diversity” means a geographic area containing a high level of genetic diversity for crop species in *in situ* conditions.

### **Article 3 – Scope**

This ~~Undertaking~~Convention relates to plant genetic resources for food and agriculture.

### **[Article 4 – Relationship of this ~~Undertaking~~Convention with ~~O~~ther International Agreements**

4.1 The provisions of this ~~Undertaking~~Convention will be implemented in harmony with the provisions of other existing international agreements relevant to the objectives of this ~~Undertaking~~Convention, in such a way that they are mutually supportive, with a view to achieving sustainable development.

4.2 This ~~Undertaking~~Convention shall not be interpreted as implying a change in the rights and obligations of a Contracting Party under any existing international agreements, nor as being subordinate to them.]

## **PART II - GENERAL PROVISIONS**

### **Article 5 - General Obligations**

Each Contracting Party shall ensure the conformity of its laws, regulations and procedures with its obligations as provided in this ~~Undertaking~~Convention.

### **Article 6 – Conservation, Exploration, Collection, Characterization, Evaluation and Documentation of Plant Genetic Resources for Food and Agriculture**

6.1 Each Contracting Party shall, subject to national legislation, and in cooperation with other Contracting Parties where appropriate, promote; an integrated approach to the exploration, conservation and sustainable use of plant genetic resources for food and agriculture and shall in particular, as appropriate:

- (a) Survey and inventory plant genetic resources for food and agriculture, taking into account the status and degree of variation in existing populations, including those that are of potential use and, as feasible, assess any threats to them;
- (b) Promote the collection of plant genetic resources for food and agriculture and relevant associated information on those plant genetic resources that are under threat or are of potential use;
- (c) ~~P~~romote or support, as appropriate, farmers and local communities’ efforts to manage and conserve on-farm their plant genetic resources for food and agriculture;

- (d) Promote *in situ* conservation of wild crop relatives and wild plants for food production, including in protected areas, by supporting, *inter alia*, the efforts of indigenous and local communities;
- (e) Cooperate to promote the development of an efficient and sustainable system of *ex situ* conservation, giving due attention to the need for adequate documentation, characterization, regeneration and evaluation, and promote the development and transfer of appropriate technologies for this purpose with a view to improving the sustainable use of plant genetic resources for food and agriculture;
- (f) Monitor the maintenance of the viability, degree of variation, and the genetic integrity of collections of plant genetic resources for food and agriculture.

6.2 The Contracting Parties shall, as appropriate, take steps to minimize or, if possible, eliminate threats to plant genetic resources for food and agriculture.

### **Article 7 – Sustainable Use of Plant Genetic Resources**

7.1 The Contracting Parties shall develop and maintain appropriate policy and legal measures that promote the sustainable use of plant genetic resources for food and agriculture.

7.2 The sustainable use of plant genetic resources for food and agriculture may include such measures as:

- (a) pursuing fair agricultural policies that promote, as appropriate, the development and maintenance of diverse farming systems that enhance the sustainable use of agricultural biological diversity and other natural resources;
- (b) strengthening research which enhances and conserves biological diversity by maximizing intra- and inter-specific variation for the benefit of farmers, especially those who generate and use their own varieties and apply ecological principles in maintaining soil fertility and in combating diseases, weeds and pests;
- (c) promoting, as appropriate, plant breeding efforts which, with the participation of farmers, particularly in developing countries, strengthen the capacity to develop varieties particularly adapted to social, economic and ecological conditions, including in marginal areas;
- (d) broadening the genetic base of crops and increasing the range of genetic diversity available to farmers;
- (e) promoting, as appropriate, the expanded use of local and locally adapted crops, varieties and underutilized species;
- (f) supporting, as appropriate, the wider use of diversity of varieties and species in on-farm management, conservation and sustainable use of crops and creating strong links to plant breeding and agricultural development in order to reduce crop vulnerability and genetic erosion, and promote increased world food production compatible with sustainable development; and
- (g) reviewing, and, as appropriate, adjusting breeding strategies and regulations concerning variety release and seed distribution.

### **Article 8 – National Commitments and International Cooperation**

8.1 Each Contracting Party shall, as appropriate, integrate into its agriculture and rural development policies and programmes, activities referred to in Articles 6 and 7, and cooperate with other Contracting Parties, directly or through FAO and other relevant international organizations, in the conservation and sustainable use of plant genetic resources for food and agriculture.

8.2 International cooperation shall, in particular, be directed to:

- (a) establishing or strengthening the capabilities of developing countries and countries with economies in transition with respect to conservation and sustainable use of plant genetic resources for food and agriculture;
- (b) enhancing international activities to promote conservation, evaluation, documentation, genetic enhancement, plant breeding, seed multiplication; and sharing, providing access to, and exchanging, in conformity with Part IV, plant genetic resources for food and agriculture and appropriate information and technology;
- (c) maintaining and strengthening the institutional arrangements provided for in Part V; and
- (d) implement the funding strategy of Article 19.

### **Article 9– Technical Assistance**

The Contracting Parties agree to promote the provision of technical assistance to Contracting Parties, especially those that are developing countries or countries with economies in transition, either bilaterally or through the appropriate international organizations, with the objective of facilitating the implementation of this ~~Undertaking~~[Convention](#).

## **PART III - FARMERS' RIGHTS**

### **Article 10 – Farmers' Rights**

10.1 The Contracting Parties recognize the enormous contribution that the local and indigenous communities and farmers of all regions of the world, particularly those in the centres of origin and crop diversity, have made and will continue to make for the conservation and development of plant genetic resources which constitute the basis of food and agriculture production throughout the world.

10.2 The Contracting Parties agree that the responsibility for realizing Farmers' Rights, as they relate to pPlant gGenetic rResources for fFood and aAgriculture, rests with national governments. In accordance with their needs and priorities, each Contracting Party should, as appropriate, and subject to its national legislation, take measures to protect and promote Farmers' Rights, including:

- (a) protection of traditional knowledge relevant to plant genetic resources for food and agriculture;
- (b) the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture; [and](#)

- (c) the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture.

10.3 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.

## **PART IV - THE MULTILATERAL SYSTEM OF ACCESS AND BENEFIT-SHARING**

### **Article 11 – Multilateral System of Access and Benefit-sharing**

11.1 In their relationships with other States, the Contracting Parties recognize the sovereign rights of States over their own plant genetic resources for food and agriculture, including that the authority to determine access to those resources rests with national governments and is subject to national legislation.

11.2 In the exercise of their sovereign rights, the Contracting Parties agree to establish a multilateral system, which is efficient, effective, and transparent, both to facilitate access to plant genetic resources for food and agriculture, and to share, in a fair and equitable way, the benefits arising from the utilization of these resources, on a complementary and mutually reinforcing basis.

### **Article 12 – Coverage of the Multilateral System**

12.1 In furtherance of the objectives of conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of benefits arising out of their use, as stated in Article 11, the Multilateral System shall cover the plant genetic resources for food and agriculture listed in Annex I, established according to criteria of food security and interdependence.

12.2 The Multilateral System, as identified in Article 12.1, shall include all plant genetic resources for food and agriculture listed in Annex I that are under the management and control of the Contracting Parties and in the public domain. With a view to achieving the fullest possible coverage of the Multilateral System, the Contracting Parties invite all other holders of the plant genetic resources for food and agriculture listed in Annex I to include these plant genetic resources for food and agriculture in the Multilateral System.

12.3 Contracting Parties also agree to take appropriate measures to encourage natural and legal persons within their jurisdiction who hold plant genetic resources for food and agriculture listed in Annex I to include such plant genetic resources for food and agriculture in the Multilateral System.

12.4 Within two years of the entry into force of the [Undertaking Convention](#), the Governing Body shall assess the progress in including the plant genetic resources for food and agriculture referred to in paragraph 12.3 in the Multilateral System. Following this assessment, the Governing Body shall decide whether access shall continue to be facilitated to those natural and legal persons referred to in paragraph 12.3 that have not included these plant genetic resources for food and agriculture in the Multilateral System, or take such other measures as it deems appropriate.

12.5 The Multilateral System shall also include the plant genetic resources for food and agriculture listed in Annex I and held in the *ex situ* collections of the International Agricultural Research Centres of the [CGIAR Consultative Group on International Agricultural Research \(CGIAR\)](#), as provided in Article 16.1a, and in other international institutions, in accordance with Article 16.5.



**Article 13 – Facilitated access to plant genetic resources for food and agriculture within the Multilateral System**

13.1 The Contracting Parties agree that facilitated access to plant genetic resources for food and agriculture under the Multilateral System, as defined in Article 12, shall be in accordance with the provisions of this ~~Undertaking~~Convention.

13.2 The Contracting Parties agree to take the necessary legal or other appropriate measures to provide such access to other Contracting Parties through the Multilateral System. To this effect, such access shall also be provided to legal and natural persons under the jurisdiction of any Contracting Party, subject to the provisions of Article 12.4.

13.3 Such access shall be provided in accordance with the conditions below:

- (a) Access shall be provided solely for the purpose of utilization and conservation ~~in~~for research, breeding and training for food and agriculture, provided that such purpose does not include chemical, pharmaceutical and/or other non-food/feed industrial uses. In the case of multiple-use crops (food and non-food), their importance for food security should be the determinant for their inclusion in the Multilateral System and availability for facilitated access.
- (b) Access shall be accorded expeditiously, without the need to track individual accessions and free of charge, or, when a fee is charged, it shall not exceed the minimal cost involved;
- (c) All available passport data and, subject to applicable law, any other associated available non-confidential descriptive information, shall be made available with the plant genetic resources for food and agriculture provided;
- (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];
- ~~(e)~~ Access to plant genetic resources for food and agriculture under development, including material being developed by farmers, shall be at the discretion of its developer, during the period of its development;
- (f) Access to plant genetic resources for food and agriculture protected by intellectual and other property rights shall be consistent with relevant international agreements, and with relevant national laws;
- (g) Plant genetic resources for food and agriculture accessed under the Multilateral System and conserved shall continue to be made available to the Multilateral System by the recipients of those plant genetic resources for food and agriculture, under the terms of this ~~Undertaking~~Convention; and
- (h) Without prejudice to the other provisions under this Article, the Contracting Parties agree that access to plant genetic resources for food and agriculture found in *in situ* conditions will be provided according to national legislation or, in the absence of such legislation, in accordance with such standards as may be set by the Governing Body.

13.4 To this effect, facilitated access, in accordance with ~~paragraphs~~Articles 13.2 and 13.3 above, shall be provided pursuant to a standard material transfer agreement (MTA), which shall be adopted by the Governing Body and contain the provisions of Articles 13.3a, d and g, as well as the benefit-sharing provisions set forth in Article 14.2d(ii) and other relevant provisions of this

Undertaking Convention, and the provision that the recipient of the plant genetic resources for food and agriculture shall require that the conditions of the MTA shall apply to the transfer of plant genetic resources for food and agriculture to another person or entity, as well as to any subsequent transfers of those plant genetic resources for food and agriculture.

13.5 Contracting Parties shall ensure that an opportunity to seek recourse is available, consistent with applicable jurisdictional requirements, under their legal systems, in case of contractual disputes arising under such MTAs, recognizing that obligations arising under such MTAs rest exclusively with the parties to those MTAs.

13.6~~5~~ In emergency disaster situations, the Contracting Parties agree to provide facilitated access to appropriate plant genetic resources for food and agriculture in the Multilateral System for the purpose of contributing to the re-establishment of agricultural systems, in cooperation with disaster relief co-ordinators.

#### **Article 14 - Benefit-sharing in the Multilateral System**

14.1 The Contracting Parties recognize that facilitated access to plant genetic resources for food and agriculture which are included in~~within~~ the Multilateral System constitutes itself a major benefit of the Multilateral System and agree that benefits accruing therefrom shall be shared fairly and equitably in accordance with the provisions of this Article.

14.2 The Contracting Parties agree that benefits arising from the use, including commercial, of plant genetic resources for food and agriculture under the Multilateral System shall be shared fairly and equitably through the following mechanisms: the exchange of information, access to and transfer of technology, capacity-building, and the sharing of the benefits arising from commercialization, taking into account the priority activity areas in the rolling Global Plan of Action, under the guidance of the Governing Body:

(a) Exchange of information:

The Contracting Parties agree to make available information which shall, *inter alia*, encompass catalogues and inventories, information on technologies, results of technical, scientific and socio-economic research, including characterization, evaluation and utilization, regarding those plant genetic resources for food and agriculture under the Multilateral System. Such information shall be made available, where non-confidential, subject to applicable law and in accordance with national capabilities. Such information shall be made available to all Contracting Parties to this Undertaking Convention through the information system of the Multilateral System, provided for in Article 18.

(b) Access to and transfer of technology

(i) The Contracting Parties undertake to provide and/or facilitate access to technologies for the conservation, characterization, evaluation and use of plant genetic resources for food and agriculture which are under the Multilateral System. Recognizing that some technologies can only be transferred through genetic material, the Contracting Parties shall provide and/or facilitate access to such technologies and genetic material which is under the Multilateral System and to improved varieties and genetic material developed through the use of plant genetic resources for food and agriculture under the Multilateral System, in conformity with the provisions of Article 13. Access to these technologies, improved varieties and genetic material shall be provided and/or facilitated, while respecting applicable property rights and access laws, and in accordance with national capabilities.

- (ii) Access to and transfer of technology to countries, especially to developing countries and countries with economies in transition, shall be carried out through a set of measures, such as the establishment and maintenance of, and participation in, crop-based thematic groups on utilization of plant genetic resources for food and agriculture, all types of partnership in research and development and in commercial joint ventures ~~on~~ relating to the material received, human resource development, and effective access to research facilities.
- (iii) Access to and transfer of technology as referred to in (i) and (ii) above, including that protected by intellectual property rights, to developing countries that are Contracting Parties, in particular least developed countries, and countries with economies in transition, shall be provided and/or facilitated under fair and most favourable terms, in particular in the case of technologies for use in conservation as well as technologies for the benefit of farmers in developing countries, especially in least developed countries, and countries with economies in transition, including on concessional and preferential terms where mutually agreed, *inter alia*, through partnerships in research and development under the Multilateral System. Such access and transfer shall be provided on terms which recognize and are consistent with the adequate and effective protection of intellectual property rights.

(c) Capacity-building

Taking into account the needs of developing countries and countries with economies in transition, as expressed through the priority they accord to building capacity in plant genetic resources for food and agriculture in their plans and programmes, when in place, in respect of those plant genetic resources for food and agriculture covered by the Multilateral System, the Contracting Parties agree to give priority to (i) establishing and/or strengthening programmes for scientific and technical education and training in conservation and sustainable use of plant genetic resources for food and agriculture, (ii) developing and strengthening facilities for conservation and sustainable use of plant genetic resources for food and agriculture, in particular in developing countries, and countries with economies in transition, and (iii) carrying out scientific research preferably, and where possible, in developing countries and countries with economies in transition, in cooperation with institutions of such countries, and developing capacity for such research in fields where they are needed.

(d) Sharing of monetary and other benefits of commercialization

- (i) The Contracting Parties agree, under the Multilateral System, to take measures in order to achieve commercial benefit-sharing, through the involvement of the private and public sectors in activities identified under this Article, through partnerships and collaboration, including with the private sector in developing countries and countries with economies in transition, in research and technology development;
- (ii) The Contracting Parties agree that the standard Material Transfer Agreement referred to in Article 13.4 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 20.3f, 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 [Undertaking Convention](#), 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.

~~(iii) Contracting Parties shall ensure that an opportunity to seek recourse is available, consistent with applicable jurisdictional requirements, under their legal systems, in case of contractual disputes arising under such MTAs, recognizing that obligations arising under such MTAs rest exclusively with the parties to those MTAs.~~

14.3 The Contracting Parties agree that benefits arising from the use of plant genetic resources for food and agriculture that are shared under the Multilateral System should flow primarily, directly and indirectly, to farmers in all countries, especially in developing countries, and countries with economies in transition, who conserve and sustainably utilize plant genetic resources for food and agriculture.

14.4 The Governing Body ~~will~~[shall](#), at its first meeting, consider relevant policy and criteria for specific assistance under the agreed funding strategy established under Article 19 for the conservation of plant genetic resources for food and agriculture in developing countries, and countries with economies in transition whose contribution to the diversity of plant genetic resources for food and agriculture in the Multilateral System is significant and/or which have special needs.

14.5 The Contracting Parties recognize that the ability to fully implement the Global Plan of Action, in particular of developing countries and countries with economies in transition, will depend largely upon the effective implementation of this Article and of the funding strategy as provided in Article 19.

14.6 The Contracting Parties shall consider modalities of a strategy of voluntary benefit-sharing contributions whereby Food Processing Industries that benefit from plant genetic resources for food and agriculture shall contribute to the Multilateral System.

## **PART V - SUPPORTING COMPONENTS**

### **Article 15 – Global Plan of Action**

[Recognizing](#) that the rolling Global Plan of Action for the Conservation and Sustainable Use of Plant Genetic Resources for Food and Agriculture is important to this [Undertaking Convention](#), Contracting Parties should promote its effective implementation, including through national actions and, as appropriate, international cooperation to provide a coherent framework, *inter alia*, for capacity-building, technology transfer and exchange of information, taking into account the provisions of Article 14.

**Article 16 - Ex Situ Collections of Plant Genetic Resources for Food and Agriculture held by the International Agricultural Research Centres of the Consultative Group on International Agricultural Research and other International Institutions**

16.1 The Contracting Parties recognize the importance to this [Undertaking Convention](#) of the *ex situ* collections of plant genetic resources for food and agriculture held in trust by the International Agricultural Research Centres (IARCS) of the Consultative Group on International Agricultural Research (CGIAR). The Contracting Parties call upon the IARCs to sign agreements with the Governing Body with regard to such *ex situ* collections, in accordance with the following terms and conditions:

- (a) Plant genetic resources for food and agriculture listed in Annex I of this [Undertaking Convention](#) and held by the IARCs shall be made available in accordance with the provisions set out in Part IV of this [Undertaking Convention](#);
- (b) Plant genetic resources for food and agriculture other than those listed in Annex I of this [Undertaking Convention](#) and collected before its entry into force that are held by IARCs shall be made available in accordance with the provisions of the MTA currently in use pursuant to agreements between the IARCs and the FAO. This MTA shall be amended ~~by agreement~~ by the Governing Body no later than its second regular session, in consultation with the IARCs, in accordance with the relevant provisions of this [Undertaking Convention](#), especially Articles 13 and 14, and under the following conditions:
  - (i) The IARCs shall periodically inform the Governing Body about the MTAs entered into, according to a schedule to be established by the Governing Body;
  - (ii) The Contracting Parties in whose territory the plant genetic resources for food and agriculture were collected from *in situ* conditions shall be provided with samples of such plant genetic resources for food and agriculture on demand, without any MTA;
  - (iii) Benefits arising under the above MTA that accrue to the mechanism mentioned in Article 20.3f shall be applied, in particular, to the conservation and sustainable use of the plant genetic resources for food and agriculture in question, particularly in national and regional programmes in developing countries and countries with economies in transition, especially in centres of diversity and the least developed countries; [and](#)
  - (iv) The IARCs shall take appropriate measures, in accordance with their capacity, to maintain effective compliance with the conditions of the MTAs, and shall promptly inform the Governing Body of cases of non-compliance.
- (c) IARCs recognize the authority of the Governing Body to provide policy guidance relating to *ex situ* collections held by them and subject to the provisions of this [Undertaking Convention](#).
- (d) The scientific and technical facilities in which such *ex situ* collections are conserved shall remain under the authority of the IARCs, which undertake to manage and administer these *ex situ* collections in accordance with internationally accepted standards, in particular the Genebank Standards as endorsed by the [FAO](#) Commission on Genetic Resources for Food and Agriculture.
- (e) Upon request by an IARC, the Secretary~~at~~ shall endeavour to provide appropriate technical support.

- (f) The Secretariat shall have, at any time, right of access to the facilities, as well as right to inspect all activities performed therein directly related to the conservation and exchange of the material covered by this Article.
- (g) If the orderly maintenance of these *ex situ* collections held by IARCs is impeded or threatened by whatever event, including *force majeure*, the Secretariat, with the approval of the host country, shall assist in its evacuation or transfer, to the extent possible.

16.2 The Contracting Parties agree to provide facilitated access to plant genetic resources for food and agriculture in Annex I under the Multilateral System to IARCS of the ~~Consultative Group on International Agricultural Research~~ CGIAR that have signed agreements with the Governing Body in accordance with this ~~Undertaking Convention~~. Such Centres shall be included in a list held by the Secretariat to be made available to the Contracting Parties on request.

16.3 The material other than that listed in Annex I, which is received and conserved by IARCs after the coming into force of this ~~Undertaking Convention~~, shall be available for access on terms consistent with those mutually agreed between the IARCs that receive the material and the country of origin of such resources or the country that has acquired those resources in accordance with the Convention on Biological Diversity or other applicable law.

16.4 The Contracting Parties are encouraged to provide IARCs that have signed agreements with the Governing Body with access, on mutually agreed terms, to plant genetic resources for food and agriculture not listed in Annex I that are important to the programmes and activities of the IARCs.

16.5 The Governing Body will also seek to establish agreements for the purposes stated in this Article with other relevant International Institutions.

### **Article 17 – International Plant Genetic Resources Networks**

17.1 Existing cooperation in international plant genetic resources for food and agriculture networks will be encouraged or developed on the basis of existing arrangements and consistent with the terms of this ~~Undertaking Convention~~, so as to achieve as complete coverage as possible of plant genetic resources for food and agriculture.

17.2 The Contracting Parties will encourage, as appropriate, all relevant institutions, including governmental, private, non-governmental, research, breeding and other institutions, to participate in the international networks.

### **Article 18 – The Global Information System on Plant Genetic Resources for Food and Agriculture**

18.1 The Contracting Parties shall cooperate to develop and strengthen a global information system to facilitate the exchange of information, based on existing information systems, on scientific, technical and environmental matters related to plant genetic resources for food and agriculture, with the expectation that such exchange of information will contribute to the sharing of benefits by making information on plant genetic resources for food and agriculture available to all Contracting Parties. In developing the Global Information System, cooperation will be sought with the Clearing House Mechanism of the Convention on Biological Diversity.



18.2 Based on notification by the Contracting Parties, early warning should be provided about hazards that threaten the efficient maintenance of plant genetic resources for food and agriculture, with a view to safeguarding the material.

18.3 The Contracting Parties shall cooperate with the Commission on Genetic Resources for Food and Agriculture of the FAO in its periodic reassessment of the state of the world's plant genetic resources for food and agriculture in order to facilitate the updating of the rolling Global Plan of Action referred to in Article 15.

## PART VI - FINANCIAL PROVISIONS

### Article 19 – Financial Resources

19.1 The Contracting Parties undertake to implement a funding strategy for the implementation of this ~~Undertaking~~[Convention](#) in accordance with the provisions of this Article.

19.2 The objectives of the funding strategy shall be to enhance the availability, transparency, efficiency and effectiveness of the provision of financial resources to implement activities under this ~~Undertaking~~[Convention](#).

19.3 In order to mobilize funding for priority activities, plans and programmes, in particular in developing countries and countries with economies in transition, and taking the Global Plan of Action into account, the Governing Body shall periodically establish a target for such funding.

19.4 Pursuant to this funding strategy:

- (a) The Contracting Parties shall take the necessary and appropriate measures within the Governing Bodies of relevant international mechanisms, funds and bodies to ensure due priority and attention to the effective allocation of predictable and agreed resources for the implementation of plans and programmes under this ~~Undertaking~~[Convention](#).
- (b) The extent to which Contracting Parties that are developing countries and Contracting Parties with economies in transition will effectively implement their commitments under this ~~Undertaking~~[Convention](#) will depend on the effective allocation, particularly by the developed country Parties, of the resources referred to in this Article. Contracting Parties that are developing countries and Contracting Parties with economies in transition will accord due priority in their own plans and programmes to building capacity in plant genetic resources for food and agriculture.
- (c) The Contracting Parties that are developed countries also provide, and Contracting Parties that are developing countries and Contracting Parties with economies in transition avail themselves of, financial resources for the implementation of this ~~Undertaking~~[Convention](#) through bilateral and regional and multilateral channels. Such channels shall include the mechanism referred to in Article 20.3f.
- (d) Each Contracting Party agrees to undertake, and provide financial resources for national activities for the conservation and sustainable use of plant genetic resources for food and agriculture in accordance with its national capabilities and financial resources[, and avoiding subsidies];
- (e) The Contracting Parties agree that the financial benefits arising from Article 14.2d are part of the funding strategy.
- (f) Voluntary contributions may also be provided by Contracting Parties, the private sector, taking into account the provisions of Article 14, non-governmental organisations and

other sources. The Contracting Parties agree that the Governing Body shall consider modalities of a strategy to promote such contributions;

19.5 The Contracting Parties agree that priority will be given to the implementation of agreed plans and programmes for farmers in developing countries, especially in least developed countries, and in countries with economies in transition, who conserve and sustainably utilize plant genetic resources for food and agriculture.

## PART VII - INSTITUTIONAL PROVISIONS

### Article 20 – Governing Body

20.1 A Governing Body for this Undertaking Convention is hereby established, composed of all Contracting Parties.

20.2 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.

20.3 The functions of the Governing Body shall be to promote the full implementation of this Undertaking Convention, keeping in view its objectives, and, in particular, to:

- (a) provide policy direction and guidance to monitor, and adopt such recommendations as necessary for the implementation of this Undertaking Convention and, in particular, for the operation of the Multilateral System;
- (b) adopt plans and programmes for the implementation of this Undertaking Convention;
- (c) adopt, at its first session, and periodically review the funding strategy for the implementation of this Undertaking Convention, in accordance with the provisions of Article 19;
- (d) adopt the budget of this Undertaking Convention;
- (e) consider and establish subject to the availability of necessary funds such subsidiary bodies as may be necessary, and their respective mandates and composition;
- (f) establish, as needed, an appropriate mechanism, such as a Trust Account, for receiving and utilizing financial resources that will accrue to it for purposes of implementing this Undertaking Convention;
- (g) establish and maintain cooperation with other relevant international organizations and treaty bodies, including in particular the Conference of the Parties to the Convention on Biological Diversity, on matters covered by this Undertaking Convention, including their participation in the funding strategy;
- (h) consider and adopt, as required, amendments to this Undertaking Convention, in accordance with the provisions of Article 24;
- (i) consider and adopt, as required, amendments to annexes to this Undertaking Convention, in accordance with the provisions of Article 25;
- (j) consider modalities of a strategy to encourage voluntary contributions, in particular, with reference to Articles 14 and 19;
- (k) perform such other functions as may be necessary for the fulfilment of the objectives of this Undertaking Convention;



- (l) take note of relevant decisions of the Conference of the Parties to the Convention on Biological Diversity and other relevant international organizations and treaty bodies;
- (m) inform, as appropriate, the Conference of the Parties to the Convention on Biological Diversity and other relevant international organizations and treaty bodies of matters regarding the implementation of this ~~Undertaking~~Convention; and
- (n) approve the terms of agreements with the IARCs and other international institutions under Article 16, and review and amend the MTA in Article 16.

20.4 Subject to ~~paragraph-Article 7~~20.6, each Contracting Party shall have one vote and may be represented at sessions of the Governing Body by a single delegate who may be accompanied by an alternate, and by experts and advisers. Alternates, experts and advisers may take part in the proceedings of the Governing Body but may not vote, except in the case of their being duly authorized to substitute for the delegate.

20.5 The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not a Contracting Party to this ~~Undertaking~~Convention, may be represented as observers at sessions of the Governing Body. Any other body or agency, whether governmental or non-governmental, qualified in fields relating to conservation and sustainable use of plant genetic resources for food and agriculture, which has informed the Secretariat of its wish to be represented as an observer at a session of the Governing Body, may be admitted unless at least one third of the Contracting Parties present object. The admission and participation of observers shall be subject to the Rules of Procedure adopted by the Governing Body.

20.6 ~~†~~A Member Organization of FAO that is a Contracting Party and the member states of that Member Organization that are Contracting Parties shall exercise their membership rights and fulfil their membership obligations in accordance, *mutatis mutandis*, with the Constitution and General Rules of FAO.~~†~~

20.7 The Governing Body shall adopt and amend, as required, its own Rules of Procedure and financial rules which shall not be inconsistent with this ~~Undertaking~~Convention.

20.8 The presence of delegates representing a majority of the Contracting Parties shall be necessary to constitute a quorum at any session of the Governing Body.

20.9 The Governing Body shall hold regular sessions at least once every two years. These sessions should, as far as possible, be held back-to-back with the regular sessions of the Commission on Genetic Resources for Food and Agriculture.

20.10 Special Sessions of the Governing Body shall be held at such other times as may be deemed necessary by the Governing Body, or at the written request of any Contracting Party, provided that this request is supported by at least one third of the Contracting Parties.

20.11 The Governing Body shall elect its Chairperson and Vice-Chairpersons (collectively referred to as “the Bureau”), in conformity with its Rules of Procedure.

### **Article 21 – Secretary**

21.1 The Secretary of the Governing Body shall be appointed by ~~†~~the Director-General of FAO, with the approval of ~~†~~the Governing Body. The Secretary shall be assisted by such staff as ~~the Governing Body may decide~~may be required.

21.2 The Secretary shall perform the following functions:

- (a) arrange for and provide administrative support for sessions of the Governing Body and for any subsidiary bodies as may be established;
- (b) assist the Governing Body in carrying out its functions, including the performance of specific tasks that the Governing Body may decide to assign to it;
- (c) report on its activities to the Governing Body.

21.3 The Secretary shall communicate to all Contracting Parties and to the Director-General

- (a) decisions of the Governing Body within sixty days of adoption;
- (b) information received from Contracting Parties in accordance with the provisions of this Undertaking Convention.

21.4 The Secretary shall provide documentation in the six6 languages of the United Nations for sessions of the Governing Body.

21.5 The Secretary shall cooperate with other organizations and treaty bodies, including in particular the Secretariat of the Convention on Biological Diversity, in achieving the objectives of this Undertaking Convention.

#### **Article 22 – Compliance**

      The Governing Body shall, at its first meeting, consider and approve cooperative and effective procedures and operational mechanisms to promote compliance with the provisions of this Undertaking Convention and to address issues of non-compliance. These procedures and mechanisms shall include monitoring, and offering advice or assistance, including legal advice or legal assistance, when needed, in particular to developing countries and countries with economies in transition.

#### **Article 23 – Settlement of Disputes**

23.1 In the event of a dispute between Contracting Parties concerning the interpretation or application of this Undertaking Convention, the parties concerned shall seek solutions by negotiation.

23.2 If the parties concerned cannot reach agreement by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.

23.3 When ratifying, accepting, approving or acceding to this Undertaking Convention, or at any time thereafter, a Contracting Party may declare in writing to the Depositary that for a dispute not resolved in accordance with Article 23.1 or Article 23.2 above, it accepts one or both of the following means of dispute settlement as compulsory:

- (a) Arbitration in accordance with the procedure laid down in Part 1 of Annex II to this Undertaking Convention;
- (b) Submission of the dispute to the International Court of Justice.

23.4 If the parties to the dispute have not, in accordance with Article 23.3 above, accepted the same or any procedure, the dispute shall be submitted to conciliation in accordance with Part 2 of Annex II to this [Undertaking Convention](#) unless the parties otherwise agree.

#### **Article 24 – Amendments of the [Undertaking Convention](#)**

24.1 Amendments to this [Undertaking Convention](#) may be proposed by any Contracting Party.

24.2 Amendments to this [Undertaking Convention](#) shall be adopted at a session of the Governing Body. The text of any proposed amendment shall be communicated to Contracting Parties by the Secretary at least six months before the session at which it is proposed for adoption.

24.3 All amendments to this [Undertaking Convention](#) shall only be made by consensus of the Contracting Parties present at the session of the Governing Body.

24.4 Any amendment adopted by the Governing Body shall come into force among Contracting Parties having ratified, accepted or approved it on the ninetieth day after the deposit of instruments of ratification, acceptance or approval by two-thirds of the Contracting Parties. Thereafter the amendment shall enter into force for any other Contracting Party on the ninetieth day after that Contracting Party deposits its instrument of ratification, acceptance or approval of the amendment.

24.5 For the purpose of this Article, an instrument deposited by a Member Organization of FAO shall not be counted as additional to those deposited by member states of such an organization.

#### **Article 25 – ~~Amendments of Annexes~~**

25.1 The annexes to this [Undertaking Convention](#) shall form an integral part of this [Undertaking Convention](#) and, unless expressly provided otherwise, a reference to this [Undertaking Convention](#) shall constitute at the same time a reference to any annexes thereto.

25.2 ~~Except as otherwise provided for, t~~The provisions of Article 24 regarding amendments to this [Undertaking Convention](#) shall apply to the amendment of annexes.

~~25.3 — Any amendment to Annex I to this Undertaking shall be adopted only by consensus.~~

#### **Article 26 – Signature**

         This [Undertaking Convention](#) shall be open for signature at the FAO from ... to .... [*a period of twelve months*] by all Members of FAO and any States that are not Members of FAO but are Members of the United Nations, or any of its specialized agencies or of the International Atomic Energy Agency.

#### **Article 27 – Ratification, Acceptance or Approval**

         This [Undertaking Convention](#) shall be subject to ratification, acceptance or approval by the Members and non-Members of FAO referred to in Article 26. Instruments of ratification, acceptance, or approval shall be deposited with the Depositary.

#### **Article 28 – Accession**

This Undertaking Convention shall be open for accession by all Members of FAO and any States that are not Members of FAO but are Members of the United Nations, or any of its specialized agencies or of the International Atomic Energy Agency ~~the Members and non Members referred to in Article 26~~ from the date on which the Undertaking Convention is closed for signature. Instruments of accession shall be deposited with the Depository.

### **Article 29 – Entry into force**

29.1 Subject to the provisions of Article 30.2,  this Undertaking Convention shall enter into force on the ninetieth day after the deposit of the fortieth instrument of ratification, acceptance, approval or accession, provided that at least twenty instruments of ratification, acceptance, approval or accession have been ~~lodged~~ deposited by Members of FAO.

29.2 For each Member of FAO and any State that is not a Member of FAO but is a Member of the United Nations, or any of its specialized agencies or of the International Atomic Energy Agency ~~Member or non Member of FAO~~ that ratifies, accepts, approves or accedes to this Undertaking Convention after the deposit, in accordance with Article 29.1, of the fortieth instrument of ratification, acceptance, approval or accession, the Undertaking Convention shall enter into force on the ninetieth day following the deposit of its instrument of ratification, acceptance, approval or accession.

### **Article 30 – Member Organizations of FAO**

30.1 When a Member Organization of FAO deposits an instrument of ratification, acceptance, approval or accession for this Undertaking Convention, the Member Organization shall, in accordance with the provisions of Article II.7 of the FAO Constitution, notify any change regarding its distribution of competence to its declaration of competence submitted under Article II.5 of the FAO Constitution as may be necessary in light of its acceptance of this Undertaking Convention. Any Contracting Party to this Undertaking Convention may, at any time, request a Member Organization of FAO that is a Contracting Party to this Undertaking Convention to provide information as to which, as between the Member Organization and its member states, is responsible for the implementation of any particular matter covered by this Undertaking Convention. The Member Organization shall provide this information within a reasonable time.

30.2 Instruments of ratification, acceptance, approval, ~~or~~ accession or withdrawal, deposited by a Member Organization of FAO, shall not be counted as additional to those deposited by its ~~Member~~ States.

### **Article 31 – Reservations**

           No reservations may be made to this Undertaking Convention.

### **Article 32 – Non-Parties**

           The Contracting Parties shall encourage any Member of FAO or other State, not a Contracting Party to this Undertaking Convention, to accept this Undertaking Convention.

### **Article 33 – Withdrawals**

33.1 Any Contracting Party may at any time after two years from the date on which this ~~Undertaking~~Convention has entered into force for it, notify the Depositary in writing of its withdrawal from this ~~Undertaking~~Convention. The Depositary shall at once inform all Contracting Parties.

33.2 Withdrawal shall take effect one year from the date of receipt of the notification.

### **Article 34 – Termination**

34.1 This ~~Undertaking~~Convention shall be automatically terminated if and when, as the result of withdrawals, the number of Contracting Parties drops below forty, unless the remaining Contracting Parties unanimously decide otherwise.

34.2 The Depositary shall inform all remaining Contracting Parties when ~~that~~ the number of Contracting Parties has dropped to forty.

34.3 In the event of termination the disposition of assets shall be governed by the financial rules to be adopted by the Governing Body.

### **Article 35 – Depositary**

         The Director-General of FAO shall be the Depositary of this ~~Undertaking~~Convention.

### **Article 36 – Authentic Texts**

         The Arabic, Chinese, English, French, Russian and Spanish texts of this ~~Undertaking~~Convention are equally authentic.

## ANNEX I

## LIST OF CROPS COVERED UNDER THE MULTILATERAL SYSTEM

## Food crops

Crop	Genus	Observations
Breadfruit	<i>Artocarpus</i>	Breadfruit only.
Asparagus	<i>Asparagus</i>	
Oat	<i>Avena</i>	
Beet	<i>Beta</i>	
Brassica complex	<i>Brassica</i> et al.	Genera included are: <i>Brassica</i> , <i>Armoracia</i> , <i>Barbarea</i> , <i>Camelina</i> , <i>Crambe</i> , <i>Diplotaxis</i> , <i>Eruca</i> , <i>Isatis</i> , <i>Lepidium</i> , <i>Raphanobrassica</i> , <i>Raphanus</i> , <i>Rorippa</i> , and <i>Sinapis</i> . This comprises oilseed and vegetable crops such as cabbage, rapeseed, mustard, cress, rocket, radish, and turnip. The species <i>Lepidium meyenii</i> (maca) is excluded.
Pigeon Pea	<i>Cajanus</i>	
Chickpea	<i>Cicer</i>	
Citrus	<i>Citrus</i>	Genera <i>Poncirus</i> and <i>Fortunella</i> are included as root stock.
Coconut	<i>Cocos</i>	
Major aroids	<i>Colocasia</i> , <i>Xanthosoma</i>	Major aroids include taro, cocoyam, dasheen and tannia.
Carrot	<i>Daucus</i>	
Yams	<i>Dioscorea</i>	
Finger Millet	<i>Eleusine</i>	
Strawberry	<i>Fragaria</i>	
Sunflower	<i>Helianthus</i>	
Barley	<i>Hordeum</i>	
Sweet Potato	<i>Ipomoea</i>	
Grass pea	<i>Lathyrus</i>	
Lentil	<i>Lens</i>	
Apple	<i>Malus</i>	
Cassava	<i>Manihot</i>	<i>Manihot esculenta</i> only.
Banana / Plantain	<i>Musa</i>	Except <i>Musa textilis</i> .
Rice	<i>Oryza</i>	
Pearl Millet	<i>Pennisetum</i>	
Beans	<i>Phaseolus</i>	Except <i>Phaseolus polyanthus</i> .
Pea	<i>Pisum</i>	
Rye	<i>Secale</i>	
Potato	<i>Solanum</i>	Section <i>tuberosa</i> included, except <i>Solanum phureja</i> .
Eggplant	<i>Solanum</i>	Section <i>melongena</i> included.
Sorghum	<i>Sorghum</i>	
Triticale	<i>Triticosecale</i>	
Wheat	<i>Triticum</i> et al.	Including <i>Agropyron</i> , <i>Elymus</i> , and <i>Secale</i> .
Faba Bean / Vetch	<i>Vicia</i>	
Cowpea et al.	<i>Vigna</i>	
Maize	<i>Zea</i>	Excluding <i>Zea perennis</i> , <i>Zea diploperennis</i> , and <i>Zea luxurians</i> .

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**Forages**


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<b>Genera</b>	<b>Species</b>
<b>LEGUME FORAGES</b>	
<i>Astragalus</i>	<i>chinensis, cicer, arenarius</i>
<i>Canavalia</i>	<i>ensiformis</i>
<i>Coronilla</i>	<i>varia</i>
<i>Hedysarium</i>	<i>coronarium</i>
<i>Lathyrus</i>	<i>cicera, cilialatus, hirsutus, ochrus, odoratus, sativus</i>
<i>Lespedeza</i>	<i>cuneata, striata, stipulacea</i>
<i>Lotus</i>	<i>corniculatus, subbiflorus, uliginosus</i>
<i>Lupinus</i>	<i>albus, angustifolius, luteus</i>
<i>Medicago</i>	<i>arborea, falcata, sativa, scutellata, rigidula, truncatula</i>
<i>Melilotus</i>	<i>albus, officinalis</i>
<i>Onobrychis</i>	<i>viciifolia</i>
<i>Ornithopus</i>	<i>sativus</i>
<i>Prosopis</i>	<i>affinis, alba, chilensis, nigra, pallida</i>
<i>Pueraria</i>	<i>phaseoloides</i>
<i>Trifolium</i>	<i>alexandrinum, alpestre, ambiguum, angustifolium, arvense, agrocicerum, hybridum, incarnatum, pratense, repens, resupinatum, rueppellianum, semipilosum, subterraneum, vesiculosum</i>
<b>GRASS FORAGES</b>	
<i>Andropogon</i>	<i>gayanus</i>
<i>Agropyron</i>	<i>cristatum, desertorum</i>
<i>Agrostis</i>	<i>stolonifera, tenuis</i>
<i>Alopecurus</i>	<i>pratensis</i>
<i>Arrenatherum</i>	<i>elatius</i>
<i>Dactylis</i>	<i>glomerata</i>
<i>Festuca</i>	<i>arundinacea, gigantea, heterophylla, ovina, pratensis, rubra</i>
<i>Lolium</i>	<i>hybridum, multiflorum, perenne, rigidum, temulentum</i>
<i>Phalaris</i>	<i>aquatica, arundinacea</i>
<i>Phleum</i>	<i>pratense</i>
<i>Poa</i>	<i>alpina, annua, pratensis</i>
<i>Tripsacum</i>	<i>laxum</i>
<b>OTHER FORAGES</b>	
<i>Atriplex</i>	<i>halimus, nummularia</i>
<i>Salsola</i>	<i>vermiculata</i>

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## ANNEX II

### *Part 1*

## ARBITRATION

### Article 1

The claimant party shall notify the ~~S~~ecretary~~vat~~ that the parties to the dispute are referring it to arbitration pursuant to Article 23. The notification shall state the subject-matter of arbitration and include, in particular, the articles of this ~~Undertaking~~Convention, the interpretation or application of which are at issue. If the parties to the dispute do not agree on the subject matter of the dispute before the President of the tribunal is designated, the arbitral tribunal shall determine the subject matter. The secretariat shall forward the information thus received to all Contracting Parties to this ~~Undertaking~~Convention.

### Article 2

1. In disputes between two parties to the dispute, the arbitral tribunal shall consist of three members. Each of the parties to the dispute shall appoint an arbitrator and the two arbitrators so appointed shall designate by common agreement the third arbitrator who shall be the President of the tribunal. The latter shall not be a national of one of the parties to the dispute, nor have his or her usual place of residence in the territory of one of these parties to the dispute, nor be employed by any of them, nor have dealt with the case in any other capacity.
2. In disputes between more than two Contracting Parties, parties to the dispute with the same interest shall appoint one arbitrator jointly by agreement.
3. Any vacancy shall be filled in the manner prescribed for the initial appointment.

### Article 3

1. If the President of the arbitral tribunal has not been designated within two months of the appointment of the second arbitrator, the Director-General of FAO shall, at the request of a party to the dispute, designate the President within a further two-month period.
2. If one of the parties to the dispute does not appoint an arbitrator within two months of receipt of the request, the other party may inform the Director-General of FAO who shall make the designation within a further two-month period.

### Article 4

The arbitral tribunal shall render its decisions in accordance with the provisions of this ~~Undertaking~~Convention and international law.



#### Article 5

Unless the parties to the dispute otherwise agree, the arbitral tribunal shall determine its own rules of procedure.

#### Article 6

The arbitral tribunal may, at the request of one of the parties to the dispute, recommend essential interim measures of protection.

#### Article 7

The parties to the dispute shall facilitate the work of the arbitral tribunal and, in particular, using all means at their disposal, shall:

- (a) Provide it with all relevant documents, information and facilities; and
- (b) Enable it, when necessary, to call witnesses or experts and receive their evidence.

#### Article 8

The parties to the dispute and the arbitrators are under an obligation to protect the confidentiality of any information they receive in confidence during the proceedings of the arbitral tribunal.

#### Article 9

Unless the arbitral tribunal determines otherwise because of the particular circumstances of the case, the costs of the tribunal shall be borne by the parties to the dispute in equal shares. The tribunal shall keep a record of all its costs, and shall furnish a final statement thereof to the parties to the dispute.

#### Article 10

Any Contracting Party that has an interest of a legal nature in the subject-matter of the dispute which may be affected by the decision in the case, may intervene in the proceedings with the consent of the tribunal.

#### Article 11

The tribunal may hear and determine counterclaims arising directly out of the subject-matter of the dispute.

#### Article 12

Decisions both on procedure and substance of the arbitral tribunal shall be taken by a majority vote of its members.

#### Article 13

If one of the parties to the dispute does not appear before the arbitral tribunal or fails to defend its case, the other party may request the tribunal to continue the proceedings and to make its award. Absence of a party to the dispute or a failure of a party to the dispute to defend its case shall not constitute a bar to the proceedings. Before rendering its final decision, the arbitral tribunal must satisfy itself that the claim is well founded in fact and law.

#### Article 14

The tribunal shall render its final decision within five months of the date on which it is fully constituted unless it finds it necessary to extend the time-limit for a period which should not exceed five more months.

#### Article 15

The final decision of the arbitral tribunal shall be confined to the subject-matter of the dispute and shall state the reasons on which it is based. It shall contain the names of the members who have participated and the date of the final decision. Any member of the tribunal may attach a separate or dissenting opinion to the final decision.

#### Article 16

The award shall be binding on the parties to the dispute. It shall be without appeal unless the parties to the dispute have agreed in advance to an appellate procedure.

#### Article 17

Any controversy which may arise between the parties to the dispute as regards the interpretation or manner of implementation of the final decision may be submitted by either party to the dispute for decision to the arbitral tribunal which rendered it.

*Part 2*  
**CONCILIATION**

Article 1

A conciliation commission shall be created upon the request of one of the parties to the dispute. The commission shall, unless the parties to the dispute otherwise agree, be composed of five members, two appointed by each party concerned and a President chosen jointly by those members.

Article 2

In disputes between more than two Contracting Parties, parties to the dispute with the same interest shall appoint their members of the commission jointly by agreement. Where two or more parties to the dispute have separate interests or there is a disagreement as to whether they are of the same interest, they shall appoint their members separately.

Article 3

If any appointments by the parties to the dispute are not made within two months of the date of the request to create a conciliation commission, the Director-General of FAO shall, if asked to do so by the party to the dispute that made the request, make those appointments within a further two-month period.

Article 4

If a President of the conciliation commission has not been chosen within two months of the last of the members of the commission being appointed, the Director-General of FAO shall, if asked to do so by a party to the dispute, designate a President within a further two-month period.

Article 5

The conciliation commission shall take its decisions by majority vote of its members. It shall, unless the parties to the dispute otherwise agree, determine its own procedure. It shall render a proposal for resolution of the dispute, which the parties shall consider in good faith.

Article 6

A disagreement as to whether the conciliation commission has competence shall be decided by the commission.

## APPENDIX IV

**DRAFT RESOLUTION FOR CONSIDERATION BY THE FAO CONFERENCE  
AT ITS THIRTY-FIRST SESSION\***

**ADOPTION OF THE INTERNATIONAL ~~UNDERTAKING~~ CONVENTION<sup>\*</sup> ON PLANT  
GENETIC RESOURCES FOR FOOD AND AGRICULTURE AND INTERIM  
ARRANGEMENTS FOR ITS IMPLEMENTATION**

*The Conference,*

*Acknowledging* the interdependence of all countries with respect to pPlant gGenetic rResources for fFood and aAgriculture;

*Recognizing* the importance of realizing Farmers' Rights as set out in the International ~~Undertaking~~ Convention on Plant Genetic Resources for Food and Agriculture and of increasing co-operation in the field of technical assistance in accordance with the relevant Articles of this ~~Undertaking~~ Convention:-

*Recognizing* that the International Undertaking on Plant Genetic Resources, as adopted by the FAO Conference by Resolution 8/83, and as modified by the agreed interpretations in its Resolutions 4/89, 5/89 and 3/91, represents eds the first international instrument dealing with the conservation and sustainable use of plant genetic resources for food and agriculture;

*Recalling further* Resolution 3 of the Nairobi Conference for the ~~a~~ A ~~adoption~~ of the A ~~agreed~~ T ~~text~~ of the Convention on Biological Diversity, which recognized the need to seek solutions to outstanding matters concerning plant genetic resources, within FAO, in particular, on access to *ex situ* collections not acquired in accordance with the Convention on Biological Diversity, and the question of Farmers' Rights;

*Recalling* Resolution 7/93 of the Twenty-seventh Session of the FAO Conference, which called for negotiations, through the FAO Commission on Genetic Resources for Food and Agriculture, to revise the International Undertaking on Plant Genetic Resources, in harmony with the Convention on Biological Diversity;

*Recalling* that the plan of action of the World Food Summit underlines the need to promote an integrated approach to conservation and sustainable utilization on ~~PGRFA~~ plant genetic resources for food and agriculture;

*Recognizing* that the International ~~Undertaking~~ Convention on Plant Genetic Resources for Food and Agriculture will facilitate implementation of the Global Plan of Action agreed on the fourth International Technical Conference of FAO on Plant Genetic Resources for Food and Agriculture, 1996, in Leipzig;

*Recalling further* that both the FAO Conference at its Thirtieth Session and the Fifth Meeting of the Conference of the Parties to the Convention on Biological Diversity confirmed that

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\* Words struck out are deleted; words underlined are added.

~~\* The title of this agreement would be used consistently throughout this text and with the text of the Agreement as adopted by the Sixth Extraordinary Session~~

negotiations would proceed on the basis that the revision of the International Undertaking on Plant Genetic Resources would take the form of a legally binding instrument, closely linked to FAO and the Convention on Biological Diversity;

*Recalling* further that the Conference of the Parties ~~of~~to the Convention on Biological Diversity at its F~~fifth M~~m~~eeeting recognized the potential contribution that the revised International Undertaking on Plant Genetic Resources, in harmony with the Convention on Biological Diversity, would have to assist in the implementation of its P~~p~~rogramme of W~~w~~ork on Agricultural Biological Diversity, and that the revised International Undertaking wa~~s~~ envisaged to play a crucial role in the implementation of the Convention on Biological Diversity;~~

*Recalling further* that the Hundred and Nineteenth Session of FAO Council requested that the negotiations be completed in time for the revised International Undertaking on Plant Genetic Resources to be sent to this Session of the Conference;

*Noting with appreciation* the work undertaken by FAO and its Commission on Genetic Resources for Food and Agriculture in supporting States and Regional Economic Integration Organizations throughout the negotiations for the revision of the International Undertaking on Plant Genetic Resources and in preparation for its effective implementation;

*Also noting with appreciation* the many expressions of support by the Conference of the Parties ~~to~~of the Convention on Biological Diversity for FAO and its Commission on Genetic Resources for Food and Agriculture in this work;

*Noting further* that preparations are required for effective operation of the International ~~Undertaking~~Convention on Plant Genetic Resources for Food and Agriculture, once it has entered into force;

A. Adoption of the International ~~Undertaking~~Convention on Plant Genetic Resources for Food and Agriculture

1. *Adopts* the International ~~Undertaking~~Convention on Plant Genetic Resources for Food and Agriculture, which is annexed to this Resolution;
2. *Requests* the Director-General of FAO to open the International ~~Undertaking~~Convention on Plant Genetic Resources for Food and Agriculture for signature, after the adoption of this Resolution, during this Session of the FAO Conference and at FAO Headquarters in Rome from 14 November 2001 until 13 November 2002;
3. *Invites* Members of FAO and States that are not Members of FAO, but are Members of the United Nations and any of its specialized agencies or the International Atomic Energy Agency to sign the International ~~Undertaking~~Convention on Plant Genetic Resources for Food and Agriculture, and to deposit instruments of ratification, acceptance, approval or accession, at the earliest opportunity;
4. *~~Decides~~Notes with satisfaction* that the International ~~Undertaking~~Convention on Plant Genetic Resources for Food and Agriculture, as now adopted by the FAO Conference, on entry into force establishes a new and binding framework for cooperation in the area of p~~P~~lant g~~G~~enetic r~~R~~esources for f~~F~~ood and a~~A~~griculture.

B. Interim Arrangements for the Implementation of the International ~~Undertaking~~Convention on Plant Genetic Resources for Food and Agriculture

1. *Decides* to establish an Interim Committee on the International ~~Undertaking~~ Convention on Plant Genetic Resources for Food and Agriculture, hereinafter referred to as “the Interim Committee”. The Rules of Procedures of the Interim Committee shall be based on and not be incompatible with the FAO Rules of Procedures.

2. *Invites* Members of FAO and States that are not Members of FAO, but are Members of the United Nations and any of its specialized agencies or the International Atomic Energy Agency to participate in the Interim Committee ~~consistent with the applicable FAO rules of Procedures~~.

3. *Requests* the Director-General of FAO to convene the first meeting of the Interim Committee in 2002, and at the request of the Interim Committee subsequent meetings as necessary whenever possible in conjunction with meetings of the Commission on Genetic Resources for Food and Agriculture, subject to the availability of necessary resources.

The Interim Committee shall:

~~(new-a)~~ Adopt at its first session its Rules of Procedures;

~~(ba)~~ prepare, for consideration at the first session of the Governing Body, draft rules of procedure; draft financial rules; [and a proposal for a budget of the International ~~Undertaking~~ Convention on Plant Genetic Resources for Food and Agriculture]; pending ongoing negotiations;<sup>9</sup>

~~(cb)~~ also prepare, for consideration at the first session of the Governing Body, upon the recommendation of an expert group, a draft standard Material Transfer Agreement for facilitated access and proposals for the level, form and manner of payments for the equitable sharing of benefits arising from the commercialization of products;

~~(db-bis)~~ [also prepare, for consideration at the first session of the Governing Body proposed procedures to promote compliance in accordance with Article 22; ]<sup>10</sup>

~~(ce)~~ consult with the International Agricultural Research Centres on the agreements to be signed with the Governing Body;

~~(d)~~

~~(fe)~~ perform such other functions as may be necessary for the effective operation of the ~~Revised~~-International ~~Undertaking~~ Convention on Plant Genetic Resources for Food and Agriculture upon its entry into force;

4. *Further requests* the Director-General of FAO to appoint an ~~I~~nterim Secretary to assist the Interim Intergovernmental Committee in its work;

5. *Also requests* the Director-General of FAO to invite the Executive Secretary of the Convention on Biological Diversity to convey this Resolution to the Conference of the Parties ~~of~~ to the Convention on Biological Diversity;

6. *Requests* the ~~Intergovernmental~~-Interim Committee to initiate the establishment of cooperation with the Conference of the Parties ~~of~~ to the Convention on Biological Diversity and, as appropriate, with other relevant international organizations and treaty bodies, in particular in

<sup>9</sup> Outstanding issue, pending ongoing negotiations in the Plenary.

<sup>10</sup> Outstanding issue, pending ongoing negotiations in the Plenary.

relation to the provisions of Article 189.4a of the International ~~Undertaking~~ Convention on Plant Genetic Resources for Food and Agriculture;

7. *Invites* the Conference of Parties ~~of to~~ the Convention on Biological Diversity to establish and maintain cooperation with the Interim Intergovernmental Committee and, upon the entry into force of the International ~~Undertaking~~ Convention on Plant Genetic Resources for Food and Agriculture, with the Governing Body;

8. *Further invites* Members of FAO and States that are not Members of FAO, but are Members of the United Nations and any of its specialized agencies and Regional Economic Integration Organizations to contribute, through the FAO, to the functioning of the Interim Intergovernmental Committee;

9. *Also invites* the ~~IARCs~~ International Agricultural Research Centres of the ~~CGIAR~~ Consultative Group on International Agricultural Research, in particular ~~the~~ IPGRI International Plant Genetic Resources Institute, and other relevant international organizations and treaty bodies, to assist the Interim Intergovernmental Committee and its Interim Secretary in its work.