

April 2001



منظمة الأغذية  
والزراعة  
للأمم المتحدة

联合国  
粮食及  
农业组织

Food  
and  
Agriculture  
Organization  
of  
the  
United  
Nations

Organisation  
des  
Nations  
Unies  
pour  
l'alimentation  
et  
l'agriculture

Organización  
de las  
Naciones  
Unidas  
para la  
Agricultura  
y la  
Alimentación

## Item 2 of the Provisional Agenda

COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE

SIXTH EXTRAORDINARY SESSION

Rome, 24-30 June 2001

**CHAIRMAN'S SIMPLIFIED TEXT, INCLUDING THE TEXTS NEGOTIATED AND AGREED BY THE COMMISSION AND THE CHAIRMAN'S CONTACT GROUP**

**NOTE:** At its Sixth Inter-sessional Meeting, the Contact Group considered a *Chairman's Simplified Text*, which included text negotiated and agreed in previous sessions of the Commission and the Chairman's Contact Group, **and agreed to use that text as the basis for further negotiations**. The current document consists of the *Chairman's Simplified Text*, which now includes the texts negotiated and agreed at the Sixth Inter-sessional Meeting of the Chairman's Contact Group.

It was agreed that the Composite Draft Text (CGRFA/Ex-6/01/3), in which the specific texts negotiated and agreed in each Article by the Commission and the Contact Group in its 1<sup>st</sup> to 6<sup>th</sup> Meetings are identified, should remain at the disposal of the Commission for reference purposes only.

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**CHAIRMAN'S SIMPLIFIED TEXT, INCORPORATING THE TEXTS  
NEGOTIATED DURING THE SIXTH INTER-SESSIONAL MEETING OF THE  
CONTACT GROUP**

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**THE INTERNATIONAL UNDERTAKING ON PLANT GENETIC RESOURCES**

**PREAMBLE**

**The Contracting Parties to this Undertaking,**

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**PART I – INTRODUCTION**

**Article 1 – Objectives**

1.1 The objectives of this Undertaking 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 to the Food and Agriculture Organization of the United Nations and to the Convention on Biological Diversity.

**Article 2 – Definitions**

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

**Article 3 – Scope**

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

**Article 4 – Relationship of this Undertaking with Other International Agreements**

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

4.2 This Undertaking 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 – Conservation, Exploration, Collection, Characterization, Evaluation and Documentation of Plant Genetic Resources for Food and Agriculture**

5.1 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) Support, as appropriate, farmers and local communities' efforts to manage 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.

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

### **Article 6 – Sustainable Use of Plant Genetic Resources**

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

6.2 The sustainable use of plant genetic resources for food and agriculture includes such measures as:

- (a) pursuing 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 biological diversity by maximizing intra- and inter-specific variation for the benefit of farmers, especially smallholder farmers, who generate and use their own crops and apply ecological principles in maintaining soil fertility and in combating diseases, weeds and other pests;

- (c) promoting, as appropriate, plant breeding efforts which, with the participation of farmers, particularly in developing countries, strengthen the capacity to develop varieties specifically adapted to the various 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; and
- (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.
- (g) reviewing, and, as appropriate, adjusting breeding strategies and regulations concerning variety release and seed distribution.

#### **Article 7 – National Commitments and International Cooperation**

7.1 Each Contracting Party shall, as appropriate, integrate into its agriculture and rural development policies and programmes, activities referred to in Articles 5 and 6, 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.

7.2 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.
- (d) strengthening or establishing of funding mechanisms to finance activities related to the conservation and sustainable use of plant genetic resources for food and agriculture, in accordance with Article 18.

#### **Article 8– Technical Assistance**

The Contracting Parties agree to promote the provision of technical assistance to Contracting Parties, especially those that are developing countries, either bilaterally or through the appropriate international organizations, with the objective of facilitating the implementation of this Undertaking.

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

### **Article 9 – Farmers' Rights**

9.1 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.

9.2 The Contracting Parties agree that the responsibility for realizing Farmers' Rights, as they relate to Plant Genetic Resources for Food and Agriculture, 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;
- (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.

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

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

### **Article 10 – Multilateral System of Access and Benefit-sharing**

10.1 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.

10.2 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 11 – Coverage of the Multilateral System**

11.1 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 1, 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, including the material in the *ex situ* collections of the International Agricultural Research Centres referred to in Article 15.1a.

[11.2 Contracting Parties are encouraged to include in the Multilateral System, as identified in paragraph 11.1, plant genetic resources for food and agriculture listed in Annex 1 from diverse holdings within their territory. At a minimum the Multilateral System, as identified in paragraph 11.1,

shall encompass plant genetic resources for food and agriculture that are under the management and control of the national government of a Party.]

**Article 12 – Facilitated access to plant genetic resources for food and agriculture within the Multilateral System**

12.1 The Contracting Parties agree that facilitated access to plant genetic resources for food and agriculture under the Multilateral System, as defined in Article 11, shall be in accordance with the provisions of this Undertaking.

[12.2 The Contracting Parties agree to take the necessary legal or other appropriate measures to provide such access through the Multilateral System. A Contracting Party may decide that the plant genetic resources for food and agriculture may be provided to it or to any natural or legal person under its jurisdiction.]

12.3 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 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 available to the Multilateral System by the recipients of those plant genetic resources for food and agriculture, under the terms of this Undertaking;
- (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.

12.4 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 13 - Benefit-sharing in the Multilateral System**

13.1 The Contracting Parties recognize that facilitated access to plant genetic resources for food and agriculture 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.

13.2 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 through the information system of the Multilateral System.

(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 12. 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 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 benefits on commercialisation

- (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)<sup>1</sup> Whenever the use of plant genetic resources for food and agriculture accessed under the Multilateral System results in a product that is a plant genetic resource covered by any form of intellectual property right that restricts utilization of the product for research and plant breeding, the rights-holder shall pay an equitable royalty in line with commercial practice on the commercial exploitation of the product into a mechanism referred to in Article 19.2g, as a contribution to the implementation of agreed plans and programmes as established under this Undertaking.
- (iii) Whenever the use of plant genetic resources for food and agriculture accessed under the Multilateral System results in a product that is a plant genetic resource covered by any form of intellectual property right that does not restrict utilization of that product for research and plant breeding, the Contracting Parties shall take measures, as appropriate, to encourage the rights-holder to pay into the above mechanism a royalty on the commercial exploitation of that product, taking into account the need to exempt farmers in developing countries, especially in least developed countries, and countries with economies in transition, from this provision.
- (iv) The Governing Body shall review the provisions of Article 13.2d(ii) and Article 13.2d(iii) within a period of five years of the entry into force of this Undertaking, with a view to optimizing benefits accruing from these provisions, and shall in particular assess the possibility of establishing a mandatory scheme in regard to the above paragraph. Following this review, any proposed amendment shall be addressed in accordance with Article 22.

13.3 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.

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<sup>1</sup> Four countries stated that they do not agree to the text of Article 13.2d(ii, iii and iv).

13.4 The Governing Body will, at its first meeting, consider relevant policy and criteria for specific assistance under the agreed funding strategy established under Article 18 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.

13.5 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 18.

13.6 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 14 – 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, 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 13.

### **Article 15 - 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**

15.1 The Contracting Parties recognize the importance to this Undertaking 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, in accordance with the following terms and conditions:

- (a) Plant genetic resources for food and agriculture listed in Annex I of this Undertaking and held by the IARCs shall be made available in accordance with the provisions set out in Part IV of this Undertaking;
- (b) Plant genetic resources for food and agriculture other than those listed in Annex I of this Undertaking 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 consensus 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, especially Articles 12 and 13, 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) Any monetary benefits stipulated in the standard MTA, deriving from the commercial use of such material shall accrue to the mechanism mentioned in Article 19.2g and be applied in particular to the conservation and sustainable use of the crops in question, particularly in national and regional programmes in developing countries, especially the least developed countries;
- (iv) IARCs shall take appropriate measures, in accordance with their capacity, in cases of violation of the MTA.
- (c) IARCs recognize the authority of the Governing Body to provide policy guidance relating to *ex situ* collections held by them, in accordance with this Undertaking.
- (d) The scientific and technical facilities in which the *ex situ* collections are conserved shall remain in charge of the IARCs, which undertake to manage and administer the *ex situ* collections in accordance with internationally accepted standards, including, with respect to storage, exchange and distribution of seeds, International Genebank Standards, and ensuring that all the material is duplicated in order to guarantee its safety.
- (e) Whenever appropriate, the Secretariat of this Undertaking shall provide technical support, on request by the IARC.
- (f) The Secretariat of this Undertaking 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.
- (g) If the orderly maintenance of the *ex situ* collections held by IARCs is impeded or threatened by whatever event, including *force majeure*, the Secretariat of this Undertaking, with the approval of the host country, shall assist in its evacuation or transfer, to the extent possible.

15.2 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 that have signed agreements with the Governing Body in accordance with this Undertaking. Such Centres shall be included in a list held by the Secretary of the Governing Body to be made available to the Contracting Parties on request.

15.3 Access to material other than that listed in Annex I, received by International Institutions after the coming into force of this Undertaking, shall be on mutually agreed terms to be decided by the country where the material is collected and the International Institutions that receive the material, and in harmony with the terms of the Convention on Biological Diversity.

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

15.5 The Contracting Parties are encouraged to provide access, as appropriate, to plant genetic resources for food and agriculture of crops not listed in Annex I that are important to the programmes and activities of the IARCs of the Consultative Group on International Agricultural Research. Such access should be consistent with the provisions of this Article, and to the extent possible, on terms consistent with the in-trust nature of these *ex situ* collections.

### **Article 16 – International Plant Genetic Resources Networks**

16.1 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, so as to achieve as complete coverage as possible of plant genetic resources for food and agriculture.

16.2 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 17 – The Global Information System on Plant Genetic Resources for Food and Agriculture**

17.1 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.

17.2 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.

17.3 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 14.

## **PART VI - FINANCIAL PROVISIONS**

### **Article 18 – Financial Resources**

18.1 The Contracting Parties undertake to implement a funding strategy for the implementation of this Undertaking in accordance with the provisions of this Article.

18.2 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.

18.3 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.

18.4 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.

- (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 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) 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.<sup>2</sup>
- (d) 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 through bilateral and regional and multilateral channels. Such channels shall include the mechanism referred to in Article 19.2g.
- (e) The Contracting Parties agree that the financial benefits arising from Article 13.2d are part of the funding strategy;<sup>3</sup>
- (f) Voluntary contributions may also be provided by Contracting Parties, the private sector, taking into account the provisions of Article 13, non-governmental organisations and other sources. The Contracting Parties agree that the Governing Body shall consider modalities of a strategy to promote such contributions;

18.5 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 19 – Governing Body**

- 19.1 The Governing Body shall be composed of all Contracting Parties to this Undertaking.
- 19.2 The functions of the Governing Body shall be to promote the full implementation of this Undertaking, keeping in view its objectives, and, in particular, to:
- (a) provide policy direction and guidance for, monitor, and adopt such recommendations as necessary for the implementation of this Undertaking and, in particular, for the operation of the Multilateral System of Access and Benefit-Sharing;
  - (b) take into account the state of plant genetic resources for food and agriculture and its implications for world food security;

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<sup>2</sup> Three countries requested that this paragraph be moved to Article 7.

<sup>3</sup> The four countries that do not agree to the text of 13.2d (ii, iii and iv) also do not agree to the text of Article 18.4e. The text of Article 18.4e must await resolution of the unagreed text in Article 13.2d (ii, iii and iv).

- (c) adopt plans and programmes for the implementation of this Undertaking;
- (d) periodically review the funding strategy for the implementation of this Undertaking;
- (e) adopt the budget of this Undertaking to manage the operations of the Secretariat and the Governing Body;
- (f) consider and establish such subsidiary bodies as may be necessary, and their respective mandates and composition;
- (g) 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;
- (h) establish cooperation with other relevant international organizations on matters covered by this Undertaking, including their participation in the funding strategy;
- (i) consider and adopt, as required, amendments to this Undertaking, in accordance with the provisions of Article 22;
- (j) consider and adopt, as required, amendments to annexes to this Undertaking, in accordance with the provisions of Article 23;
- (k) consider modalities of a strategy to encourage voluntary contributions, in particular, with reference to Articles 13 and 18;
- (l) perform such other functions as may be necessary to the fulfilment of the objectives of this Undertaking.

19.3 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.

19.4 The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not Contracting Party to this Undertaking, may be represented as observers at meetings 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 meeting 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.

19.5 The Contracting Parties shall make every effort to reach agreement on all matters by consensus. If all efforts to reach consensus have been exhausted and no agreement is reached, the decision shall, as a last resort, be taken by a two-thirds majority of the Contracting Parties present and voting unless, where specifically stated, that consensus is required.

19.6 For the purpose of this Article, "Contracting Parties present and voting" shall mean Contracting Parties present and casting an affirmative or negative vote.

19.7 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.

19.8 The Governing Body may adopt and amend, as required, its own Rules of Procedure, which shall not be inconsistent with this Undertaking.

19.9 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.

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

19.11 Special sessions of the Governing Body shall be convened at the request in writing of at least one-third of the Contracting Parties to this Undertaking.

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

### **Article 20 - Secretariat**

20.1 The Secretariat of the Commission on Genetic Resources for Food and Agriculture shall act as the Secretariat of the Governing Body, assisted by such staff as the Governing Body shall decide.

20.2 Some activities may be delegated or shared by the Secretariat, under conditions to be approved by the Governing Body.

20.3 The Secretariat shall perform the following functions:

- (a) arrange for and service meetings of the Governing Body;
- (b) assist the Governing Body in carrying out its functions and responsibilities, including performing specific tasks that the Governing Body shall decide to assign to it;
- (c) report on its activities to the Governing Body.

20.4 The Secretariat shall disseminate to all Contracting Parties:

- (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.

20.5 The Secretariat shall provide translations in the official languages of FAO, of documentation for meetings of the Governing Body.

20.6 The Secretariat shall cooperate with other organizations and treaty bodies, including in particular the Secretariat and Conference of the Parties to the Convention on Biological Diversity, in achieving the aims of this Undertaking.

### **Article 21 - Interpretation and Settlement of Disputes**

Any dispute regarding the interpretation or application of this Undertaking, if not settled between the parties to the dispute, shall be referred for settlement to a conciliation procedure to be adopted by the Governing Body. The results of such conciliation procedure, 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 may be

referred to the International Court of Justice in accordance with the Statute of the International Court of Justice, unless the parties to the dispute agree to another method of settlement.

### **Article 22 – Amendments of this Undertaking**

22.1 Any proposal by a Contracting Party for the amendment of this Undertaking shall be communicated to the Director-General of FAO.

22.2 Any proposed amendment of this Undertaking received by the Director-General of FAO from a Contracting Party shall be presented to a regular or special session of the Governing Body for approval and, if the amendment involves important technical changes or imposes additional obligations on the Contracting Parties, it shall be considered by an advisory committee of specialists convened by FAO prior to the Governing body.

22.3 Notice of any proposed amendment of this Undertaking, shall be transmitted to the Contracting Parties by the Director-General of FAO not later than the time when the agenda of the session of the Governing Body at which the matter is to be considered is dispatched.

22.4 Any such proposed amendment of this Undertaking shall require the approval of the Governing Body and shall come into force as from the thirtieth day after acceptance by two-thirds of the Contracting Parties. 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.

22.5 Amendments involving new obligations for Contracting Parties, however, shall come into force in respect of each Contracting Party only on acceptance by it and as from the thirtieth day after such acceptance.

22.6 The rights and obligations of any Contracting Party that has not accepted an amendment involving additional obligations shall continue to be governed by the provisions of this Undertaking as they stood prior to the amendment.

22.7 Amendments to this Undertaking shall be reported to the Conference which shall have the power to disallow any amendment which it finds to be inconsistent with the objectives and purposes of the Organization or the provisions of the Constitution of the Organization.

### **Article 23 – Amendments of Annexes**

23.1 The annexes to this Undertaking shall form an integral part of this Undertaking and, unless expressly provided otherwise, a reference to this Undertaking shall constitute at the same time a reference to any annexes thereto.

23.2 Except as provided for in Article 23.3, the provisions of Article 22 regarding amendments to this Undertaking shall apply to the amendment of annexes.

23.3 Amendments to Annex I to this Undertaking shall be adopted only with the consensus of all the Parties.

### **Article 24 – Acceptance**

24.1 This Undertaking shall be open to acceptance by Members or Associate Members of the Organization.



24.2 The Governing Body may, by a two-thirds majority of its membership, admit to membership such other States 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 and a declaration made in a formal instrument that they accept this Undertaking as in force at the time of admission.

24.3 Participation in the activities of the Governing Body by non-Members of the Organization shall be contingent upon the assumption of such proportionate share in the expenses of the Secretariat as may be determined in the light of the relevant provisions of the Financial Regulations of the Organization.

24.4 Acceptance of this Undertaking by any Member or Associate Member 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.

24.5 Acceptance of this Undertaking by non-members of the Organization shall be effected by the deposit of an instrument of acceptance with the Director-General of the Organization. Membership shall become effective on the date on which the Governing Body approves the application to become a Contracting Party, in conformity with the provisions of paragraph 2 of this Article.

24.6 The Director-General of the Organization shall inform all Contracting Parties, all Members of the Organization and the Secretary-General of the United Nations of all acceptances that have become effective.

#### **Article 25 – Member Organizations of FAO**

25.1 When a Member Organization of FAO deposits an instrument of acceptance of this Undertaking, the Member Organization shall, in accordance with the provisions of Article II. 7 of the FAO Constitution, as appropriate, notify such modifications or clarifications 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. Any Contracting Party to this Undertaking may, at any time, request a Member Organization of FAO that is a Contracting Party to this Undertaking 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. The Member Organization shall provide this information within a reasonable time.

25.2 Instruments of acceptance deposited by a Member Organization of FAO shall not be counted as additional to those deposited by its member states.

#### **Article 26 – Entry into Force**

26.1 This Undertaking shall enter into force on the ninetieth day after the deposit of the thirtieth instrument of acceptance.

26.2 For each Contracting Party that accepts this Undertaking after the deposit of the thirtieth instrument of acceptance, this Undertaking shall enter into force on the ninetieth day after the deposit by such Contracting Party of its instrument of acceptance.

#### **Article 27 – Reservations**

No reservations may be made to this Undertaking.

### **Article 28 – Non- Parties**

The Contracting Parties shall encourage any Member of FAO or other State, not a party to this Undertaking to accept this Undertaking, and shall encourage any non-party to act consistently with the provisions of this Undertaking.

### **Article 29 – Languages**

The authentic languages of this Undertaking shall be all official languages of FAO.

### **Article 30 – Withdrawals**

30.1 Any Contracting Party may at any time after two years from the date on which this Undertaking has entered into force for it, withdraw from this Undertaking by notification addressed to the Director-General of FAO. The Director-General shall at once inform all Contracting Parties.

30.2 Withdrawal shall take effect one year from the date of receipt of the notification by the Director-General of FAO.

### **Article 31 - Termination**

This Undertaking shall be automatically terminated if and when, as the result of withdrawals, the number of Contracting Parties Members drops below \*\*\*, unless the remaining Contracting Parties unanimously decide otherwise.

### **Article 32 – Depositary**

The Director-General shall be the Depositary of this Undertaking. The Depositary shall:

- (a) send certified copies of this Undertaking to each Member of FAO and to such non-Member States as may become Contracting Party to this Undertaking;
- (b) arrange for the registration of this Undertaking, upon its entry into force, with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations;
- (c) inform each Contracting Party and each Member of FAO that is not a Party of:
  - (i) the deposit of instruments of acceptance in accordance with Article 24;
  - (ii) the date of entry into force of this Undertaking in accordance with Article 26;
  - (iii) proposals for the amendment of this Undertaking or of Annexes thereto;
  - (iv) the adoption of amendments to this Undertaking in accordance with Article 22 and their entry into force;
  - (v) the adoption of amendments to the Annexes to this Undertaking in accordance with Article 23, and the entry into force of amendments to annexes; and
  - (vi) withdrawals from this Undertaking pursuant to Article 30.

**ANNEX I**

**LIST OF CROPS COVERED BY THE MULTILATERAL SYSTEM**



## APPENDIX I

**RESULTS OF THE LEGAL WORKING GROUP ON ARTICLES 19 TO 32:****Annotated Text of the Legal Group Referring to the Chairman's Proposed Text**

25 and 26 April 2001

**PART VII - INSTITUTIONAL PROVISIONS****Article 19 – Governing Body**

19.1 ~~The A~~ Governing Body for this Undertaking is hereby established. ~~shall be composed of all Contracting Parties to this Undertaking.~~

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

- (a) provide policy direction and guidance for, monitor, and adopt such recommendations as necessary for the implementation of this Undertaking and, in particular, for the operation of the Multilateral System of Access and Benefit-Sharing<sup>4</sup>;
- (b) take into account the state of plant genetic resources for food and agriculture and its implications for world food security;
- (c) adopt plans and programmes for the implementation of this Undertaking;
- (d) adopt and periodically review the funding strategy for the implementation of this Undertaking;
- (e) adopt the budget of this Undertaking to manage the operations of the Secretariat and the Governing Body;<sup>5</sup>
- (f) consider and establish such subsidiary bodies as may be necessary, and their respective mandates and composition;<sup>6</sup>

<sup>4</sup> It is suggested that reference to the 'Multilateral System' be made in a consistent manner. The first time the expression, 'Multilateral System of Access and Benefit-Sharing', appears in the text of the Undertaking the words, "hereinafter referred to as the Multilateral System", should be inserted.

<sup>5</sup> In the Composite text, "Adopt the budget of this Undertaking", was in brackets. In the Simplified Text, the words, "to manage the operations of the Secretariat and the Governing Body", were added, and the Legal Group recommended that the Plenary discuss this matter.

If the Undertaking is under Article XIV of the FAO Constitution, then there are three possibilities: (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 has an additional autonomous budget. In the case of the 1<sup>st</sup> possibility, the approval of a budget is not required; in the case of the 2<sup>nd</sup> and 3<sup>rd</sup> possibilities, a budget is required.

If the Undertaking has its own autonomous budget, then provision for adoption of the budget as well as financial rules must be made in the text. In the case of the Undertaking being entirely financed by the Organization under Article XIV of the FAO Constitution, the Financial Regulations and Rules of the Organization will apply.

<sup>6</sup> If an Article XIV agreement, then the Undertaking "shall specify whether [it] may establish subsidiary bodies". The establishment of such bodies is "subject to the availability of necessary funds".

- (g) 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;
- (h) establish cooperation with other relevant international organizations on matters covered by this Undertaking, including their participation in the funding strategy;<sup>7</sup>
- (i) consider and adopt, as required, amendments to this Undertaking, in accordance with the provisions of Article 22;
- (j) consider and adopt, as required, amendments to annexes to this Undertaking, in accordance with the provisions of Article 23;
- (k) consider modalities of a strategy to encourage voluntary contributions, in particular, with reference to Articles 13 and 18; and
- (l) perform such other functions as may be necessary ~~to~~ for the fulfilment of the objectives of this Undertaking.

19.3 ~~Subject to paragraph 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.

19.4 The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not Contracting Party to this Undertaking, may be represented as observers at ~~meetings~~ 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 ~~meeting~~ 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.

19.5 The Contracting Parties shall make every effort to reach agreement on all matters by consensus. If all efforts to reach consensus have been exhausted and no agreement is reached, the decision shall, as a last resort, be taken by a two-thirds majority of the Contracting Parties present and voting unless, where specifically stated, that consensus is required.<sup>8</sup> ~~19.6~~ ~~For this purpose of this Article,~~ “Contracting Parties present and voting” shall mean Contracting Parties present and casting an affirmative or negative vote.

19.6~~7~~ 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

<sup>7</sup> If an Article XIV agreement, agreements with other international organizations will need to be made through the FAO, as the holder of the international legal personality. If outside Article XIV, appropriate arrangements will need to be made in this regard.

In either case, appropriate links should be made between FAO and the CBD.

<sup>8</sup> This text was in brackets in the Composite Text. It has not been agreed whether decisions should be taken by consensus or by some lesser majority. There are two possible approaches to decision-making: (1) to put the majority and quorum provisions in the Undertaking itself, or (2) or to put them in the Rules of Procedure, which might be approved by consensus, as in Article 23.3 of the CBD. Cf. Article 19.8 of the Simplified Text. The Legal Group noted that the Article “Replacing 17.6 and 17.9” of the Composite Text was omitted from the Simplified Text, and suggested a final decision be taken by the Plenary; the omitted paragraph would also be in line with and Article XIV agreement.

membership obligations in accordance, *mutatis mutandis*, with the Constitution and General Rules of FAO.<sup>9</sup>

19.78 The Governing Body may adopt and amend, as required, its own Rules of Procedure, which shall not be inconsistent with this Undertaking.

19.89 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.

19.0910 The Governing Body shall hold regular sessions at least once every two years.<sup>10</sup> These ~~meeting~~ sessions shall, as far as possible, be held back-to-back with the regular sessions of the Commission on Genetic Resources for Food and Agriculture.<sup>11</sup>

19.101 Special sessions of the Governing Body shall be convened at the request in writing of at least one-third of the Contracting Parties ~~to this Undertaking~~.<sup>12</sup>

19.112 The Governing Body shall elect its Chairperson and Vice-Chairpersons (collectively referred to as “the Bureau”<sup>13</sup>), in conformity with its Rules of Procedure.

### Article 20 - Secretariat

20.1 The Secretary ~~of the~~ Governing Body ~~Commission on Genetic Resources for Food and Agriculture~~ shall be appointed by the Director-General of FAO, with the approval of the Governing Body. The Secretary shall be ~~act as the Secretariat of the Governing Body,~~ assisted by such staff as the Governing Body shall decide.

~~20.2 Some activities may be delegated or shared by the Secretariat, under conditions to be approved by the Governing Body.~~<sup>14</sup>

20.23 The Secretariat shall perform the following functions:

- (a) arrange for and ~~service~~ provide administrative support for ~~meeting~~ sessions of the Governing Body and its subsidiary bodies;
- (b) assist the Governing Body in carrying out its functions ~~and responsibilities~~, including the ~~performance of~~ specific tasks that the Governing Body ~~shall~~ may decide to assign to it;

<sup>9</sup> If not an Article XIV agreement, provisions should be made for the participation of regional economic integration organizations in respect of this paragraph as well as paragraph 3 of this Article.

<sup>10</sup> If not an Article XIV agreement, PIC Article 18.2 may provide a model, in that it states a responsibility to convene the first meeting, thus: “The first meeting of the Governing agreement shall be convened by ...”

<sup>11</sup> The Legal Group felt that this provision might be better in the Rules of Procedure. If it is not an Article XIV agreement, the agreement of the FAO would be required.

<sup>12</sup> The following formulation, based on the PIC Article 18.3, may be considered, as an alternative:

‘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’. The timing of meetings might also be dealt with in the Rules of Procedure.

<sup>13</sup> The Plenary may consider specifying an inter-sessional role for the Bureau.

<sup>14</sup> The Legal Group suggests deletion of this Article, which is redundant, in light of Article 20.3b.

(c) report on its activities to the Governing Body.

20.4 The Secretariat shall ~~disseminate~~ communicate to all Contracting Parties:

- (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.

20.5 The Secretariat shall provide ~~translations~~ documentation in the ~~official~~ languages of FAO, ~~of documentation for meeting~~ sessions of the Governing Body.<sup>15</sup>

20.6 The Secretariat shall cooperate with other organizations and treaty bodies, including in particular the Secretariat and ~~Conference of the Parties to the Convention on Biological Diversity~~, in achieving the ~~aims~~ objectives of this Undertaking.<sup>16</sup>

### **Article 21 - Interpretation and Settlement of Disputes**<sup>17</sup>

21.1 ~~Any dispute regarding the interpretation or application of this Undertaking, if not settled between the parties to the dispute, shall be referred for settlement to a conciliation procedure to be adopted by the Governing Body. The results of such conciliation procedure, 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 may be referred to the International Court of Justice in accordance with the Statute of the International Court of Justice, unless the parties to the dispute agree to another method of settlement. If there is any dispute regarding the interpretation or application of this Undertaking, the parties concerned shall seek to resolve the dispute by negotiation.~~

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

21.3 When ratifying, accepting, approving or acceding to this Undertaking, or at any time thereafter, a State or Member Organization of FAO may declare in writing to the Depositary that for a dispute not resolved in accordance with paragraph 21.1 or paragraph 21.2 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;

(b) Submission of the dispute to the International Court of Justice.

21.4 If the parties to the dispute have not, in accordance with paragraph 21.3 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 unless the parties otherwise agree.

<sup>15</sup> If not an Article XIV agreement, the official languages should be stipulated.

<sup>16</sup> In addition to secretariat-to-secretariat links, it may be necessary to provide for governing body-to-governing body links, in Article 19.2h of the Simplified Text. If not an Article XIV agreement, particular mention should be made of cooperation with FAO.

<sup>17</sup> The Legal Group has suggested to revert to the original text of the Composite Draft Text. The annexes referred to in such text should be revised depending on the legal status of the Undertaking. However, some members were concerned with the possible cost for contracting parties of this procedure, and preferred the version in the Chairman's Text.



## Article 22 – Amendments of this Undertaking<sup>18, 19</sup>

~~22.1 Any proposal by a Contracting Party for the amendment of this Undertaking shall be communicated to the Director General of FAO.~~

~~22.2 Any proposed amendment of this Undertaking received by the Director General of FAO from a Contracting Party shall be presented to a regular or special session of the Governing Body for approval and, if the amendment involves important technical changes or imposes additional obligations on the Contracting Parties, it shall be considered by an advisory committee of specialists convened by FAO prior to the Governing body.~~

~~22.3 Notice of any proposed amendment of this Undertaking, shall be transmitted to the Contracting Parties by the Director General of FAO not later than the time when the agenda of the session of the Governing Body at which the matter is to be considered is dispatched.~~

~~22.4 Any such proposed amendment of this Undertaking shall require the approval of the Governing Body and shall come into force as from the thirtieth day after acceptance by two thirds of the Contracting Parties. 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.~~

~~22.5 Amendments involving new obligations for Contracting Parties, however, shall come into force in respect of each Contracting Party only on acceptance by it and as from the thirtieth day after such acceptance.~~

~~22.6 The rights and obligations of any Contracting Party that has not accepted an amendment involving additional obligations shall continue to be governed by the provisions of this Undertaking as they stood prior to the amendment.~~

~~22.7 Amendments to this Undertaking shall be reported to the Conference which shall have the power to disallow any amendment which it finds to be inconsistent with the objectives and purposes of the Organization or the provisions of the Constitution of the Organization.~~

## Article 22 – Amendments of the Undertaking

22.1 Amendments to this Undertaking may be proposed by any Contracting Parties [and shall be communicated to the Director-General of FAO].

22.2 Amendments to this Undertaking shall be adopted at a meeting of the Governing Body. The text of any proposed amendment shall be communicated to Contracting Parties by the Secretariat at least six months before the meeting at which it is proposed for adoption.

22.3 [The Contracting Parties shall make every effort to reach agreement on any proposed amendment by consensus. If all efforts to reach consensus have been exhausted and no agreement is reached, the decision on the adoption of the amendment shall, as a last resort, be taken by a two-thirds majority of the

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<sup>18</sup> This Article draws on the text of Article 29 of the Convention on Biological Diversity.

<sup>19</sup> The Legal Group suggested to revert to the original text of the Composite Draft Text, as negotiated by the Fifth Contact Group. The Legal Group suggested to discuss this matter in Plenary. If an Article XIV agreement, the FAO Basic Texts specify that additional clauses similar to paragraphs 22.5, 22.6 and 22.7 of the Simplified Text, should be included in the text “when appropriate”. The Plenary may wish to consider whether the inclusion of such additional clauses would be appropriate.

Contracting Parties present and voting, the meeting for that purpose counting upon a minimum attendance of two-thirds of the Contracting Parties, members of this Undertaking, unless, where specifically stated, consensus is required.] / [All amendments to this Undertaking shall only be made by consensus of all Contracting Parties to this Undertaking.]

22.4 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.

22.5 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 23 – Amendments of Annexes**

23.1 The annexes to this Undertaking shall form an integral part of this Undertaking and, unless expressly provided otherwise, a reference to this Undertaking shall constitute at the same time a reference to any annexes thereto.

23.2 Except as otherwise provided for ~~in Article 23.3~~, the provisions of Article 22 regarding amendments to this Undertaking shall apply to the amendment of annexes.

23.3 Amendments to Annex I to this Undertaking shall be adopted only with the consensus of all the Contracting Parties.<sup>20</sup>

### **Article 24 – Acceptance**<sup>21</sup>

24.1 This Undertaking shall be open to acceptance by Members or Associate Members of the Organization.

24.2 The Governing Body may, by a two-thirds majority ~~of its membership~~, admit ~~to membership~~ as Contracting Parties such other States 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~~ admission as Contracting Parties and a declaration made in a formal instrument that they accept this Undertaking as in force at the time of admission.

<sup>20</sup> Subject to negotiation of Article 22. Negotiation on the Simplified Text is not yet concluded.

<sup>21</sup> This formulation reflects the simplified form. Both the traditional system, i.e., that of signature, signature subject to ratification, and accession, as well as the more recent and simplified system of acceptance by the deposit of an instrument of acceptance have in the past been applied by FAO, and are acceptable for an Article XIV agreement.

Provisions in line with those in 24.2 should be put in all agreements under Article XIV, since these provisions are in the FAO Constitution (Art.XIV.3.b). In this connection, the Legal Group notes that 10 Parties to the CBD are not Members of FAO, and 9 Members of FAO are not Parties to the CBD. The Composite Draft Text is acceptable for an Article XIV agreement, with the addition of the provisions contained in 24.2.

The placement of such provisions should be further explored.

24.3 Participation in the activities of the Governing Body by non-Members of the Organization shall be contingent upon the assumption of such proportionate share in the expenses of the Secretariat as may be determined in the light of the relevant provisions of the Financial Regulations of the Organization.<sup>22</sup>

24.4 Acceptance of this Undertaking by any Member or Associate Member 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~~.

24.5 Acceptance of this Undertaking by non-Members of the Organization shall be effected by the deposit of an instrument of acceptance with the Director-General of the Organization. ~~Membership~~ Acceptance shall become effective on the date on which the Governing Body approves the application to become a Contracting Party, in conformity with the provisions of paragraph 24.2 of this Article.

24.6 The Director-General of the Organization shall inform all Contracting Parties, all Members of the Organization and the Secretary-General of the United Nations of all acceptances that have become effective.

### **Article 25 – Member Organizations of FAO**<sup>23</sup>

25.1 When a Member Organization of FAO deposits an instrument of acceptance of this Undertaking, the Member Organization shall, in accordance with the provisions of Article II.7 of the FAO Constitution, ~~as appropriate,~~<sup>24</sup> ~~notify such modifications or clarifications~~ 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. Any Contracting Party to this Undertaking may, at any time, request a Member Organization of FAO that is a Contracting Party to this Undertaking 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. The Member Organization shall provide this information within a reasonable time.

25.2 Instruments of acceptance deposited by a Member Organization of FAO shall not be counted as additional to those deposited by its member states.

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<sup>22</sup> The Legal Group suggested to further explore the provisions of this clause in the light of Financial Regulation V.9 and Part R of the FAO Basic Texts ( page 197, 32(iv)).

<sup>23</sup> If not an Art. XIV agreement, provisions should be made for the participation of regional economic integration organizations.

<sup>24</sup> The Legal Group suggested to align this text with Art. II.7 of the FAO Constitution.

### **Article 26 – Entry into Force**

26.1 This Undertaking shall enter into force on the ninetieth day after the deposit of the thirtieth instrument of acceptance.

26.2 For each Contracting Party that accepts this Undertaking after the deposit of the thirtieth instrument of acceptance, this Undertaking shall enter into force on the ninetieth day after the deposit by such Contracting Party of its instrument of acceptance.

### **Article 27 – Reservations**<sup>25</sup>

No reservations may be made to this Undertaking.

### **Article 28 – Non-Parties**

The Contracting Parties shall encourage any Member of FAO or other State, not a party to this Undertaking to accept this Undertaking, and shall encourage any non-party to act consistently with the provisions of this Undertaking.

### **Article ~~30-29~~ – Withdrawals**

30.1 Any Contracting Party may at any time after two years from the date on which this Undertaking has entered into force for it, notify the Director-General of FAO in writing of its withdrawal from this Undertaking~~withdraw from this Undertaking by notification addressed to the Director-General of FAO.~~ The Director-General shall at once inform all Contracting Parties.

30.2 Withdrawal shall take effect one year from the date of receipt of the notification by the Director-General of FAO.

### **Article ~~31-30~~ - Termination**

This Undertaking shall be automatically terminated if and when, as the result of withdrawals, the number of Contracting Parties ~~Members~~ drops below thirty<sup>26</sup>, unless the remaining Contracting Parties unanimously decide otherwise.

### **Article ~~32-31~~ – Depositary**<sup>27</sup>

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

<sup>25</sup> Such provision is not mandatory under FAO Rules.

<sup>26</sup> An Article XIV agreement shall contain a termination clause. This clause shall *inter alia* provide for automatic termination if and when the number of participants drops below that required to bring into force.

<sup>27</sup> Paragraphs (a) and (c) are required if an Article XIV agreement.

- (a) send certified copies of this Undertaking to each Member of FAO and to such non-Member States as may become Contracting Parties to this Undertaking;
- (b) arrange for the registration of this Undertaking, upon its entry into force, with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations; and
- (c) inform each Contracting Party and each Member of FAO that is not a Party of:
  - (i) the deposit of instruments of acceptance in accordance with Article 24;
  - (ii) the date of entry into force of this Undertaking in accordance with Article 26;
  - (iii) proposals for the amendment of this Undertaking or of ~~a~~ Annexes thereto;
  - (iv) the adoption of amendments to this Undertaking in accordance with Article 22 and their entry into force;
  - (v) the adoption of amendments to the Annexes to this Undertaking in accordance with Article 23, and the ir entry into force ~~of amendments to annexes; and~~
  - (vi) notifications of withdrawals from this Undertaking in accordance with ~~pursuant to~~ Article 30; and
  - (vii) the termination of this Undertaking in accordance with Article 31.

**Article 29-32 – Languages**<sup>28</sup>

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

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<sup>28</sup>

If a non-Article XIV agreement, the authentic languages will have to be determined.

## ANNEX II<sup>29</sup>

### Part 1

#### ARBITRATION

##### Article 1

The claimant party shall notify the secretariat that the Contracting Parties are referring a dispute to arbitration pursuant to Article 27. The notification shall state the subject-matter of arbitration and include, in particular, the articles of the ~~is Convention or the protocol~~ Undertaking, the interpretation or application of which are at issue. If the Contracting Parties 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 ~~Convention or to the protocol concerned~~ Undertaking.

##### Article 2

1. In disputes between two Contracting Parties, 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 Contracting Parties, 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 in 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 ~~Secretary~~ Director-General of the United Nations 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 ~~Secretary~~ 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 ~~Convention,~~ any protocols concerned Undertaking 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

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<sup>29</sup> Taken from the Convention on Biological Diversity, with slight editorial modifications to take into account the relationship with FAO, which are shown in the text.

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 [to the dispute](#) 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 ~~p~~Party concerned and a President chosen jointly by those members.

## Article 2

In disputes between more than two ~~Contracting P~~parties, parties [to the dispute](#) in the same interest shall appoint their members of the commission jointly by agreement. Where two or more ~~Contracting P~~parties 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 ~~Secretary~~[Director](#)-General of ~~the United Nations~~[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 ~~Secretary~~[Director](#)-General of ~~the United Nations~~[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 2

**RESULTS OF THE WORKING GROUP FOR THE LIST OF CROPS  
FOR ANNEX I OF THE UNDERTAKING**

On the basis of the report of the Working Group for the List of Crops below, **the Contact Group agreed** to the following proposals of the Chairman:

1. that a panel of experts, requested by the Working Group, be co-ordinated by FAO and IPGRI and provide further scientific information and technical advice to support the Working Group in the finalisation of the list of crops, including forages; and
2. that the Working Group shall resume one day before the next meeting.

**Report of the Working Group for the List of Crops for Annex I of the Undertaking**

Spoletto, 28 April 2001

Members of the Working Group: Canada, Iran (Co-chairs); Angola, Burkina Faso, Zimbabwe (Africa Region); China, Japan, Philippines (Asia Region); France, Poland, Sweden (European Region); Argentina, Brazil, Colombia (Latin America & the Caribbean Region); USA (North America); Australia, Samoa (Southwest Pacific); invited expert from IPGRI; Secretariat of the CGRFA (FAO).

1. (a) The working group used the criteria of food security and interdependence to select the crops for the list.  
(b) The lists submitted by the regions as per CGRFA/CG-4/00/Inf.4 were used as source material and compiled in one working document, comparing commonality of crops among regions. The Working Group worked on the crops most commonly suggested by the Regions.  
(c) The working group agreed that the working basis should be crops, with genera as indicative of crops, and species designation in cases where required.
2. The working group has achieved consensus on 30 food crops (Table I). A further group of widely consumed food crops (Table II), where there is considerable support from a number of regions, remains under discussion. In addition, there are crops important to one or more regions that have not been discussed yet.
3. Forage crops are highly important to all seven Regions. Requirements are diverse and highly complex. Discussions on forage crops have just begun and need considerable further discussion, including advice from forage experts.
4. The working group recommends:
  - (a) A panel of experts be asked to examine the genera in Tables I and II and make technical recommendations (including the scientific sources) for further consideration and final confirmation, at the species level when required by the Regions, the Working Group and the Contact Group. This study would identify and suggest the relevant genetic resources of the crop, including related genera and species that are important for breeding activities and the root stock of the crop, if relevant.

- (b) An opportunity be provided for discussion of the crops from the lists submitted by the Regions, that have not yet been considered.
- (c) The Working Group continue to develop, with the assistance of forage experts from the Regions, the list of forage crops for the next meeting of the Contact Group (working document attached).
- (d) The working group finish its work on the list of food crops, following the analysis described in paragraph 4(a), and before the next meeting of the Contact Group.

## I. Common list of crops

Crops agreed by consensus of the Regions in the Working Group on the List of Crops

Crop	Genus	Comments
Oat	<i>Avena</i>	
Beet	<i>Beta</i>	
Cabbages	<i>Brassica</i>	
Rapeseed	<i>Brassica</i>	Study of related genera and species that are relevant for food use.
Pigeon Pea	<i>Cajanus</i>	
Chickpea	<i>Cicer</i>	
Citrus	<i>Citrus</i>	Study of the genera and species that constitute the root stock to <i>Citrus</i> , such as <i>Poncyrus</i> .
Coconut	<i>Cocos</i>	
Major aroids (*)	<i>Colocasia</i> , <i>Xanthosoma</i>	
Yams	<i>Dioscorea</i> et al.	
Finger Millet	<i>Eleusine</i>	
Sunflower	<i>Helianthus</i>	
Barley	<i>Hordeum</i>	
Sweet Potato	<i>Ipomoea</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 polianthus</i> .
Pea	<i>Pisum</i>	
Rye	<i>Secale</i>	
Potato	<i>Solanum</i>	<i>Solanum tuberosum</i> , including section <i>tuberosa</i> , except <i>Solanum phureja</i> .
Sorghum	<i>Sorghum</i>	
Triticale	<i>Triticosecale</i>	
Wheat	<i>Triticum</i> et al.	
Faba Bean / Vetch	<i>Vicia</i>	
Cowpea et al.	<i>Vigna</i>	
Maize	<i>Zea</i>	

(\*) Major aroids include Taro, Cocoyam, Dasheen and Tannia.

## II. Crops under discussion

**Regions (7):** Africa, Asia, Europe, Middle East, Latin America & the Caribbean, North America, Southwest Pacific.

Crop	Genus	No. Regions with reservations
Onion, garlic et al.	<i>Allium</i>	1
Groundnut / Peanut	<i>Arachis</i>	1
Oil Palm	<i>Elaeis</i>	1
Soybean	<i>Glycine</i>	1
Grass Pea	<i>Lathyrus</i> (*)	1
Tomato	<i>Lycopersicon</i>	1
Sugarcane	<i>Saccharum</i>	1
Minor millets	{diverse} (**)	2
Mustards	<i>Brassica</i>	2
Olive	<i>Olea</i>	2
Pear	<i>Pyrus</i>	2
Vine / Grapes	<i>Vitis</i>	2
Fruit trees	<i>Prunus</i> (***)	3
Melon, cucumber	<i>Cucumis</i>	3
Pumpkins, squashes	<i>Cucurbita</i>	3
Flax	<i>Linum</i>	3
Eggplant	<i>Solanum melangena</i>	3

(\*) One region proposes to consider *Lathyrus sativus* and related species only.

(\*\*) Including *Digitaria*, *Panicum* and *Setaria* (as stated in Annex I, CGRFA/CG-6/01/2).

(\*\*\*) This crop group (genus *Prunus*) includes Apricot, Peach, Plum, Cherry and Almonds. The study of root stocks for potential inclusion is recommended.

## Forages

*Under discussion.*

**Working document on forages**  
(based on Annex I of document CGRFA/CG-6/01/2).

	Europe	Latin America & the Caribbean	North America	Southwest Pacific	Annex I (CGRFA/CG-6/01/2)
<b>GRASSES (<i>Graminae</i>)</b>					
<i>Agropyron</i>	X		X	X	X
<i>Agrostis</i>	X		X	X	X
<i>Alopecurus</i>	X		X	X	X
<i>Andropogon</i>	X	X	X	X	X
<i>Arrhenatherum</i>	X		X	X	X
<i>Axonopus</i>	X		X	X	X
<i>Brachiaria</i>	X	X	X	X	X
<i>Bromus</i>	X		X	X	X
<i>Bothriochloa</i>	X		X	X	X
<i>Cenchrus</i>	X		X	X	X
<i>Chloris</i>	X		X	X	X
<i>Cynodon</i>	X	X	X	X	X
<i>Dactylis</i>	X	X	X	X	X
<i>Elymus</i>	X		X	X	X
<i>Eragrostis</i>		X			
<i>Festuca</i>	X		X	X	X
<i>Hyparrhenia</i>	X		X	X	X
<i>Ischaemum</i>	X		X	X	X
<i>Lolium</i>	X	X	X	X	X
<i>Melinis</i>	X		X	X	X
<i>Panicum</i>	X	X	X	X	X
<i>Paspalum</i>	X		X	X	X
<i>Pennisetum</i>	X		X	X	X
<i>Phalaris</i>	X		X	X	X
<i>Phleum</i>	X		X	X	X
<i>Poa</i>	X		X	X	X
<i>Schizachyrium</i>	X		X	X	X
<i>Setaria</i>	X		X	X	X
<i>Themeda</i>	X		X	X	X
<b>LEGUMES (<i>Leguminosae</i>)</b>					
<i>Aeschynomene</i>	X		X	X	X
<i>Alysicarpus</i>	X		X	X	X
<i>Arachis</i>	X		X	X	X
<i>Bauhinia</i>	X		X	X	X
<i>Calopogonium</i>	X		X	X	X

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	Europe	Latin America & the Caribbean	North America	Southwest Pacific	Annex I (CGRFA/CG-6/01/2)
<i>Canavalia</i>	X		X	X	X
<i>Centrosema</i>	X		X	X	X
<i>Clitoria</i>	X		X	X	X
<i>Coronilla</i>	X		X	X	X
<i>Desmodium</i>	X		X	X	X
<i>Dioclea</i>	X		X	X	X
<i>Galactia</i>	X		X	X	X
<i>Indigofera</i>	X		X	X	X
<i>Lablab</i>	X		X	X	X
<i>Lathyrus</i>	X		X	X	X
<i>Lespedeza</i>	X		X	X	X
<i>Leucaena</i>	X		X	X	X
<i>Lotus</i>	X	X	X	X	X
<i>Lupinus</i>	X		X	X	X
<i>Macroptilium</i>	X		X	X	X
<i>Medicago</i>	X	X	X	X	X
<i>Melilotus</i>	X		X	X	X
<i>Neonotonia</i>	X		X	X	X
<i>Onobrychis</i>	X		X	X	X
<i>Pueraria</i>	X	X	X	X	X
<i>Stizolobium</i>	X		X	X	X
<i>Stylosanthes</i>	X		X	X	X
<i>Teramnus</i>	X		X	X	X
<i>Tephrosia</i>	X		X	X	X
<i>Trifolium</i>	X	X	X	X	X
<i>Trigonella</i>	X		X	X	X
<i>Vetiveria</i>	X		X	X	X
<i>Zornia</i>	X		X	X	X

## APPENDIX 3

## RESULTS OF THE TECHNICAL WORKING GROUP ON THE USE OF TERMS:

## Report of the Technical Group, Draft Proposals for Use of Terms

Term	Use of Term	Position in Text
<i>In situ</i> conservation	“ <i>In situ</i> 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.	5.1(d)
<i>Ex situ</i> conservation	“ <i>Ex situ</i> conservation” means the conservation of plant genetic resources for food and agriculture outside their natural habitat.	5.1(e)
Plant genetic resources for food and agriculture	<p>“Plant genetic resources for food and agriculture” means any material of plant origin, including reproductive and vegetative propagating material, containing functional units of heredity, of actual or potential value for food and agriculture.</p> <p><i>Or,</i></p> <p>“Plant genetic resources for food and agriculture” means any material of plant origin, including genetic parts and components, containing functional units of heredity, of actual or potential value for food and agriculture.</p>	1.1; 3; 5.1; 5.1(a), (b), (c), (e), (f); 5.2; 6.1; 6.2; 7.1; 7.2(a), (b), (d); 9.2(a), (b), (c); 10.1; 10.2; 11; 12.1; 12.2; (c), (d), (e), (f), (g), (h); 12.3; 12.4; 13.1; 13.2(a), (bi,ii), (c), (dii,iii); 13.3; 13.4; 13.6; 14; 15.1; 15.2; 15.5; 16.1; 17.1; 17.2; 17.3; 18.4(b), (c); 18.5; 19.2(b); 19.4
Genetic material	“Genetic material” means any material of plant origin containing functional units of heredity.	13.2(b)(i)
Variety	“Variety” means a plant grouping, within a single botanical taxon below the level of species or subspecies, defined by the expression of its distinguishing genetic characteristics.	Variety: 6.2(g), Varieties: 6.2(c), 6.2(e), 6.2(f), Improved Varieties: 13.2(b)(i)
<i>Ex situ</i> collection	“ <i>Ex situ</i> collection” means a collection of plant genetic resources for food and agriculture maintained outside their natural habitat.	11, 15 (title), 15.1, 15.1(c), 15.1(d), 15.1(g), 15.5
Centre(s) of origin	<p>“Centre of origin” means a geographical area where a plant species, either domesticated or wild, first developed its distinctive properties. In the case of a domesticated plant species this could be evidenced by the presence of its progenitors.</p> <p><i>Or,</i></p> <p>“Centres of origin” means geographical areas where plant genetic resources for food and agriculture, either domesticated or wild, developed their distinctive properties.</p>	9.1

Centre of crop diversity	“Centre of crop diversity” means a geographic area containing a high level of genetic diversity for crop species in <i>in situ</i> conditions.	9.1
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*APPENDIX 4***PROPOSAL FROM THE G77 AND CHINA  
SATURDAY, 29 APRIL 2001, AT 12:00****[Proposal for an Article on Compliance**

1. The Contracting Parties will be responsible for the fulfilment of their obligations arising from this Undertaking. Each Contracting Parties shall, as soon as possible, adopt the appropriate measures to enforce the principles and rules provided for under this Undertaking.
2. The Contracting Parties shall be liable for non-compliance in accordance with international Law.
3. The Contracting Parties shall ensure that effective recourse is available within their jurisdictions for non-compliance with this Undertaking.]

**For insertion in  
Article 28 – Non-Contracting Parties**

[Access to plant genetic resources for food and agriculture under the Multilateral System may be granted to non-Contracting Parties only on the basis of an MTA containing obligations and conditions under Articles 12 and 13 of this Undertaking and on terms less favourable than those available to the Contracting Parties.]

**PROPOSAL BY THE G77 AND CHINA FOR ARTICLE 15 - *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, COVERING ARTICLES 15.1b(iii) TO THE END OF THE ARTICLE.**

*N.B:* the first half of this Article, 15.1, 15.1a, 15.1b, 15.1b(i) and 15.1b(ii), has been negotiated and agreed as is reflected in the main body of this document under Article 15, at page 8.

**15.1(b)...**

- (iii) Benefits accruing to the mechanism mentioned in Article 19.2g shall be applied to the conservation and sustainable use of the crops in question, particularly in national and regional programmes in developing countries, especially in centres of diversity and the Least Developed Countries;
- (iv) The IARCs shall take appropriate measures, in accordance with their capacity, to ensure 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, in accordance with this Undertaking.
- (d) The scientific and technical facilities in which the *ex situ* collections are conserved shall remain in charge of the IARCs, which undertake to manage and administer the *ex situ* collections in accordance with internationally accepted standards, including, with respect to storage, exchange and distribution of seeds, International Genebank Standards, and ensuring that all the material is duplicated in order to guarantee its safety.
- (e) Whenever appropriate, the Secretariat of this Undertaking shall provide technical support, on request by the IARC.
- (f) The Secretariat of this Undertaking 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.
- (g) If the orderly maintenance of the *ex situ* collections held by IARCs is impeded or threatened by whatever event, including *force majeure*, the Secretariat of this Undertaking, with the approval of the host country, shall assist in its evacuation or transfer, to the extent possible.

15.2 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 that have signed agreements with the Governing Body in accordance with this Undertaking. Such Centres shall be included in a list held by the Secretary of the Governing Body to be made available to the Contracting Parties on request.

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

15.4 The Contracting Parties are encouraged to provide IARCs with plant genetic resources for food and agriculture not listed in Annex I that are important to the programmes and activities of the IARCs. Such plant genetic resources for food and agriculture shall be provided on mutually agreed terms with the countries where the plant genetic resources for food and agriculture is collected in *in situ* conditions.