

February 2001



منظمة الأغذية
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Food
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des
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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 INTER-SESSIONAL MEETING OF THE CONTACT GROUP

Spoletto, Italy, 22-28 April 2001

COMPOSITE DRAFT TEXT OF THE INTERNATIONAL UNDERTAKING ON PLANT GENETIC RESOURCES, INCORPORATING: THE TEXTS OF ARTICLE 15, NEGOTIATED DURING THE COMMISSION'S EIGHTH REGULAR SESSION; AND THE TEXTS OF ARTICLES 11, 12, 13, 14, 16, 17, 18, 20 AND 21, AS NEGOTIATED AT THE FIRST TO FIFTH INTER-SESSIONAL MEETINGS OF THE CONTACT GROUP

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INTRODUCTION

Following the Montreux Meeting (19-22 January 1999), the Chairman of the Commission prepared legal provisions reflecting the *Chairman's Elements* derived from that meeting, and, in order to be able to see these legal provisions within the complete text of the International Undertaking, requested the Secretariat to prepare a *Draft Composite Text for the Revision of the International Undertaking*, which would:

- (i) “incorporate, in the *Consolidated Negotiating Text*, the legal provisions derived from the *Chairman's Elements*, in place of the corresponding existing articles;
- (ii) “include the necessary changes to the other articles of the *Consolidated Negotiating Text* with the aim of preserving internal consistency;
- (iii) “add the legal and institutional provisions required to convert the International Undertaking into a legally binding instrument”.

This was accordingly prepared and presented to the Eighth Session of the Commission (19-23 April 1999) as document CGRFA-8/99/13/Annex. The Commission decided to continue negotiations for the revision of the International Undertaking, using this *Composite Draft Text*. It also decided to establish a Contact Group to continue negotiations and, in authorizing the Chairman to convene sessions of the Contact Group, stated that this should be done on the basis of the Chairman's Elements derived from the Montreux meeting. These are therefore reproduced in the current document. This document also incorporates:

the text of Article 15, *Farmers' Rights*, as negotiated during the Eighth Session, is identified in the document by a box with a single-line border around it, as has been done with this paragraph; and

the texts of Article 11, *Multilateral System of Access and Benefit-sharing*; Article 12, *Coverage of the Multilateral System*; Article 13, *Facilitated Access to Plant Genetic Resources for Food and Agriculture within the Multilateral System*; Article 14, *Benefit-sharing in the Multilateral System*; Article 16, *Financial Resources*; Article 17, *Governing Body*; Article 18, *Secretariat*; Article 20, *Amendments of the Undertaking*; and Article 21, *Amendments of Annexes*; which were negotiated by the First, Second, Third, Fourth and Fifth Inter-sessional Meetings of the Chairman's Contact Group, and which are identified in the document by a box with a double-line border around it, as has been done with this paragraph.

**CHAIRMAN'S ELEMENTS DERIVED FROM THE MONTREUX MEETING
(19-22 January 1999)**

1. **Scope:** Plant genetic resources for food and agriculture (PGRFA).
2. **Objectives:** Conservation and use of PGRFA, and the fair and equitable sharing of benefits arising from the use of PGRFA, in harmony with the CBD, for sustainable agriculture and food security.
3. **National commitments** towards conservation and sustainable use, national programmes integrated into agriculture and rural development policies.
4. **Multilateral System**, including components for facilitated access and benefit-sharing.

Coverage

- A list of crops, established on the criteria of food security and interdependence, and
- The collections of the IARCs, on terms to be accepted by the IARCs.

Facilitated access

- To minimize transaction costs, obviate the need to track individual accessions, and ensure expeditious access, in accordance with applicable property regimes.
- Plant genetic resources in the multilateral system may be used in research, breeding and/or training, for food and agriculture only. For other uses (chemical, pharmaceutical, non-food and agricultural industrial uses, *etc.*), mutually agreed arrangements under the CBD will apply.
- Access for non-Parties shall be in accordance with terms to be established in the IU.

Equitable and fair sharing of benefits

- Fair and equitable sharing of benefits arising from the use of PGRFA, *inter alia*, through:
 - transfer of technology,
 - capacity-building,
 - the exchange of information, and
 - funding,

taking into account the priorities in the rolling GPA, under the guidance of the Governing Body.

- Benefits should flow primarily, directly and indirectly, to farmers in developing countries, embodying traditional lifestyles relevant for the conservation and sustainable utilization of PGRFA.

Supporting components

- Information system(s).
- PGRFA networks.
- Partnership in research and technology development.

5. Farmers' Rights

- Recognition of the enormous contribution that 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.
- The responsibility for realizing Farmers' Rights, as they relate to PGRFA, rests with national governments. In accordance with their needs and priorities, each Party should, as appropriate, and subject to its national legislation, take measures to protect and promote Farmers' Rights, including:
 - the right to use, exchange, and, in the case of landraces and varieties that are no longer registered, market farm-saved seeds;
 - protection of traditional knowledge;
 - the right to equitably participate in benefit-sharing;
 - the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of PGRFA.

6. Financial resources

Commitment to a funding strategy for the implementation of the IU, which includes:

- budget and contributions to manage the operations of the Governing Body/Secretariat *etc.* (Some of their activities could be delegated.);
- agreed and predictable contributions to implement agreed plans and programmes, in particular in developing countries, from sources such as:
 - CGIAR, GEF, plus ODA, IFAD, CFC, NGOs, *etc.*, for project funding
 - Country contributions
 - Private sector
 - Other contributions.
- national allocations to implement national PGRFA programmes, according to national priorities.
- priority will be given to implementation of the rolling GPA, in particular in support of Farmers' Rights in developing countries.

7. Legally-binding instrument

- Governing Body,
 - Policy direction, and adoption of budgets, plans and programmes,
 - Monitoring the implementation of the IU,
 - Periodically reviewing, and, as necessary, updating and amending the elements of the IU and its annexes,
- Secretariat.

8. Provisions for amending the International Undertaking and updating and revising its annexes

COMPOSITE DRAFT TEXT OF THE INTERNATIONAL UNDERTAKING ON PLANT GENETIC RESOURCES, INCORPORATING: THE TEXTS OF ARTICLE 15, NEGOTIATED DURING THE COMMISSION'S EIGHTH REGULAR SESSION; AND THE TEXTS OF ARTICLES 11, 12, 13, 14, 16, 17, 18, 20 AND 21, AS NEGOTIATED AT THE FIRST TO FIFTH INTER-SESSIONAL MEETINGS OF THE CONTACT GROUP

NOTE: For the purpose of the present draft, the terms "Undertaking" and "Parties" are used, without brackets, for simplicity, without prejudice to final formulations.

PREAMBLE

The Parties to this Undertaking:

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 [Relationship of the International Undertaking with the Food and Agriculture Organization of the United Nations and 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 the Undertaking with Other International Agreements

4.1 The provisions of this Undertaking shall not affect the rights and obligations of any Party deriving from any existing international agreement [except where the exercise of those rights and obligations [would] [be shown to] cause a serious damage or threat to plant genetic resources [for food and agriculture].

4.2 [Any Party that has not ratified, accepted or approved the Convention on Biological Diversity shall be assumed to accept those provisions of the Convention which relate to the matters covered by this Undertaking.]

PART II - GENERAL PROVISIONS

Article 5 – Conservation, Exploration, Collection, Characterization, Evaluation and Documentation of Plant Genetic Resources for Food and Agriculture

5.1 Each Party shall, subject to national legislation, [in accordance with the relevant provisions of the Convention on Biological Diversity,] and in cooperation with other 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 particular¹, 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][farmers' varieties and other] 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 Parties shall, as appropriate, take steps to minimize or, if possible, eliminate threats to plant genetic resources for food and agriculture[, including the negative effects of agro-chemicals].

Article 6 – Sustainable Use of Plant Genetic Resources

6.1 Parties shall develop or 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 [may][shall] include 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;

¹ The present formulation replaces the word "through", which is ungrammatical in the present formulation of Article 5.1, and follows more the wording normally used in legally binding instruments.

- (b) strengthening [demand-driven] 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][varieties] 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 [full] 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,] [in all agro-ecological zones] 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 create 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.

[In this respect,² Parties shall review, and, as appropriate, adjust breeding strategies and regulations concerning variety release and seed distribution.]

[6.3 Parties shall, as far as possible and as appropriate, establish or maintain means to regulate, manage or control the risks associated with the use and release of plant genetic resources for food and agriculture [that involve][which are] living modified organisms resulting from biotechnology and which are likely to have adverse environmental impacts that could affect the conservation and sustainable use of biological diversity, taking also into account the risks to human health.]

Article 7 – National Commitments and³ International Cooperation

7.1 Each Party shall, as appropriate, integrate into its agriculture and rural development policies and programmes⁴, activities referred to in Articles 5 and 6, and cooperate with other Parties, directly or through [FAO and/or 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) [encouraging][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][relevant] information and technology;

² As appropriate, the wording could be changed to read “In respect of the measures referred to above.”

³ The Title has been changed to reflect the element of “National Commitments” referred to in point 3 of the *Chairman’s Elements*.

⁴ The words “agriculture and rural development policies” are drawn from the *Chairman’s Elements*, point 3.

- (c) [maintaining and strengthening the institutional arrangements provided for in Part III⁵.]
- (d) [[strengthening or establishing of funding mechanisms to finance][identify ways and means to support] activities related to the conservation and sustainable use of plant genetic resources for food and agriculture.]

[.....]⁶

PART III - SUPPORTING COMPONENTS FOR THE UNDERTAKING

Article 8 – Global Plan of Action⁷

8.1 The Parties [shall][should] [promote][implement], as appropriate, [in accordance with national priorities,] the rolling Global Plan of Action for the Conservation and Sustainable Use of Plant Genetic Resources for Food and Agriculture, adopted at Leipzig in June 1996, in order to promote the implementation of this Undertaking, [in particular Articles 5 and 6]. Parties [shall][should] implement the Global Plan of Action through [national actions and], as appropriate, international cooperation in order to provide a coherent framework, *inter alia*, for capacity-building, technology transfer and exchange of information, [and a sound technical basis for the use of the funding mechanism provided for in Article 16]. Parties [shall][should] monitor and guide implementation of the Global Plan of Action through the [Commission on Genetic Resources for Food and Agriculture][the governing body established in Article 17]. [Implementation of the Global Plan of Action will contribute to the realization of Farmers' Rights.]

[Article 9 – The International Network of Plant Genetic Resources for Food and Agriculture]⁸

9.1 The International Network of Plant Genetic Resources for Food and Agriculture (IN/PGRFA) will be developed and strengthened. It will include plant genetic resources for food and agriculture held at national, regional and international level, and aim to improve the conservation, the exchange and utilization of plant genetic resources for food and agriculture for the benefit of sustainable agricultural development and of global food security, and contributing to the fair and equitable sharing of benefits arising from the utilization of plant genetic resources for food and agriculture.

9.2 Parties will designate plant genetic resources for food and agriculture, including material held under *in situ* and *ex situ* conditions, in order to define their contribution to the IN/PGRFA. They will encourage all institutions, including private, non-governmental, research, breeding and other institutions, to participate in the IN/PGRFA.

⁵ The *Consolidated Negotiating Text* (CNT) referred here to the articles dealing with networks, information systems and other relevant instruments, which are now set out in Part III.

⁶ Article 8 – Role of [and cooperation with] international organizations, of the CNT has not been discussed by the Commission, and hence, no substantive provisions were included in the CNT. The provisions set out in the Fourth Negotiating Draft are covered in more general terms in other parts of the Undertaking, in particular Article 9.

⁷ Cf. Article 16.2 – 4.

⁸ The provisions of Article 9 may need to be reviewed in the light of the *Chairman's Elements* dealing with the Multilateral System. Alternative 2 may need to be reworded as is usual in legally binding instruments and to expand the scope and purpose of the network beyond the maintenance of collections, to act as a supporting component for the Multilateral System as set out in point 4 of the *Chairman's Elements*.

9.3 The collections of the International Agricultural Research Centres of the CGIAR under the auspices of the FAO will be part of the International Network of Plant Genetic Resources for Food and Agriculture.

9.4 Modalities of functioning of the Network should be as simple and cost-effective as possible.]

OR

[Article 9 – International Plant Genetic Resources Networks]

9.1 International networks to maintain collections of plant genetic resources for food and agriculture will be encouraged or developed, on the basis of existing arrangements, so as to achieve as complete coverage as possible of plant genetic resources for food and agriculture.

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

**Article 10 – [The World Information Network] [Information Systems]
on Plant Genetic Resources for Food and Agriculture**

[10.1 The Parties shall cooperate to set up a global information network on scientific, technical, environmental, and commercial matters relating to plant genetic resources for food and agriculture.]

OR

[10.1 [The Parties shall cooperate to develop and strengthen⁹ a World Information Network][Information systems] on plant genetic resources for food and agriculture [(WIN/PGRFA)] to improve the knowledge and the understanding of the importance of plant genetic resources for food and agriculture, [rationalize existing collections,] facilitate the use of collections [and ensure] and strengthen regional and international cooperation. Modalities of the functioning of [the Network][information systems] should be as simple and cost-effective as possible, building, *inter alia*, on relevant existing [systems][arrangements].]

[10.2¹⁰ Based on notification by 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.]

[10.3 Parties shall cooperate, through the appropriate international organizations, to undertake a 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 provided for in Article 8.]

⁹ Wording changed to be consistent with that of a legally binding instrument.

¹⁰ Original Article 10.2 deleted as inconsistent with the *Chairman's Elements* on the Multilateral System.

PART IV - MULTILATERAL SYSTEM OF ACCESS AND BENEFIT-SHARING¹¹

This Article is as negotiated by the Third Contact Group.

Article 11 – Multilateral System of Access and Benefit-sharing

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

11.2 In the exercise of their sovereign rights, 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 re-inforcing basis.

Article 12, including the footnotes in this box, is as negotiated by the Fourth Contact Group

Article 12 – Coverage of the Multilateral System^{a b}

12.1 In furtherance of the objectives of conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of benefits arising out of their use, as stated in Article 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.^c

[12.2 The multilateral system shall also cover:

(a) material held in *ex situ* collections by International Agricultural Research Centres of the Consultative Group on International Agricultural Research^d [international centres]^e that accept the provisions of [Annex V to] this Undertaking;

[(b) material held in collections of other international institutions that accept the provisions of this Undertaking, and with the agreement of the Governing Body of this Undertaking.]^f

OR

[12.2 Parties agree that the germplasm collections held in *ex situ* collections by the CG International Centres and other international institutions shall be subject to the provisions of this International Undertaking and in accordance with the provisions of Annex V.]

¹¹ Part IV basically reflects the legal provisions prepared by the Chairman, on the basis of the *Chairman's Elements* from the Montreux Meeting.

[12.3 The Governing Body¹² shall keep Annex I under periodic review as well as Annexes II, III and IV on the conditions of access, benefit-sharing and financial resources respectively, taking into account the inter-relationship among those annexes.]^g

[12.4 Parties agree that any alteration to Annex I and Annex V of this Undertaking shall only be possible with the consensus of all Parties to this International Undertaking.]

- a. The final decision on Article 12 will depend on its harmonization with Articles 13, 14, 16 and 17, which are pending completion.
- b. *For further consideration:* the issues of the identification and of the end use of material in collections.
- c. Adopted *ad referendum*, and pending the adoption of Article 21, including the issue of the adoption of annexes by consensus.
- d. *For further consideration:* The CGIAR Centres shall respect the rights of countries that provide material or from which material is collected.
- e. *For further consideration:* Specific Conditions shall apply to international centres other than CGIAR Centres.
- f. *For further consideration.*

This Article is as negotiated by the Fourth Contact Group.

Article 13 – Facilitated access to plant genetic resources for food and agriculture within the Multilateral System¹³

13.1 Parties agree that facilitated access to plant genetic resources for food and agriculture under the Multilateral System shall be in accordance with the provisions of this Undertaking.

13.2 Parties agree to provide such access to other Parties, in accordance with the conditions below:

- (a) Access shall be provided solely for the purpose of [conservation and/or] utilization 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;

¹² In the text, the term “Governing Body” has been used to designate the intergovernmental body that will implement the revised International Undertaking as a legally binding instrument, without prejudice to the actual status of the instrument. See Article 17.

¹³ Two countries registered that Article 13 was negotiated in good faith pending symmetrical advances in Article 14 and 16.

- (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 [, or their genetic parts or components], for food and agriculture[, in the form] received [from the Multilateral System]]/[No plant varietal or patent protection will be sought by recipient Parties on the plant genetic resources for food and agriculture received under this 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 national law, and with relevant international law.]
- (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, 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. [Pursuant to the above, access will be provided to plant genetic resources for food and agriculture in areas designated, or programmes established, for the purpose of this agreement by Governments for the *in situ* conservation of plant genetic resources for food and agriculture]

13.3 In emergency disaster situations, 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.

NOTE:ARTICLE 13.4 IS AS REVIEWED DURING THE FIFTH CONTACT GROUP

13.4 Parties agree to provide facilitated access to plant genetic resources for food and agriculture under the Multilateral System to International Agricultural Research Centres of the Consultative Group on International Agricultural Research that accept the provisions of Article [8 bis] to this Undertaking. Such Centres shall be included in a list held by the Secretary of the Governing Body to be made available to Parties on request.

13.5 [Parties agree that access to plant genetic resources for food and agriculture under the Multilateral System shall not be provided to other non-Parties unless they agree to be bound by the obligations and conditions set out in this International Undertaking. In addition, where access is granted, non-Parties shall be subject, *inter alia*, to a standardized MTA, agreed by the Parties.]

This Article is as negotiated by the Fourth Contact Group.

Article 14 - Benefit-sharing in the Multilateral System

14.1 The 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.

14.2 The 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 GPA, under the guidance of the Governing Body:

(a) Exchange of information:

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 Parties to the International Undertaking through the information system of the Multilateral System.

(b) Access to and transfer of technology

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

(ii) Access to and transfer of technology to countries, especially to developing countries and countries with economies in transition, shall be carried out through a set of measures, such as the establishment and maintenance of, and participation in, crop-based thematic groups on utilization of plant genetic resources for food and agriculture, all types of partnership in R & D 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 country Parties,¹⁴ in particular least developed countries, 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

¹⁴

One country requested the inclusion of "and countries with economies in transition".

as technologies for the benefit of farmers in developing countries,¹⁶ especially in least developed countries, 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, 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) Each Party to this Undertaking undertakes to pay, in accordance to the agreed Funding Strategy to be established under Article 16, an annual contribution representing percent of the value of the crops produced in its territory through the use of plant genetic resources for food and agriculture listed in Article 12 to this Undertaking where such crops are produced from or through plant genetic materials or related processes in respect of which IPR protection has been sought under its national legislation. For this purpose, the value of the crops shall be calculated on the basis of the hectareage of the crops harvested multiplied by the average national yield per hectare for those crops and the average ex-farm price for the current year.
- (ii) Developed countries, party to this Undertaking, undertake to make annual contributions to the Agreed Funding Strategy established under Article 16 in the proportions of their national contributions according to the United Nations Scale of Assessment.]
- (iii) 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 Article 14 of the International Undertaking, through partnerships and collaborations, including with the private sector in developing countries and countries with economies in transition, in research and technology development;
- (iv)^{15 16} 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

¹⁵ Four countries stated that they do not agree to the text of Article 14.2d(iv).

¹⁶ If an agreement is reached in relation to Articles 14.2(b)(iii) and 14.2(d)(iv), Articles 14.2(d)(i) and (ii) will be deleted.

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 17.2, as a contribution to the implementation of agreed plans and programmes as established under this Undertaking.

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, 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,¹⁷ especially in least developed countries, from this provision.

The Governing Body shall review the provisions of Article 14.2d(iv) within a period of five years of the entry into force of the International 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 20.

To be inserted in 17.2

(**) Identify[, by consensus,] forms of intellectual property right that restrict utilization for research and plant breeding, for the purposes of Article 14.2d(iv).

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

14.4 The Governing Body will, at its first meeting, consider relevant policy and criteria for specific assistance under the agreed funding strategy established under Article 16 for the conservation of plant genetic resources for food and agriculture in developing countries and countries with economies in transition whose contribution to the diversity of plant genetic resources for food and agriculture in the Multilateral System is significant and/or which have special needs.

14.5 Parties recognize that the ability to fully implement the GPA, 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 16.

(**) ¹⁸ Parties agree that the Governing Body 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.

¹⁷ Two countries requested the inclusion of “and countries with economies in transition”.

¹⁸ The principle was adopted; the position of the sub-article is still to be decided.

PART V - FARMERS' RIGHTS

Article 15 as negotiated during the Eighth Regular Session of the Commission.

Article 15 – Farmers' Rights

15.1 The 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.

15.2 The 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 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.

15.3 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 VI - FINANCIAL PROVISIONS

Article 16 is as negotiated by the Fourth Contact Group

Article 16 – Financial Resources

16.1 The Parties undertake, through the Governing Body, to develop, keep under review [and implement] a funding strategy for the implementation of the International Undertaking in accordance with the provisions of this Article.

16.2 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 the International Undertaking.

16.3 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.

16.4 Pursuant to this funding strategy:

- (a) 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 the International Undertaking.

- (b) The extent to which developing country Parties and countries with economies in transition will effectively implement their commitments under this International Undertaking will depend on the effective allocation, particularly by the developed country Parties, of the resources referred to in this Article. Developing country Parties and 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 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.¹⁹
 - (d) The developed country Parties also provide, and developing country Parties and Parties which are countries with economies in transition avail themselves of, financial resources for the implementation of this International Undertaking through bilateral and regional and multilateral channels. Such channels shall include the mechanism referred to in Article 17.2.
 - (e) [Parties undertake to provide the financial benefits arising from Article 14.2(d)] / [Parties agree that the equitable royalties accruing from the sharing of benefits arising from commercialization according to Article 14.2 d (iv) shall be incorporated into the funding strategy];
 - (f) Voluntary contributions may also be provided by Parties, the private sector, non-governmental organisations and other sources. Parties agree that the Governing Body shall consider modalities of a strategy to promote such contributions;
- 16.5 Parties agree that priority will be given to the implementation of agreed plans and programmes in support of farmers in developing countries, especially in least developed countries, and in countries with economies in transition, embodying lifestyles relevant for the conservation and sustainable utilization of plant genetic resources for food and agriculture;²⁰

PART VII - INSTITUTIONAL PROVISIONS

Article 17 is as negotiated by the Fifth Contact Group

Article 17 – Governing Body

17.2 The functions of the Governing Body shall be to promote the full implementation of the 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 the Undertaking and, in particular, for the operation of the Multilateral System of Access and Benefit-Sharing;

¹⁹ One country reserved the right to consult its capital.

²⁰ For four countries, the issue of priority category will be determined by the outcome of the negotiations of Article 4.

- (b) take into account the state of plant genetic resources for food and agriculture and its implications for world food security;
- (c) [periodically review and, as necessary, update the rolling Global Plan of Action provided for in Article 8;]
- (d) adopt plans and programmes for the implementation of the Undertaking;
- (e) adopt and periodically review the funding strategy for the implementation of the Undertaking;
- (f) [adopt the budget of the Undertaking];
- (g) consider and establish such subsidiary bodies as may be necessary, and their respective mandates and composition;
- (h) 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 the International Undertaking;
- (i) establish cooperation with other relevant international organizations on matters covered by this Undertaking, including their participation in the funding strategy;
- (j) consider and adopt, as required, amendments to the Undertaking, in accordance with the provisions of Article 20;
- (k) periodically review and, as necessary, adopt amendments to the annexes to this Undertaking, in accordance with the provisions of Article 21;²¹
- (l) consider modalities of a strategy to encourage voluntary contributions, in particular, with reference to Articles 14 and 16;
- (m) perform such other functions as may be necessary to the fulfilment of the objectives of this Undertaking.

17.3 The Governing Body shall be composed of all Parties to this Undertaking.

17.4 Each Party shall have one vote²² 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 an alternate who is duly authorized to substitute for the delegate.

17.5 The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not Party to this International 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 Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Governing Body.

[17.6 The 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

²¹ The suggestio was made that, with agreement on this Article, it would be possible to delete Article 12.3.

²² Subject to the legal basis of this Undertaking.

last resort, be taken by a two-thirds majority of the Parties present and voting unless, where specifically stated, that consensus is required.²³]

[REPLACING 17.6 AND 17.9 The Governing Body shall by consensus agree upon and adopt rules of procedure for itself and for any subsidiary body it may establish, as well as financial rules, which would be consistent with this Undertaking.]

17.7 For the purpose of this Article, “Parties present and voting” shall mean Parties present and casting an affirmative or negative vote.

17.8 A Member Organization of FAO that is a Party and the member states of that Member Organization that are Parties shall exercise their membership rights and fulfil their membership obligations in accordance, *mutatis mutandis*, with the Constitution and General Rules of FAO.²²

17.9 [The Governing Body may adopt and amend, as required, its own Rules of Procedure, which shall not be inconsistent with this Undertaking.²³]

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

17.11 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.

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

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

Article 18 is as negotiated by the Fifth Contact Group

Article 18 - Secretariat

[18.1 The Secretary of the Governing Body shall be appointed by the [Director-General of FAO, with the approval of the [Governing Body] [Bureau]].]

or

[18.1 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 may be required.]

18.2 The Secretariat shall comprise such staff as may be required, with the approval of the Governing Body.

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

18.4 The Secretariat shall perform the following functions:

(a) arrange for and service meetings of the Governing Body;

²³

The final negotiation of these texts will be subject to the negotiation of Articles 20 and 21.

(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.

18.5 The Secretariat shall disseminate to all Parties:

(a) decisions of the Governing Body within sixty days of adoption;

(b) information received from Parties in accordance with the provisions of the Undertaking.

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

18.7 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 the Undertaking.

Article 19 - Settlement of Disputes²⁴

19.1 If there is any dispute regarding the interpretation or application of this Undertaking, the Parties concerned shall seek to resolve the dispute by negotiation.

19.2 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.

19.3 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 Depository that for a dispute not resolved in accordance with paragraph 1 or paragraph 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 VI to this Undertaking;

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

19.4 If the Parties to the dispute have not, in accordance with paragraph 3 above, accepted the same or any procedure, the dispute shall be submitted to conciliation in accordance with Part 2 of Annex VI to this Undertaking unless the Parties otherwise agree.

Article 20 is as negotiated by the Fifth Contact Group

Article 20 – Amendments of the Undertaking²⁵

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

²⁴ This Article draws on the text of Article 27 of the Convention on Biological Diversity.

²⁵ This Article draws on the text of Article 29 of the Convention on Biological Diversity.

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

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

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

20.5 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 16 is as negotiated by the Fifth Contact Group

Article 21 – Amendments of Annexes²⁶

21.1 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.

21.2 [Amendments to the annexes to this Undertaking shall be proposed and adopted in accordance with the procedure for the proposal and adoption of amendments to the Undertaking as set out in Article 20.] [Amendments to the annexes to this Undertaking shall be proposed in accordance with the procedure for the proposal of amendments to the Undertaking as set out in Article 20.] [Amendments shall only be adopted by consensus of all Parties to this Undertaking.]

21.3 An amendment to an annex to this Undertaking shall enter into force in accordance with the procedures set out in Article 20.4.

Article 22 – Signature

This Undertaking shall be open for signature at FAO Headquarters in Rome by all Members of FAO, of the United Nations or of any specialized agency of the United Nations or of the International Atomic Energy Agency until *** 20**.

Article 23 – Ratification, Acceptance or Approval

This Undertaking shall be subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Director-General of FAO.

²⁶

This Article draws on the text of Article 30 of the Convention on Biological Diversity.

Article 24 – Accession

This Undertaking shall be open for accession by any Member of FAO, the United Nations or any specialized agency of the United Nations or the International Atomic Energy Agency from the date on which the Undertaking is closed for signature. Instruments of accession shall be deposited with the Depository.

Article 25 – Member Organizations of FAO

25.1 When a member organization of FAO deposits an instrument of ratification, acceptance or approval of, or accession to, 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 ratification, acceptance, approval or accession deposited by a member organization of FAO shall not be counted as additional to those deposited by its member states.

Article 26 – Entry into Force²⁷

26.1 This Undertaking shall enter into force on the ninetieth day after the deposit of the thirtieth instrument of ratification, acceptance, approval or accession.

26.2 For each Party that ratifies, accepts or approves this Undertaking or accedes thereto after the deposit of the thirtieth instrument of ratification, acceptance, approval or accession, this Undertaking shall enter into force on the ninetieth day after the deposit by such Party of its instrument of ratification, acceptance, approval or accession.

Article 27 – Reservations²⁸

No reservations may be made to this Undertaking.

Article 28 – Non- Parties

The 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 the Undertaking shall be all official languages of FAO.

Article 30 – Technical Assistance

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

²⁷ This Article draws on the text of Article 36 of the Convention on Biological Diversity.

²⁸ This Article draws on the text of Article 37 of the Convention on Biological Diversity.

Article 31 – Withdrawals

31.1 Any 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 Parties.

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

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 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 Party and each Member of FAO that is not a Party of:
 - (i) the deposit of instruments of ratification, acceptance or approval in accordance with Article 23;
 - (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 the Annexes thereto;
 - (iv) the adoption of amendments to this Undertaking in accordance with Article 20 and their entry into force;
 - (v) the adoption of amendments to the Annexes this Undertaking in accordance with Article 21, and the entry into force of amendments to annexes; and
 - (vi) withdrawals from this Undertaking pursuant to Article 31.

ANNEX I

LIST OF CROPS COVERED BY THE MULTILATERAL SYSTEM

<u>Common name</u>	<u>Genus¹</u>	<u>Common name</u>	<u>Genus¹</u>
Rice	<i>Oryza</i>		<i>Ischaemum</i>
Oats	<i>Avena</i>		<i>Lolium</i>
Rye	<i>Secale</i>		<i>Melinis</i>
Barley	<i>Hordeum</i>		<i>Panicum</i>
Millets	<i>Pennisetum</i>		<i>Paspalum</i>
	<i>Setaria</i>		<i>Pennisetum</i>
	<i>Panicum</i>		<i>Phalaris</i>
	<i>Eleusine</i>		<i>Phleum</i>
	<i>Digitaria</i>		<i>Poa</i>
	<i>Zea</i>		<i>Schizachyrium</i>
Maize	<i>Sorghum</i>		<i>Setaria</i>
Sorghum	<i>Triticum</i>		<i>Themeda</i>
Wheat		Legumes (<i>Leguminosae</i>)	
Peanut	<i>Arachis</i>		<i>Aeschynomene</i>
Cowpea	<i>Vigna</i>		<i>Alysicarpus</i>
Pea	<i>Pisum</i>		<i>Arachis</i>
Beans	<i>Phaseolus</i>		<i>Bauhinia</i>
Lentils	<i>Lens</i>		<i>Calopogonium</i>
Soybean	<i>Glycine</i>		<i>Canavalia</i>
Potato	<i>Solanum</i>		<i>Centrosema</i>
Sweet potato	<i>Ipomoea</i>		<i>Clitoria</i>
Yams	<i>Dioscorea</i>		<i>Coronilla</i>
Cassava	<i>Manihot</i>		<i>Desmodium</i>
Bananas, plantains	<i>Musa</i>		<i>Dioclea</i>
Citrus	<i>Citrus</i>		<i>Galactia</i>
Sugarcane	<i>Saccharum</i>		<i>Indigofera</i>
Beet	<i>Beta</i>		<i>Lablab</i>
Pumpkins, squashes	<i>Cucurbita</i>		<i>Lathyrus</i>
Tomato	<i>Lycopersicon</i>		<i>Lespedeza</i>
Coconut	<i>Cocos</i>		<i>Leucaena</i>
			<i>Lotus</i>
Tannia	<i>Xanthosoma</i>		<i>Lupinus</i>
Taro	<i>Colocasia</i>		<i>Macroptilium</i>
Cabbages, rape, mustards	<i>Brassica</i>		<i>Medicago</i>
Onion, leek, garlic	<i>Allium</i>		<i>Melilotus</i>
Chickpea	<i>Cicer</i>		<i>Neonotonia</i>
Faba bean	<i>Vicia</i>		<i>Onobrychis</i>
Pigeon pea	<i>Cajanus</i>		<i>Pueraria</i>
Melons	<i>Cucumis</i>		<i>Stizolobium</i>
Flax	<i>Linum</i>		<i>Stylosanthes</i>
Sunflower	<i>Helianthus</i>		<i>Teramnus</i>
			<i>Tephrosia</i>
Cotton	<i>Gossypium</i>		<i>Trifolium</i>
Oil palm	<i>Elaeis</i>		<i>Trigonella</i>
			<i>Vetiveria</i>
Forages			<i>Zornia</i>
Grasses (<i>Gramineae</i>)	<i>Agropyron</i>		
	<i>Agrostis</i>		
	<i>Alopecurus</i>		
	<i>Andropogon</i>		
	<i>Arrhenatherum</i>		
	<i>Axonopus</i>		
	<i>Brachiaria</i>		
	<i>Bromus</i>		
	<i>Bothriochloa</i>		
	<i>Cenchrus</i>		
	<i>Chloris</i>		
	<i>Cynodon</i>		
	<i>Dactylis</i>		
	<i>Elymus</i>		
	<i>Festuca</i>		
	<i>Hyparrhenia</i>		

1 Genera are indicated only to clarify to which genus a particular crop belongs.

During the negotiations of the Contact Group, Annexes II, III, IV and V were deleted. The remaining Annex, until now numbered Annex VI, "Settlement of disputes", has now been renumbered as Annex II.

ANNEX II

SETTLEMENT OF DISPUTES

ADDENDUM 1**CHAIRMAN'S PROPOSAL FOR A NEW ARTICLE 8 BIS,
DURING THE FIFTH CONTACT GROUP, AND DELEGATIONS' COMMENTS**

**New Article 8 bis - Ex Situ Collections of Plant Genetic Resources for Food and
Agriculture held by the International Agricultural Research Centres of the CGIAR and
other International Institutions**

8 bis.1 Parties recognize that the *ex situ* collections of plant genetic resources for food and agriculture held by the International Agricultural Research Centres (IARCS) of the CGIAR are an important element of this Undertaking. The Parties invite the IARCs to sign agreements with the Governing Body, in accordance with the following terms and conditions:

- (a) Material listed in Annex I to this International Undertaking, and held by IARCs, shall be provided according to the provisions set out in Part IV of this Undertaking;
- (b) Material other than that listed in Annex I to this Undertaking and collected before its entry into force, which is held by IARCS, shall be provided in accordance with a standardized Material Transfer Agreement. At its first meeting, the Governing Body will determine the conditions to be contained in the Material Transfer Agreement, in accordance with the relevant provisions of Articles 13 and 14, and taking into account any sovereign rights of the country of origin there may be over those materials;
 - (i) IARCs shall periodically inform the country in whose jurisdiction the material was collected, of Material Transfer Agreements entered into, according to a schedule to be established by the Governing Body;
 - (ii) Parties in whose jurisdiction materials were collected shall be provided with samples of such materials on simple demand;
 - (iii) Any monetary benefits deriving from the commercial use of such material shall accrue to the mechanism mentioned in article 17.2.h 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 all the relevant 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 the International Undertaking shall provide technical support, on request by the IARC, either directly or through an implementing mechanism.
 - (f) The Secretariat of the International 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 the International Undertaking, with the approval of the host country, shall assist in its evacuation and/or transfer, to the extent possible.
- 8 bis.2 Access to material other than that listed in Annex I, received by International Institutions after the coming into force of this International 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.
- 8 bis.3 The Governing Body will also seek to establish agreements for the purposes stated in this Article with other relevant International Institutions.

Delegations' comments

[New Article 8 bis] / [New Article 12 bis {EU²⁹}] - Ex Situ Collections of Plant Genetic Resources for Food and Agriculture held by the International Agricultural Research Centres of the CGIAR and other International Institutions

8 bis.1 Parties recognize that the *ex situ* collections of plant genetic resources for food and agriculture held [in trust {G77 US+ EU+}] by the International Agricultural Research Centres (IARCS) of the CGIAR [should {US Chair-}] [are] [constitute (G77+ EU+)] an important [element] / [component {G77 US+ EU+}] of this Undertaking. [To that effect {US EU+}], [the Parties [shall {US}]] invite the IARCs to sign agreements with the Governing Body, in accordance with the following terms and conditions:] / [the Governing Body, in signing agreements with IARCs regarding such collections, shall do so in accordance, *inter alia*, with the following terms and conditions: {G77 US-}]

- (a) Material [covered by {G77}] / [listed in] Annex I to this International Undertaking, and held by IARCs, shall be [provided according] / [subject {CAN}] to the provisions set out in Part IV of this Undertaking;
- (b) Material other than that [listed in] / [covered by {G77}] Annex I to this Undertaking [and collected before its entry into force {CAN delete and 8 bis.2 EU+ ANG- at this stage}], which is held by IARCS, shall be provided in accordance with a standardized Material Transfer Agreement[, legally accepted by Parties to it, before access is granted{G77}]. At its first meeting, the Governing Body will determine [by consensus {CAN}] the conditions to be contained in the Material Transfer Agreement, in accordance with the relevant provisions of Articles 13 [regarding obligations of recipients of material {G77}] and [Article {G77}]14 {CAN proposes deleting rest of this chapeau} [EU more precise words needed like “applied with equivalent effect”], and taking into account any sovereign rights of the country of origin {EU sovereign rights should be treated under a new article 11.3} there may be over those materials[;] /[,besides, {G77}]
 - (i) IARCs shall periodically inform [the] [each {CAN}] country [providing plant genetic resources for food and agriculture about the {CAN EU+}] / [in whose jurisdiction the material was collected, of] Material Transfer Agreements entered into, according to a schedule to be established by the Governing Body;
 - (ii) [Parties] [Countries] [that have provided plant genetic resources for food and agriculture] / [in whose jurisdiction materials were collected {EU find a better word} {CAN EU+}] shall be provided with samples of such materials on simple demand;
 - (iii) Any monetary benefits deriving from the commercial use of such material shall accrue to the mechanism mentioned in article 17.2.h 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[, and the regions from which the material was collected. {G77}]{CAN delete EU-, but link to provisions of 14}{POL adds “countries with economies in transition”}
 - (iv) [IARCs shall take all the relevant measures, in accordance with their capacity, in cases of violation of the MTA.] / [IARCS and the Governing Body shall develop appropriate guidelines to address cases of violation of MTAs {USA Chair+ EU+}]

²⁹

NOR supported all the EU amendments.

- (c) IARCs recognize the authority of the Governing Body to provide policy [direction and {G77}] 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 the International Undertaking shall provide technical support, on request by the IARC[, either directly or through an implementing mechanism [either directly or indirectly {CAN EU+}]].
- (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 the International Undertaking[, with the approval of the host country] [{EU suggests stipulating the responsibility of the Governing Body}], shall assist in its evacuation and/or transfer, to the extent possible.

[8 bis.2 Access to material other than that listed in Annex I, received by International Institutions after the coming into force of this International 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. {US delete POL+ G77- NOR+ IND- BRA-}]

8 bis.3 The Governing Body will also seek to establish agreements for the purposes stated in this Article with other relevant International Institutions.

[8 bis.4 Parties are encouraged to provide access, as appropriate, to plant genetic resources for food and agriculture of [present mandate {BRA}] crops not listed in Annex 1 that are important to the programmes and activities of the IARCs of the CGIAR. Such access should be [consistent with the provisions of this Article {BRA}], and to the extent possible, on terms consistent with the in trust nature of the CGIAR *ex situ* collections. {US modified by BRA}]

ADDENDUM 2**TEXTS PROPOSED FOR ARTICLES 11; 12.2; AND 12.5,
FOR POSSIBLE MOVING TO ARTICLE 13**

EU PROPOSAL FOR AN ADDENDUM TO ARTICLE 11

[11.3 In the exercise of their sovereign rights, Parties agree to establish a system for the plant genetic resources for food and agriculture covered by Article [8] / [12 bis]. The system shall be 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 re-inforcing basis.]

US PROPOSAL FOR ARTICLE 12.2

[12.2 Parties are encouraged to include in the Multilateral System, as identified in paragraph 12.1, 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 12.1, shall encompass plant genetic resources for food and agriculture that are under the management and control of the national government of a Party.]

**EU PROPOSAL FOR TEXT FOR ARTICLE 12.5,
FOR POSSIBLE MOVING TO ARTICLE 13**

[12.5 Parties shall provide information, as far as possible and in accordance with their national capabilities, on plant genetic resources for food and agriculture in Annex 1, available for facilitated access under Article 13 of this Undertaking. Such information shall include details of contacts through which the plant genetic resources for food and agriculture may be obtained, and shall be provided through the information system referred to in Article 10 of this Undertaking. The International Agricultural Research Centres of the Consultative Group on International Agricultural Research and other international institutions which make plant genetic resources for food and agriculture available to the Multilateral System under paragraph 2 above shall, as far as possible, also provide such information.]