

February 1999



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

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## Item 4 of the Draft Provisional Agenda

### COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE

#### Eighth Regular Session

Rome, 19-23 April 1999

### REPORT OF THE CHAIRMAN OF THE COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE ON THE STATUS OF NEGOTIATIONS FOR THE REVISION OF THE INTERNATIONAL UNDERTAKING ON PLANT GENETIC RESOURCES, IN HARMONY WITH THE CONVENTION ON BIOLOGICAL DIVERSITY

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**REPORT OF THE CHAIRMAN OF THE COMMISSION ON  
GENETIC RESOURCES FOR FOOD AND AGRICULTURE ON THE  
STATUS OF NEGOTIATIONS FOR THE REVISION OF THE  
INTERNATIONAL UNDERTAKING ON PLANT GENETIC  
RESOURCES, IN HARMONY WITH THE CONVENTION ON  
BIOLOGICAL DIVERSITY**

1. At its Fifth Extraordinary Session, the Commission agreed that, although progress had been made during its proceedings, respective positions clearly continued to be distinct and distant with regard to the sharing of benefits from the commercial and other use of plant genetic resources for food and agriculture.

2. The Commission therefore considered it more opportune to grant the delegations a period of reflection so that they could examine their respective positions, conduct any necessary consultations and identify areas for possible compromise, before proceeding with the negotiations.

3. With this in mind, the Commission mandated the Chairman to consult the Members, where appropriate, in order to assess the situation and then to decide on the advisability of an extraordinary session, on condition that the Members manifested the necessary political will, flexibility of position and spirit of compromise, and that extra-budgetary funds were available.

3. I therefore embarked on a series of consultations in August 1998, particularly with countries belonging to the Chairman's Contact Group and the Distinguished Members of the Bureau, as representatives of their regions and for having been actively involved in the whole negotiating process. I asked them if they thought the conditions existed for a compromise to break the *deadlock* that had befallen the negotiations, without however raising unfounded expectations. I said I would welcome any draft compromise they might come up with and asked them for suggestions on how to move the process forward. In the specific case of the developed countries, I also asked them if they would kindly inform me whether their governments would be willing to contribute financially towards the preparation and conduct of an Extraordinary Session of the Commission, and towards facilitating the attendance at such a session of delegates of developing countries.

5. One of the main findings to emerge from these consultations was that, although there was broad support for a rapid conclusion to the negotiations, certain other conditions also needed to be satisfied:

- In general terms, the delegations needed to be given more time so they they could conduct consultations both within their respective countries and between countries. Consultations between countries could be carried out under the responsibility of the Chair and could involve a limited number of delegates acting as representatives of the different regions in the FAO membership. More specifically, it was generally felt that a further Extraordinary Session of the Commission would be premature and that the time available could be better

employed paving the way for continuation of the negotiating process.

- As a result, the extra-budgetary funds that countries had committed for an Extraordinary Session were insufficient. However, certain countries that had not committed funds indicated their willingness to make a financial contribution when the objective political conditions existed to carry the negotiations forward.

6. As mandated by the Commission at its Fifth Extraordinary Session, I continued the consultations on the occasion of the 115<sup>th</sup> Session of the FAO Council, held 23 to 28 November 1998. I made a full report to the Council, which decided:

- to acknowledge the progress that the Commission had so far made in the negotiations;
- to unanimously support the proposal of the Chairman of the Commission on Genetic Resources to hold an informal meeting of experts representing the various regions and positions, who - in their personal capacity - would address the following inter-related issues: benefit-sharing, farmers' rights, the financial mechanism, the legal status of the revised Undertaking, and other issues, as appropriate, including access to plant genetic resources for food and agriculture;
- to welcome Switzerland's offer to organize and host the informal meeting in early 1999, under the responsibility of the Chairman of the Commission on Genetic Resources, and to thank Switzerland and the United States of America for the arrangements that they were making to facilitate the participation of developing country participants;
- to agree that, should the Chairman of the Commission on Genetic Resources determine that the informal discussions indicated potential for progress, he would then request the Director-General to convene an Extraordinary Session of the Commission, subject to the availability of extra-budgetary funds;
- to urge the donor countries to make funds available both for holding this Extraordinary Session and for facilitating the participation of developing countries.

7. Finally, the Council expressed its desire to obtain a positive yet balanced outcome to these negotiations, and the Members reaffirmed their commitment to work actively with the Chairman of the Commission towards finalizing the negotiations by the next session of the FAO Conference.

8. Further to the decisions taken by the FAO Council at its 115<sup>th</sup> Session, under my responsibility and in collaboration with the Swiss Government, and with the financial support of the Governments of Switzerland, the United States of America and Germany, I invited experts from 21 countries and the European Community to an informal meeting in Montreux, Switzerland, from 19 to 22 January 1999. The FAO Secretariat and the Director-General of IPGRI also provided assistance. A list of participants is given in *Annex 1*.

9. The participants discussed the legal status of the revised International Undertaking. The majority considered that this should be an internationally binding instrument, with its Secretariat provided by FAO and operating closely with both FAO and the Convention on Biological Diversity. The structure of the International Undertaking should be such that all its operational and

administrative aspects could be easily modified. It was suggested that comprehensive agreement on the Multilateral System of access to and sharing of benefits could be facilitated if a less ambitious text were drafted, with elements likely to encourage a broad consensus. The System would initially cover a limited selection of crops determined on the basis of criteria of food security and interdependence. This would be reviewed and possibly expanded periodically. The collections of the International Agricultural Research Centres (IARCs) would also form part of the System on terms previously agreed with these centres. As regards Farmers' Rights, these would have to be recognized internationally, it being clearly understood however that responsibility for realising these rights would be the responsibility of individual governments, which would be required to protect and promote them, to the extent they considered appropriate and in accordance with national legislation. With respect to the financial resources needed to implement the International Undertaking, these would be acquired through commitment to a funding strategy involving a wide range of sources, on the basis of agreed and predictable contributions, to implement agreed plans and programmes, in particular in developing countries.

10. The discussions that took place at this informal meeting enabled me, with the help of all those present, to draw up a series of *Chairman's Elements* (provided in Annex 2) for consideration by the members of the Commission on Genetic Resources for Food and Agriculture. Although presented under my sole responsibility, I believe that these *Elements* reflect a broad consensus and offer a solid basis for continuation and advance of the negotiations for the revision of the International Undertaking, in harmony with the Convention on Biological diversity.

11. Besides these *Chairman's Elements*, I should also like to make some additional observations arising from the informal meeting:

- There is a wide consensus that the International Undertaking should take the form of a legally-binding instrument, closely linked to FAO and the CBD, with the Secretariat to be provided by FAO.
- The structure of the revised Undertaking should be dynamic, incorporating only the fundamental principles in the main body of the text, while the implementation of detailed legal provisions for its application, as well as questions of an administrative character, should be dealt with in a series of annexes. The annexes, while forming an integral part of the International Undertaking, could be more easily amended and updated. In this context, the informal meeting suggested that the implementing provisions regarding the coverage of the multilateral system, conditions of access, benefit-sharing and financial resources, would need to be reviewed together, in view of their inter-relationship.
- While the *Consolidated Negotiating Text*, revised through the deliberations of the Fifth Extraordinary Session of the Commission, remains valid, the informal meeting considered that it would be useful to prepare a simpler text, incorporating the *Chairman's Elements*, which could attract a broad measure of consensus.

12. As a result, I have drafted legal provisions that reflect the *Chairman's Elements*. In addition, and so that these legal provisions may feature in the full text of the International Undertaking, I have asked the Secretariat to prepare a *Draft Integrated Text for Revision of the International Undertaking*. This *Draft* will: i) incorporate, in the *Consolidated Negotiating Text* the legal provisions derived from the *Chairman's Elements* in place of the corresponding 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 administrative provisions required to convert the International Undertaking into a legally-binding instrument.

13. Finally, as a result of this meeting, of talks held during the 115<sup>th</sup> Session of the FAO Council and of written communications received in August 1998, I believe it is not yet time to convene an Extraordinary Session of the Commission, even though new grounds exist for progress in the negotiations. However, there is certainly a need to make the necessary arrangements to continue negotiations during the Eighth Ordinary Session of the Commission (19 to 23 April 1999), in parallel with discussion of the other items on the agenda. At this meeting, the Commission should also discuss its schedule for the continuation of negotiations so that the revised Undertaking can be submitted to the next session of the Conference of FAO.

Fernando Gerbasi

Ambassador

Chairman of the Commission on

Genetic Resources for Food and Agriculture

## ANNEX 1

**LIST OF PARTICIPANTS AT THE INFORMAL MEETING OF EXPERTS ON  
GENETIC RESOURCES FOR FOOD AND AGRICULTURE HELD IN  
MONTREUX (SWITZERLAND) FROM 19 TO 22 JANUARY 1999**

**ANGOLA**

Mme. Elizabeth MATOS  
Président  
Comité national des ressources phylogénétiques

**ARGENTINA**

Sr. Arturo MARTÍNEZ  
Dirección General de Asuntos Ambientales  
Ministerio de Relaciones Exteriores, Comercio  
Internacional y Culto

**AUSTRALIA**

Ms. Kristiane HERRMANN  
Department of Primary Industries  
and Energy

**BRAZIL**

Ms. Feliziana ORTIGÃO DE SAMPAIO  
Second Secretary  
Division of Environment  
Ministry of External Relations

**BURKINA FASO**

M. Didier BALMA  
Directeur de la recherche scientifique  
Ministère des enseignements secondaire,  
supérieure et de la recherche scientifique

**CANADA**

Mr. Brad FRALEIGH  
Special Adviser  
Biodiversity and Genetic Resources  
Ministry of Agriculture and Agri-Food

**COLOMBIA**

Sr. Ricardo TORRES  
Subdirector de Investigación Estratégica  
Corporación Colombiana de Investigación  
Agropecuaria –  
Ministerio de Agricultura

**ETHIOPIA**

Mr. Worku DAMENA  
Environmental Protection Authority

**EUROPEAN UNION**

M. Gerasimos APOSTOLATOS  
Administrateur principal  
DG VI-B-11.1

**FAO**

Mr. Gerald MOORE  
Legal Counsel

Mr. José ESQUINAS ALCÁZAR  
Secretary of the Commission on Genetic Resources  
for Food and Agriculture

Mr. Clive STANNARD  
Assistant Secretary of the Commission on Genetic  
Resources for Food and Agriculture

**FRANCE**

Mme. Marianne LEFORT  
Directeur  
Bureau des ressources génétiques

**GERMANY**

Mr. Wilbert HIMMIGHOFEN  
Head of Division  
Ministry of Food, Agriculture and Forestry

**INDIA**

S.P. TIWARI  
Assistant Director-General  
Indian Council of Agricultural Resources

**IRAN**

Mr. Mohammad TAEB  
Research Deputy to Deputy Minister of Research,  
Extension and Education

**IPGRI**

Mr. Geoffrey HAWTIN  
Director General

**JAPAN**

Mr. Akio YAMAMOTO  
Deputy Director (Genetic Resources)  
Ministry of Agriculture, Forestry and Fisheries

**MALAYSIA**

Mr. Engsiang LIM  
Principal Assistant Secretary  
Ministry of Agriculture

**NORWAY**

Mr. Jan BORRING  
Ministry of Environment

**POLAND**

Mrs. Zofia BULINSKA-RADOMSKA  
Plant Breeding and Acclimatization Institute  
Ministry of Agriculture

**SOUTH AFRICA**

Mishack MOLOPE  
Programme Manager, Sustainable Resource Use  
and Management,  
National Department of Agriculture

**SWITZERLAND**

M. Gert KLEIJER  
Station fédérale de recherches agronomiques de  
Changins

**THE NETHERLANDS**

Mr. Peter A. VERMEIJ  
Deputy Director  
Department of Agriculture  
Ministry of Agriculture, Nature Management and  
Fisheries

**UNITED STATES OF AMERICA**

Ms. Melinda KIMBLE\*  
Assistant Secretary of State for Oceans,  
Environment and Science

\* replaced on the last days by Ms. Wonda K. DELAWIE,  
Political Economics Officer, U.S. Permanent Mission to  
FAO in Rome.

**VENEZUELA**

Sr. Fernando GERBASI  
Embajador de la República de Venezuela en

Colombia

## ANNEX 2

**CHAIRMAN'S ELEMENTS\***

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.

\* Prepared by the Chairman, under his responsibility, following discussion in draft, and broad consensus, during the Montreux meeting (19-22 January 1999).

**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.

**5. 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.

**5. 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.**