

**COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE**

**REVISION OF
THE INTERNATIONAL UNDERTAKING ON PLANT GENETIC RESOURCES****CONSOLIDATED NEGOTIATING TEXT
RESULTING FROM THE DELIBERATIONS DURING THE
FIFTH EXTRAORDINARY SESSION OF THE COMMISSION ON GENETIC
RESOURCES FOR FOOD AND AGRICULTURE**

Conference Resolution 7/93 called for the revision of the International Undertaking on Plant Genetic Resources, in harmony with the Convention on Biological Diversity. The Commission, at its First Extraordinary Session in November 1994, accordingly reviewed a First Negotiating Draft, which incorporated the text of the International Undertaking and its three annexes into a single, rational overall structure, grouped into 14 Articles. The Commission made extensive comments on this draft, and suggested a number of alternative wordings.

These were incorporated into a Second Negotiating Draft, which the Commission considered at its Sixth Session, in June 1995. The Commission focused its discussions in that occasion on Articles 3 (Scope), 11 (Access) and 12 (Farmers' Rights) and undertook a first reading of the Preamble.

The written proposals made during the session were integrated into a Third Negotiating Draft, provided to the Commission at its Third Extraordinary Session, in December 1996. The Commission again discussed Articles 3, 11 and 12; agreed on a new draft negotiating text for Articles 12.1 and 12.2; and received written proposals on Articles 3 and 11.

A Fourth Negotiating Draft was prepared for the Fourth Extraordinary Session of the Commission, in December 1997, which then prepared a **Consolidated Negotiating Text** for Articles 1, 3, 4, 5, 6/bis, 7, 8/bis, 9, 10, 11 and 12., which was discussed and completed by the Fifth Extraordinary Session, in June 1998. The **current document** incorporates the texts established by the Fifth Extraordinary Session.¹

¹ *Appendix C* of CGRFA-Ex5/98/REP.

**CONSOLIDATED NEGOTIATING TEXT
RESULTING FROM THE DELIBERATIONS DURING THE
FIFTH EXTRAORDINARY SESSION OF THE COMMISSION ON GENETIC
RESOURCES FOR FOOD AND AGRICULTURE.**

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

Article 1 – Objectives

1.1 [The objectives of this Undertaking [being consistent with the objectives of the Convention on Biological Diversity] are the conservation and sustainable use of plant genetic resources for food and agriculture for future food security and the fair and equitable sharing of the benefits arising out of their use [through the establishment and implementation of a system of access to genetic resources based on the prior informed consent of the country of origin, and the protection of Farmers’ Rights to their biological diversity, traditional knowledge, innovations and practices relevant to the conservation and sustainable use of plant genetic resources] .]

or

1.1 [The Undertaking seeks to facilitate unrestricted access to plant genetic resources for food and agriculture and farmers’ efforts to conserve and sustainably use plant genetic resources for food and agriculture in order to secure global food security for present and future generations.]

Article 2 – Definitions

NOTE: The Commission decided to defer consideration of this Article, pending further progress on the substantive articles

Article 3 – Scope

3.1 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.]

**Article 5 – Conservation, exploration, collection, characterization, evaluation
and documentation of plant genetic resources for food and agriculture**

5.1 Each Party [will][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 through[, 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 bis – Sustainable Use of Plant Genetic Resources

- 6 bis.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 bis.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;
 - (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, parties shall review, and, as appropriate, adjust breeding strategies and regulations concerning variety release and seed distribution.]

[6 bis.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 – General International Cooperation

7.1 Each Party shall, as appropriate, integrate into its programmes activities referred to in Articles 5 and 6 bis, and cooperate with other Parties, directly or through [the 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 Article 11,] plant genetic resources for food and agriculture and [appropriate][relevant] information and technology;
- (c) [maintaining and strengthening the institutional arrangements provided for in Articles **;] *Note: the articles cross-referenced here could refer to networks, information systems and other relevant instruments.*
- (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.]

Article 8 – Role of [and cooperation with] international organizations

NOTE: The Commission deferred discussion on this Article.

Article 8 bis – Global Plan of Action

8 bis.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 bis]. 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 14]. 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 13].

[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

- 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.
- 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 World Information Network][Information systems] on plant genetic resources for food and agriculture [(WIN/PGRFA)] will be developed and strengthened 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].]
- [10.2 Parties who are granted access to plant genetic resources for food and agriculture shall disclose and/or transmit to the country of origin or to the body designated to administer the multilateral system, as appropriate, at least once in a year, information on:

- (a) the status of the genetic resources it has received or accessed;
- (b) the newly discovered uses, if any, of the genetic resources it has received or accessed;
- (c) material under development for commercialization including varieties, cultivars and breeders' lines; and
- (d) if there is more than one country of origin, the share of the genetic resource of each country that has gone into making the commercialized variety.]

[10.3 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.]

[10.4 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 bis.]

Article 11 – Access to plant genetic resources for food and agriculture¹

11.1² Parties recognize the sovereign rights of States over their plant genetic resources for food and agriculture, including that the authority to determine access to those resources rests with the national governments and is subject to national legislation, and in the exercise of their sovereign rights, Parties shall facilitate access without imposing restrictions that run counter to the Convention on Biological Diversity and this Undertaking.

[11.1 and 11.2 In furtherance of the Convention on Biological Diversity, Parties shall facilitate access to their plant genetic resources for food and agriculture without imposing restrictions that run counter to the Convention on Biological Diversity and this Undertaking, and in a manner which is efficient, effective and transparent.

11.2 Parties agree to establish a multilateral system, which is efficient, effective, and transparent, 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, including, *inter alia*, the [appropriate] transfer of [relevant] technology, capacity-building, [appropriate] exchange of [relevant] information and [appropriate] funding. Parties recognise that access to plant genetic resources for food and agriculture is a major benefit to the [Parties/participants] of this multilateral system.

11.3.1 Access to material included in the multilateral system shall be provided expeditiously and free of charge, or where a fee is charged, this shall not exceed the minimal costs involved.

11.3.2 Parties agree that access to plant genetic resources provided under the multilateral system shall be subject to the following conditions:

- (a) they will be used for research, breeding and/or training in food and agriculture only;
- [(b) any uses of the plant genetic resources received under the multilateral system, including commercial, shall be subject to fair and equitable benefit-sharing, as described in Article [];]

¹. The symbol * next to a paragraph number in Article 11 indicates that the paragraph was not addressed by the Chairman's Contact Group at the Fifth Extraordinary Session of the Commission.

². The United States of America reserved its position with respect to Article 11.1.

[(c) any commercial utilization, other than for food and agriculture, derived from the plant genetic resources received under this multilateral system [shall] [may] be subject to the provisions of the Convention on Biological Diversity, especially with regard to the fair and equitable sharing of the benefits resulting from such use]

or

[[(c) uses of these resources for purposes other than food and agriculture may be subject to different conditions, in accordance with the provisions of the Convention on Biological Diversity];

*(d) information generated shall be shared with other Parties, and access to technology developed in the above-mentioned activities shall be facilitated;

*(e) plant genetic resources received will not be given to non-parties to this Undertaking without the prior informed consent of the party providing the resources;

*(f) rights that limit the facilitated access to and/or utilization of the plant genetic resources for food and agriculture obtained shall not be claimed;

*(g) access to proprietary breeders' lines, farmers' varieties and other material under development, will be at the discretion of their developers during the period of their development.

*11.3.2 bis Providers of material undertake, by acceptance of the rules of the multilateral system stated in Annex **:

*(a) to provide adequate information on the material; and

*(b) that where the acquisition is subject to specific conditions, access shall be provided consistent with these conditions.

*11.3.2 tris [Parties/participants] to the multilateral system agree that:

*(a) access to material protected by intellectual property rights will be consistent with the relevant international legislation; and

*(b) proprietary breeders' lines, farming breeding materials and other material under development will be at the discretion of their developers during the period of their development.]

*11.3.3[Under the multilateral system, Parties shall provide or allow for access for research, breeding or training, for food and agriculture, to the following plant genetic resources for food and agriculture, held in collections designated by their national governments:

(i) all material listed in Annex I to Article 11 of this Undertaking; and

(ii) material not listed in Annex I, acquired prior to the entry into force of this Undertaking, provided that access to any such material acquired subject to specific conditions shall be in accordance with such conditions.]

*11.3.4 The Parties agree to grant other Parties to this Undertaking, access to plant genetic resources for food and agriculture in accordance with the following provisions:

(a) access to the plant genetic resources [described in Annex I] to this Undertaking shall be in accordance with the multilateral system described in this Article;

(b) access to plant genetic resources for food and agriculture not listed in [Annex I to] this Undertaking shall be determined by the contracting parties concerned on mutually agreed terms, keeping in view the provisions of the Convention on Biological Diversity.

*[11.3.5 The [Governing Body] shall keep Annex I under review with a view to [extending] [increasing] its scope [and ultimately achieving a more complete coverage of plant genetic resources for food and agriculture]. Amendments to the Annex shall be in accordance with the procedures set out in Article ** of this Undertaking.]

*11.3.6

- (a) Parties shall take legislative, administrative or policy measures, as appropriate, to [promote] [ensure] the participation in the multilateral system of entities within their jurisdiction. Relations between the Party and the participant shall be governed by applicable domestic law. The Party shall, however, require that the participant assume the obligations stipulated within the multilateral system, and not act in a manner that violates obligations which the Party has accepted under this Undertaking, or under related international agreements.
- *(b) The conditions of access, as set out in this Undertaking, shall also apply to plant genetic resources for food and agriculture held by those International Agricultural Research Centres that notify the depository of their formal acceptance to be bound by the relevant provisions of this Undertaking.
- *(c) States Party to this Undertaking shall not impose any conditions to access to germplasm held in the collections of any International Agricultural Research Centre.

NOTE: The Articles numbered 11.3 to 11.7 below are consolidated text, prepared by the Bureau at its Seventh Session, which the Fifth Extraordinary Session did not have time to consider

- *[11.3 Any Party may propose an amendment to Annexes A, B and C for consideration by the CGRFA. The text of the proposed amendment shall be communicated by the Secretariat of the CGRFA to Parties at least three months before its meeting.
- *11.4 Parties agree that plant genetic resources received under the terms of this Undertaking for use for food and agriculture and later utilized for any other commercial purposes shall also be obliged to ensure fair and equitable benefit-sharing arising from such non-agricultural use.
- *11.5 Access to the material in the International Network will be allowed to non-participants under specific conditions to be negotiated by the [FAO CGRFA]/[governing body].
- *11.6 Prior to being granted access, applicants for access shall meet the requirements set out in any generally agreed international standards, including in particular the FAO Code of Conduct for Plant Germplasm Collecting and Transfer.
- *11.7 Access to proprietary breeders' lines and farmers' varieties under development will be at the discretion of their developers during the period of their development, provided that the exercise of this discretion does not run counter to the objectives of this Undertaking.]

Article 12 - Farmers' Rights^{1, 2, 3}

- 12.1 Parties recognize 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

¹ The symbol, * , next to a paragraph number in Article 12 indicates that it was not addressed by the Open-ended Working Group at the Fifth Extraordinary Session of the Commission.

The symbol, ‡, next to a paragraph number in Article 12 indicates that the paragraph was considered in general, but not negotiated, by the Open-ended Working Group at the Fifth Extraordinary Session of the Commission.

Italics in Article 12 indicate terms where the exact wording will be determined at a later stage (except for Latin terms).

² Definitions are required for Farmers' Rights, farmers and farming communities throughout the entire text.

³ The Europe Region proposes for the purpose of the Undertaking that farmers and farming communities include indigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of plant genetic resources for food and agriculture.

constitute the basis of food and agriculture production throughout the world. These contributions form the basis for F/farmers' R/rights as they relate to plant genetic resources for food and agriculture.

or

12.1 Parties recognize 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. These contributions form the basis for the concept of F/farmers' R/rights as they relate to plant genetic resources for food and agriculture.

*12.2 [Parties recognize that the [principal] responsibility for realizing [the rights of [their] farmers, as they related to plant genetic resources for food and agriculture] [Farmers' Rights] [individually and/or collectively, where recognized by national law], rests with [the national government] [national governments] [and the international community, as a beneficiary of the plant genetic resources developed and conserved by farmers]. The international community[, as a beneficiary of the plant genetic resources developed and conserved by farmers, also has the responsibility to][recognize Farmers' Rights and to][will] assist national governments for the purpose of [ensuring/encouraging] equitable benefits to present and future generations of farmers and farming [and indigenous] communities.]

or

*12.2 [Parties recognize the need to promote the efforts of their farmers to conserve and sustainably use plant genetic resources for food and agriculture.]

*12.3¹ [Each Party / Parties] [shall / should] therefore, as appropriate, take measures, including administrative, policy and legislative measures, according to [its needs and priorities] / [their respective priorities], to:

- (a) Assist their [*farmers and*] [*traditional*] *farming communities*, [*including indigenous and local communities*,] [especially] [including] in areas of origin/diversity of plant genetic resources, in contributing to the evolution, conservation, improvement, evaluation and sustainable use of plant genetic resources for food and agriculture, through their participation in, and establishment or strengthening of, appropriate arrangements, such as:
 - (i) national and regional germplasm programmes;
 - (ii) initiatives that promote the use of, and research into, crops which are not widely used.
- (b) [[Subject to] [In accordance with] national legislation,] [Ensure that relevant international programmes] [Promote relevant international programmes that] [directly] benefit farmers by furthering their activities to conserve and sustainably use plant genetic resources for food and agriculture.
- (c) [Actively implement the measures referred to in Article **,² in accordance with their national capacities, so contributing to ensure benefits to *farmers and [their] [traditional / farming / indigenous and local] communities*.]
- (d) Support measures for research, training and institutional capacity-building activities at the local level, with the [full] participation of the communities concerned, particularly

¹ Note: the asterix applies to the chapeau only; the sub-paragraphs of 12.3 were considered by the Fifth Extraordinary Session of the Commission.

² The Europe Region proposes titling Article ** (Article 5 in IUND/4) "National commitment towards the conservation and sustainable use of plant genetic resources for food and agriculture."

focusing on women farmers, including measures that facilitate transfer of technology, and remove financial and market barriers to the protection, integration, enhancement and development of [*traditional farmers' / farmers' traditional*] knowledge, innovations and practices relevant to conservation and sustainable use of plant genetic resources for food and agriculture.

- (e) Facilitate the integration of [*traditional farmers' / farmers' traditional*] knowledge, know-how and practices, with modern technologies, as appropriate.
- (f) Promote national and international scientific and technological agricultural research that supports and enhances, as appropriate, farmer-based knowledge systems related to plant genetic resources for food and agriculture.
- (g) [Recognize and protect, consistent with national [and international] legislation, as appropriate, the [ability] [traditional rights] of *farmers and their communities* to keep, use, exchange, share and market their [seeds and any other plant reproductive material] [or any types of varieties, including farmers' varieties or landraces] [farmers' varieties / landraces] [, including the right to re-use farm-saved seed] .]
- (h) [[Utilize] [Ensure] [Promote] funding arrangements as provided for in Article(s) ** to [support] [promote] [ensure] farmers' activities to conserve and use sustainably plant genetic resources for food and agriculture, and [traditional farmers' knowledge] [without restricting or distorting trade], as well as facilitate and [ensure][promote] access to appropriate technologies and equitable sharing of benefits derived from the products obtained through the use of plant genetic resources for food and agriculture [for the benefit of present and future generations of farmers].]

Note: the following text from sub-paragraph (h) to be considered under discussion of appropriate article(s):

- [Establish and implement an international fund and develop its operational mechanism.] [Make appropriate efforts to mobilize adequate financial resources.] [In this regard, they should seek the full use and qualitative improvement of all national, bilateral and multilateral funding sources and mechanisms and the involvement of private sector sources and mechanisms, including non-governmental organizations.]
- (i) [[Subject to national legislation, encourage] Recognize and [ensure the rights of [their] farmers in sharing]] [endeavour to share] the benefits arising from the [direct] use of plant genetic resources on a fair and equitable basis, [and] as mutually agreed, including [through transfer of technology,] participation in research, and access to the results of research and development,[where appropriate,] derived [at present, and in the future,] from the improved use of plant genetic resources through plant breeding[. and other modern scientific methods, as well as from their commercial use.]
 - (j) [Ensure that the [individual and/or] collective knowledge and plant genetic resources for food and agriculture held and developed by *farmers and [farming / local] communities* are protected and promoted by adopting and implementing appropriate legislation [in the form of a collective rights regime] that provides for the adequate protection of traditional or indigenous knowledge, innovations, materials and practices of and by *farmers and [farming / local] communities*.]
 - ‡(k) [Promote on the national level legal protection systems [and/or other mechanisms] in order to render effective the rights of farmers [and / relating to] the fair and equitable sharing of the benefits arising out of the utilization of plant genetic resources for food and agriculture.]

or

- ‡(k) [Establish systems on the national level[, including *sui generis* systems,] as appropriate, [pertaining to] / [to ensure / promote] the fair and equitable sharing of the benefits arising out of the utilization of plant genetic resources for food and agriculture.]
- ‡(l) [Promote the establishment and advise on the development of an international *sui generis* system for the recognition, protection and compensation of knowledge, innovations and practices of *farmers and traditional communities*.]
- (m) To [promote] [ensure] the participation of their *farmers and farming communities* in the review and implementation of measures provided under this Undertaking, which [may][shall] include the initiation of flexible consultative processes to meet this aim.¹
- ‡(n) [Ensure that the prior informed consent of the concerned *farmers and local communities* is obtained before the collection of plant resources is undertaken; adapt current variety registration systems so as to identify and record, as appropriate, varieties of plant genetic resources provided by *farmers and farming communities*; and require disclosure of the origin of plant genetic resources utilized in the development of commercial varieties.]
- ‡(o) [Review, assess and, if appropriate, modify intellectual property rights systems, land tenure, and seed laws in order to ensure their harmony with the provisions of this Article.]

Article 13 – [Intergovernmental Body,] Monitoring of activities and related action by [FAO]

NOTE: The Commission decided to defer discussion of this Article

Article 14 – Financial Security

NOTE: The Commission decided to defer discussion of this Article.

Proposed text consolidating proposals for benefit-sharing²

(prepared by the Fifth Extraordinary Session of the Commission)

- [1. The Parties agree to a [multiple and multi-stakeholder] approach to the fair and equitable sharing of benefits arising from the [conservation and sustainable use of plant genetic resources for food and agriculture, including the] utilization of material under the multilateral system. Parties also recognize that, in addition to facilitated access to plant genetic resources itself, the fair and equitable sharing of benefits [derived from their use] includes the facilitated flow of a diversity of other benefits[, both financial and in kind]. The sharing of benefits shall be realized through the [mechanisms of and] activities under the [multilateral system] [International Undertaking], as distinct from individual transactions between participants, and shall aim for long-term food security and sustainable agriculture at local, regional and global levels, [primarily in developing countries and countries with economies in transition].
2. Parties agree that [in-kind] benefit-sharing [particularly in kind] shall be facilitated through the [[mechanisms established] [activities elaborated] under Article []] which shall include particularly for Parties that are developing countries or countries with

¹

The placement of this paragraph will be determined at a later stage.

²

The symbol, *, next to a paragraph number in the *Proposed text consolidating proposals for benefit-sharing*, produced by the Fifth Extraordinary Session of the Commission, indicates that it was not addressed by the Chairman's Contact Group during the Session.

economies in transition, facilitated access to plant genetic resources for food and agriculture and related information, joint programmes, collaborative activities, the coordination of ongoing efforts to support activities identified in Articles 5, 6 bis, 7, 10 and 12, ***, and especially in the rolling Global Plan of Action referred to in Article 8 bis, and the transfer of technology in accordance with the provisions of the Convention on Biological Diversity.

3 option A

- A3.1 Parties shall neither grant nor recognize intellectual property rights protection to the plant genetic resources for food and agriculture in the multilateral system or to any regenerative material derived therefrom.

3 option B

- B3.1 Parties agree that intellectual property rights protection over propagating material shall not apply in the country or countries of origin of material that has gone into its parentage.
- B3.2 Parties shall, in accordance with the formula in the following paragraph, share benefits arising from the commercial use of material which has been derived from plant genetic resources in the multilateral system and for which intellectual property rights protection has been obtained.
- B3.3 Each Party to this Undertaking undertakes to pay into the International Fund to be established under Article ** 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 Annex I to this Undertaking where such crops are produced from or through plant genetic materials or related processes in respect of which intellectual property 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.
- B3.4 The International Fund shall derive its financial resources as stated in paragraph 3.2 above, from the financial mechanism of the Convention on Biological Diversity, as well as from any voluntary contributions and other sources that the Conference of the Parties to this Undertaking may decide upon.
- *B3.5 For plant genetic resources collected after the entry into force of the [International Undertaking] [the Convention on Biological Diversity] and where the country of origin is known, half of the financial benefits accruing from commercialization shall flow to that country.
- *B3.6 In other cases, the Conference of the Parties to this Undertaking shall develop an index for each country as regards each crop in the multilateral system to reflect the genetic diversity of that crop in that country in relation to the global genetic diversity of that crop. Half of the financial benefits derived from the commercialization of that crop and deposited in the fund in accordance with paragraph 3.2 above shall be divided among the country Parties in proportion to their respective indices.

3 option C

- *C3.1 In order to facilitate financial benefit-sharing and the activities described above, Parties agree to [establish a mechanism to] promote and better channel the flow of funds from available sources (from official bilateral and existing multilateral sources and from non-governmental organizations and the private sector) on a transparent basis to Parties who are developing countries or countries with economies in transition. Such financial support shall be directed towards the conservation and sustainable use of plant genetic resources for food and agriculture through assistance for

activities covered under the Global Plan of Action for plant genetic resources for food and agriculture as well as activities mentioned specifically in this Undertaking.

C3.2 Recipients of plant genetic resources will not claim proprietary rights over those resources in the form received. Material derived from the resources received may be protected by proprietary rights in a manner consistent with the relevant international and national legislation and, in the case of plant varieties, in a manner that does not restrict others from using this material, or the original plant genetic resources in their own breeding programmes.

or

C3.2 Recipients of plant genetic resources [under the multilateral system] will not claim [intellectual property] rights[, including plant varietal protection], over those resources in the form received. Material derived from the resources received may be protected by proprietary rights in a manner consistent with the relevant international and national [law][[and, in the case of plant varieties, in a manner that does not restrict others from using this material, or the original genetic resources in their own breeding programmes.]] [Preferential conditions for access to protected varieties and/or to technologies applied to develop them, shall be given to countries or regions of origin of the material included in its parentage.]]

or

C3.2 Recipients of plant genetic resources within this multilateral system will not claim proprietary rights over those resources received or their parts, or extracts obtained from them. Material developed from the resources received may be protected by proprietary rights in a manner that does not restrict others from using this material or the original genetic resources involved. Preferential conditions for access to protected material and/or technologies applied to develop them shall be given to developing countries or countries with economies in transition, under the mechanisms established by this multilateral system.

3 option D

D3.1 Parties agree that the financial benefits arising from the commercial and other uses of the plant genetic resources for food and agriculture listed in Annex 1 to this Undertaking shall be shared in a fair and equitable way. The formula, mode and mechanisms for sharing such benefits shall be determined by the Governing Body of this Undertaking. Parties shall establish an International Fund, which shall receive the financial benefits, as stated in the paragraph above, and contributions from the private sector, non-governmental organizations, international organizations and other sources, as may be decided by the Parties.

or

D3.1 In order to facilitate financial benefit-sharing and the activities described above, Parties agree to establish a mechanism to promote and better channel the flow of funds from available sources (from official bilateral and existing multilateral sources and from non-governmental organizations and from participants from the private sector, including those benefiting from the commercialization of some intellectual property rights derived from plant genetic resources under the multilateral system) on a transparent basis to Parties who are developing countries or countries with economies in transition. These funds shall be directed towards the conservation and sustainable use of plant genetic resources for food and agriculture and to the activities covered under the Global Plan of

Action for Plant Genetic Resources for Food and Agriculture as well as activities mentioned specifically in this Undertaking.

- *4.1 Parties shall ensure that benefits arising from the commercialization of plant genetic resources outside of the multilateral system are shared with the country or countries of origin in a fair and equitable manner based on mutually agreed terms.
- *4.2 The Party in whose jurisdiction the recipient operates shall, therefore, through its competent authority, ensure the conformity of the recipient's conduct with the requirements of this Undertaking and guarantee the fair and equitable sharing of benefits arising from the commercialization of plant genetic resources.]

ANNEX 1
Tentative list of crops
(Article 11.3.3)

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

1

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