

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
FOURTH 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 represented the considerable progress made during the session"; the Commission agreed "that this text would be reviewed during further negotiating sessions, with a view to its final adoption".

At the request of the Commission Chairman, the Secretariat has included in the present document the Consolidated Negotiating Text¹, and as *Appendix I* the proposals on benefit-sharing made by the African Region, by the European Region and by Malaysia, during the last session².

¹ *Appendix C* of CGRFA-Ex4/97/REP.

**CONSOLIDATED NEGOTIATING TEXT
RESULTING FROM THE DELIBERATIONS DURING THE
FOURTH 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 6bis - Sustainable Use of Plant Genetic Resources

6bis.1 Parties shall develop or maintain appropriate policy and legal arrangements that promote the sustainable use of plant genetic resources for food and agriculture.

6bis.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.]

[6bis.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 6bis , 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 8bis: Global Plan of Action

8bis.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 6bis]. 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 agriculture

11.1¹ 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 Recipients of genetic material must be informed that by acceptance they:

- (a) undertake that it will be used for purposes of research, breeding or training in food and agriculture;
- (b) understand that any other use of this material may be subject to different conditions in accordance with the Convention on Biological Diversity;
- (c) agree that the material received will not be given to a third party without the prior informed consent of the donor; and
- (d) will not claim rights that limit the facilitated access to and/or utilization of the plant genetic resources for food and agriculture obtained.

11.3.2bis 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.

11.3.2tris [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.]

OR

[11.3.2 Recipients of genetic material, by virtue of this Article, accept:

- (a) that it will be used exclusively for purposes of research, breeding and training;
- (b) that any use other than the above will be subject to other provisions, in accordance with the Convention on Biological Diversity, especially with regard to the fair and equitable sharing of the benefits resulting from such use;
- (c) to undertake to share with the country of origin the information generated and facilitate access to the technology developed in the above mentioned activities, under preferential and concessional terms;
- (d) to agree that the material received will not be given to a third party without the prior consent of the party providing the material;
- (e) to undertake not to claim proprietary rights over the materials received, or parts thereof, or extracts obtained from them; and
- (f) that 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.]

OR

[11.3.2 Recipients of plant genetic resources for food and agriculture within this Multilateral System shall be informed that, by virtue of this Article, they are committed to:

- (a) undertake that it will be used exclusively for purposes of research, breeding or training in food and agriculture;
- (b) all uses of plant genetic resources for food and agricultural purposes, including commercial, shall be subject to fair and equitable benefit-sharing, within this Multilateral System;
- (c) any use other than for food and agricultural purposes, shall be subject to the provisions of the Convention on Biological Diversity, with regard to the fair and equitable sharing of the resulting benefits;
- (d) agree that the material received will not be given to non-parties to this Undertaking;
- (e) not to claim rights that limit the facilitated access to and/or utilization of the plant genetic resources for food and agriculture obtained;
- (f) 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 Fourth 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 Collecting and Transfer of Plant Germplasm.

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}

12.1 (a) 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.

(b) [These contributions form [the]/[a] basis for [[recognizing F/farmers' R/rights as they relate to plant genetic resources for food and agriculture] [, as elaborated in Article 12.3] [and for undertaking] [the concept of farmers' rights]/[the concept of Farmers' Rights]/ [Farmers' Rights] [as dealt with in FAO Resolution 5/89 [and other relevant FAO resolutions]] [to be addressed at the national level by]] / [] appropriate measures [[reflecting national capacities and needs,] [which are non-discriminatory and non-trade-distorting,]] necessary for Parties and/or farmers to continue to conserve, manage and improve 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 PGRFA,] [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 PGR developed and conserved by farmers]. The international community[, as a beneficiary of the PGR 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

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

12.3 [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:

¹ Definitions are required for Farmers' Rights, farmers and farming communities throughout the entire text.

² The European 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

- (a) Assist their farmers and [traditional] farming communities, [especially 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 the participation in and establishment or strengthening of appropriate arrangements, [and the participation of their farmers and their [traditional] farming communities therein] 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 national legislation,] Ensure that international programmes [directly] benefit farmers by furthering their activities to conserve and sustainably use plant genetic resources for food and agriculture.]

OR

[Work with relevant international programmes to benefit farmers and to] further their activities to conserve and sustainably use plant genetic resources for food and agriculture.]

- (c) [Actively implement the measures referred to in Article **,¹ 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 focusing on women farmers, [[including / and] measures for [review of] credit facilities and market provisions.] [governing farmers' access to plant genetic resources for enhancing traditional genetic resources, development and the exchange systems through, *inter alia*, the removal of financial and market barriers against such systems, for conservation, development and sustainable use, and transfer of technology that protect, integrate, enhance and develop [traditional farmers' / farmers' traditional] knowledge, know-how and practices.]
- (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 traditional rights of farmers and their communities to keep, use, exchange, share and market their seeds and any other plant reproductive material, including the right to re-use farm-saved seed.]

OR

¹ The European Region proposes titling Article ** (Article 5 in IUND/4) "National commitment towards the

[[In accordance with national legislation,] Recognize [and protect] traditional [practices and] rights of farmers and their communities to keep, use, exchange, share and market [their] [/ farmers' varieties /] landraces] [[seeds and [any other / their] plant reproductive material], [of their local or farmer varieties,] including the right to re-use [their] farm-saved seed [under UPOV] [as appropriate].]

OR

Protect the ability of farmers and their communities to keep and use, including the ability to re-use, their farm-saved seed and their other plant reproductive material: as well as [consistent with national legislation, exchange, share and market seeds and other plant reproductive materials in the public domain.]

OR

[Protect, consistent with national and international legislation, as appropriate, the ability of farmers and their communities to keep, use, exchange, share and market seed and other plant reproductive materials of their farmers' varieties / landraces.]

(h) [Establish and implement an international fund (referred to in Article **) and develop its operational mechanism to ensure conservation and sustainable use of plant genetic resources, and traditional farmers' knowledge, facilitate and ensure access to new technologies and equitable sharing of benefits derived from the products obtained through the use of plant genetic resources for the benefit of present and future generations of farmers.]

OR

[Make appropriate efforts to mobilize adequate financial resources to support farmers activities to conserve and use sustainably plant genetic resources for food and agriculture [without restricting or distorting trade]. 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 NGOs.]

(i) [[Subject to national legislation, encourage] Recognize and [ensure the rights of [their] farmers in [fully] 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 [and promote the equitable sharing of benefits arising from the utilization of their plant genetic resources for food and agriculture] .]

(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

[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 local farming communities in the [reviewing and] implementation of measures provided under this [Undertaking][Article] [and the International Fund referred to in Article **], which [may][shall] include the initiation of [permanent and] flexible consultative processes to meet this aim [and participation in the development and implementation of legislative measures on Farmers' Rights at national and international levels].

(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.

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

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

Trifolium
Trigonella
Vetiveria
Zornia

Appendix 1

Proposals on Benefit-Sharing submitted by the African Region, by the European Region, and by Malaysia to the Fourth Extraordinary Session of the Commission on Genetic Resources for Food and Agriculture

1. PROPOSAL ON BENEFIT-SHARING FROM THE AFRICAN REGION

- a) Parties shall create a system of collecting and disseminating technical information resulting from research and development on the genetic resources in the Multilateral System.
- b) Parties shall develop a system of identifying the technological needs of Parties particularly developing country Parties, for research in and development of the crops in the Multilateral System and arrange for the transfer of these technologies including the provision of training.
- c) 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 pedigree.
- d) Each Party shall adopt national legislation and institutional arrangements that prevent unauthorized access to plant genetic resources for food and agriculture.

Either:

- e) Parties shall neither grant nor recognize intellectual property rights protection to the plant genetic resources for food and agriculture in the Multilateral System.

or:

- e.1) The recipient 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.
- e.2) The amount of contribution to the fund as referred to in (e.1) shall be [ten percent] of the value of the commodity produced using intellectual property rights protected material, process, or product derived from the genetic resource received.
- e.3) Parties shall establish a fund for the implementation of activities under this Undertaking. The fund shall derive its financial resources from the commercialization of crop genetic resources in the Multilateral System, 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.
- e.4) 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.

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 (e.3) above shall be divided among the country Parties in proportion to their respective indices.

f) 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.

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.

2. PROPOSAL ON BENEFIT-SHARING UNDER THE MULTILATERAL SYSTEM, SUBMITTED BY THE EUROPEAN REGION

1. Parties agree to a multiple approach on benefit sharing, acknowledging that:

(a) benefits arising from the utilization of plant genetic resources for food and agriculture are diverse;

(b) benefits are shared through the multilateral system, independently of the individual transactions between [Parties] [participants];

(c) the benefit sharing should be transparent and governed by [Parties] [participants], according to agreed rules;

(d) the benefit sharing should, *inter alia*, contribute to long-term food security and sustainable agriculture, at local, regional and global levels.

2 The benefits to be shared under this [Undertaking] shall include :

- the conservation and sustainable use of plant genetic resources for food and agriculture;
- facilitated mutual access to plant genetic resources for food and agriculture;
- facilitated access to information on plant genetic resources for food and agriculture;
- promote access to existing financial mechanisms;
- increased availability of adapted high-quality planting materials;
- cooperation in collection, research, training, technology transfer and capacity building relating to, *inter alia*, the legal and economic aspects of plant genetic resources for food and agriculture;
- broader existing regional networks, and new regional networks where appropriate [as

3 [Parties] [participants] who participate in the multilateral system are entitled to benefits accruing from the exchange of material listed in Annex 1

4 The benefits shall be realized through a multi-stakeholder approach which offers cost effectiveness and reduces duplication. This entails:

(a) the functioning of the multilateral system, through [the development of] integrated strategies and methodologies, networks, joint programmes and activities;

(b) inputs provided to the multilateral system by [Parties] [participants], to include as appropriate elements of the benefits as described [above]; and

(c) improved coordination of existing mechanisms and systems.

5 The individual [Parties] to this [Undertaking] shall endeavour to share fairly and equitably the benefits arising from the utilization of plant genetic resources for food and agriculture[, in accordance with article 12].

3. PROPOSAL ON BENEFIT-SHARING SUBMITTED BY MALAYSIA

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.