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PROGRESS REPORT ON THE INTERNATIONAL UNDERTAKING
OF PLANT GENETIC RESOURCES

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Table of Contents

	<u>Paragraphs</u>
I. INTRODUCTION	1-4
II. COMMENTS FROM COUNTRIES	5-6
III. DISCUSSIONS OUTSIDE FAO	7-8
IV. SECRETARIAT COMMENTS	9-18
V. GUIDANCE REQUESTED FROM THE WORKING GROUP	19-21
FIGURE FAO GLOBAL SYSTEM FOR THE CONSERVATION AND UTILIZATION OF PLANT GENETIC RESOURCES	

PROGRESS REPORT ON THE INTERNATIONAL UNDERTAKING
ON PLANT GENETIC RESOURCES

I. INTRODUCTION

1. The Twenty-fifth Session of the Conference expressed its satisfaction with the considerable and growing acceptance of the International Undertaking. The Conference approved without reservations Resolutions 4/89 (Agreed Interpretation of the International Undertaking) and 5/89 (Farmers' Rights) and requested these to be appended as Annexes to the International Undertaking. Both Resolutions aimed at improving the participation of countries in the International Undertaking and avoiding any possible conflicts between the International Undertaking and national legislation and policy. The Resolutions, while preserving the principle of unrestricted availability of germplasm, recognized the rights of both donors of technologies and donors of germplasm to be compensated for their contributions through the simultaneous recognition of plant breeders' and farmers' rights. The Conference recognized that both Resolutions were intended to lay the basis for an equitable and lasting global system for sharing the costs and benefits of the world's plant genetic resources for present and future generations.

2. In the Conference debate a number of countries expressed their intention to adhere to the Undertaking or to withdraw their reservations, should the Resolutions be adopted. Subsequently, a Circular State Letter was sent to countries which had not yet adhered to the Undertaking and to those which adhered to it with reservations, requesting them to either adhere or withdraw their reservations, as appropriate.

3. During the Conference debate a few countries considered that more negotiations were needed on aspects related to the implementation of plant breeders' and farmers' rights. The Conference agreed that their comments and proposals should be included in a document to be prepared by the Secretariat for consideration by the next sessions of the Working Group and the Commission.

4. The present document analyses, in the light of Resolutions 4/89 and 5/89, the comments expressed by these countries, reports on follow-up discussions that have taken place since then and seeks the guidance of the Working Group on the subject.

II. COMMENTS FROM COUNTRIES

5. In relation to Resolutions 4/89 and 5/89 the outstanding points raised by a few countries for clarification or further discussion can be summarized as follows:

(i) Points that Needed Clarification

- a. Whether the benefits and responsibilities deriving from the International Undertaking should be limited to countries adhering to it.

- b. Clarification of the term "heritage of mankind" as used in Resolutions 8/83, 4/89 and 5/89, and its relationship with national sovereignty.

(ii) Points that Needed Further Negotiation

- a. Plant Breeders' Rights (PBR) cannot be implemented in practice if Breeders' Lines (germplasm material being developed by breeders and not yet covered by PBR legislation) are to be freely available.
 - b. Farmers' Rights will remain as an empty concept if no financial mechanisms are developed for their implementation for the benefit of farmers and donors of germplasm.
6. Other questions such as (i) possible ambiguities of the term "Farmers' Rights", its coverage and objectives, and (ii) need for a clear definition of the purpose and use of resources of the International Fund, are closely linked to the development of mechanisms to implement Farmers' Rights.

III. DISCUSSIONS OUTSIDE FAO

7. Since the endorsement of Resolutions 4/89 and 5/89 by the FAO Conference in November 1989, the Agreed Interpretation of the International Undertaking, and in particular the concept of Farmers' Rights, has been a matter of discussion and has been supported in many fora (e.g. the Keystone International Dialogue on Plant Genetic Resources, in Madras; Genetic Heritage and Human Rights, in Paris; UNEP Intergovernmental Ad Hoc Working Group of Experts on Biological Diversity, in Geneva; Prepcom of UNCED, in Nairobi). Many experts seem to agree that in order to ensure the continuation of the unrestricted availability of germplasm, farmers' rights need to be developed and given meaningful financial content.

8. The discussions and consensus reached by the participants at the Second Session of the Keystone International Dialogue on Plant Genetic Resources (29 January to 2 February 1990, Madras, India) are especially significant, since the meeting involved many well known experts and personalities from governments, industries, NGOs and intergovernmental organizations. Although participating in their personal capacities, they represented all the interests concerned. The International Dialogue considered that the two outstanding matters on which consensus was still needed were the availability of breeder's lines and the development of mechanisms for the implementation of farmers' rights. The Dialogue agreed that "elite and developing breeder lines" should be recognized to be available only "at the discretion of

the breeders". It also agreed to propose that "the best way of recognizing farmers' rights would be a mandatory fund, such as the fund currently existing at FAO"* , that "contributions to the Fund should not be voluntary", and that "there should be a compulsory funding mechanism". The International Dialogue stated that for an International Fund for Plant Genetic Resources a "conservative estimate indicates that at least US\$500 million per annum should be available to begin to meet these urgent needs".

IV. SECRETARIAT COMMENTS

9. It must be recognized that due to the difficulty of negotiations to achieve the compromises and consensus reflected in Resolutions 4/89 and 5/89, some of the definitions and statements therein show a certain degree of looseness. This may allow the necessary flexibility to achieve further consensus.

10. In order to assist the Working Group to analyse the outstanding points raised by some countries, to provide adequate clarification and to overcome any remaining difficulties, the Secretariat has reviewed the various points in the light of the texts of resolutions 4/89 and 5/89.

(i) Points that Needed Clarification

a. Who benefits from the International Undertaking

11. It is the normal rule that the benefits and responsibilities derived from agreements or arrangements among different parties should be limited to those parties that freely decide to adhere to it. In this regard, Resolution 4/89 explicitly states that "the benefits to be derived under the International Undertaking are part of a reciprocal system, and should be limited to countries adhering to the International Undertaking."

* It should be noted, however, that the existing FAO Fund is not mandatory.

b. Concept of the "heritage of mankind" and relationship with national sovereignty.

12. The concept of the "heritage of mankind" in the Undertaking is similar to that in the Convention on the Protection of the world Cultural and Natural Heritage (the World Heritage Convention) adopted under the sponsorship of UNESCO in 1972. This Convention recognizes that the natural and man-made sites that make up the world heritage in the fields covered by the Convention are subject to the overriding sovereignty of the states in whose territories they are located, and in some cases, to property rights governed by national legislation.

13. In the International Undertaking the concept of the "heritage of mankind" applies to all categories of germplasm defined in Article 2 of the Undertaking. This concept implies two essential ideas. First that the heritage should be preserved for the use of present and future generations, and secondly that it should be available for the benefit of all countries. These two ideas are explicitly recognized in the various articles of the Undertaking. As in the UNESCO convention, the concept should be regarded as fully compatible with and complementary to the national sovereignty of individual states over their germplasm.

14. The above interpretation of the concept of the heritage of mankind in the International Undertaking is in line with Resolution 4/89 which: (i) recognizes the right of states to impose certain "restrictions" on the exchange of their germplasm; (ii) recognizes the rights of both donors of germplasm and donors of technology to be compensated for their contributions through the simultaneous recognition of farmers' and plant breeders' rights", and (iii) recognizes that "the term 'free access' does not mean free of charge".

(ii) Points that Needed Further Negotiation

a. Availability of Breeders' Lines

15. Resolution 4/89 stated that Plant Breeders' Rights "are not incompatible with the International Undertaking." To make breeders' lines fully and freely available might render it impossible in practice to protect plant breeders' rights. In order to ensure Plant Breeders' Rights in countries that have included them in their national legislation, it may be necessary to recognize that breeders' lines would be available only at the discretion of the breeders.

16. Resolution 4/89 recognizes that (i) "a State may impose only such minimum restrictions on the free exchange of materials covered by Article 2.1 (a) of the International Undertaking as are necessary for it to conform to its national and international obligations"; and (ii) the national legislation of many states prevent them from obliging their industries or institutions to make available the germplasm still under

development (breeders' lines). Thus, there would not seem to be any difficulty in recognizing that breeders' lines should be made available only at the discretion of the breeders. In this context, the laws of some countries also protect certain species or germplasm with unique promise from immediate exchange.

b. Mechanisms for the implementation of Farmers' Rights

17. After negotiating and reaching consensus on the concept and philosophy of Farmers' Rights as reflected in Resolution 5/89, the Third Session of the Commission agreed that a number of issues' regarding its implementation remained to be negotiated.

18. The mechanisms for the implementation of Farmers' Rights need to be developed in line with the texts of Resolutions 4/89 and 5/89.' The following statements from these resolutions should be kept especially in mind.

Origins of Farmers' Rights

Resolution 4/89 recognizes "the enormous contribution that farmers of all regions have made to the conservation and development of plant genetic resources, which constitute the basis of plant production throughout the world, and which form the basis for the concept of Farmers' Rights

Resolution 5/89 defines Farmers' Rights as "rights arising from the past, present and future contributions of farmers in conserving, improving, and making available plant genetic resources, particularly those in the centres of origin/diversity".

Objectives of Farmers' Rights

Resolution 5/89 endorses the concept of Farmers' Rights "for the purpose of ensuring full benefits to farmers, and supporting the continuation of their contributions, as well as the attainment of the overall purposes of the International Undertaking".

The same Resolution further defines these objectives, as being to:

a) ensure that the need for conservation is globally recognized and that sufficient funds for these purposes will be available;

b) assist farmers and farming communities, in all regions of the world, but especially in the areas of origin/diversity of plant genetic resources, in the protection and conservation of their plant genetic resources, and of the natural biosphere;

c) allow farmers, their communities, and countries in all regions, to participate fully in the benefits derived, at present and in the future, from the improved use of plant genetic resources, through plant breeding and other scientific methods".

Means to Implement and Monitor Farmers' Rights: The role of the Commission and International Fund for Plant Genetic Resources

Resolution 5/89 specifies that Farmers' Rights "are vested in the International Community, as trustees for present and future generations of farmers."

Resolution 4/89 recognizes that "The best way to implement the concept of Farmers' Rights is to ensure the conservation, management and use of plant genetic resources, for the benefit of present and future generations of farmers. This could be achieved through appropriate means, monitored by the Commission on Plant Genetic Resources, including in particular the International Fund for Plant Genetic Resources;" already established by FAO. To reflect the responsibility of those countries which have benefited most from the use of germplasm, the Fund would benefit from being supplemented by further contributions from adhering governments, on a basis to be agreed upon, in order to ensure for the Fund a sound and recurring basis."

Use of the International Fund

Resolution 4/89 establishes that "The International Fund should be used to support plant genetic conservation, management and utilization programmes, particularly within developing countries, and those which are important sources of plant genetic material. Special priority should be placed on intensified educational programmes for biotechnology specialists, and strengthening the capabilities of developing countries in genetic resource conservation and management, as well as the improvement of plant breeding and seed production."

V. GUIDANCE REQUESTED FROM THE WORKING GROUP

19. In view of the above, the Working Group may wish to discuss:
- (i) the availability of breeders' lines and whether it should be recognized that these should be available only at the discretion of the Breeders;

(ii) the establishment of financial mechanisms necessary for the implementation of the concept of Farmers' Rights and whether a mandatory International Fund for Plant Genetic Resources is the best way of recognizing these Rights. If this is the case, the guidance from the Working Group will be needed to redefine the objectives, coverage, rules and procedures of the International Fund. Specific matters that may need to be addressed by the Working Group include:

- a) Target figure for the Fund;
- b) Method of determining contributions to the Fund;
- c) Role of countries which are donors of funds and/or donors of germplasm in the administration, monitoring and supervision of the Fund;
- d) Users of the Fund (e.g. National Organizations, FAO Field Programme, other UN Organizations, IARCs, IBPGR, NGOs etc.) and the form of mechanisms for cooperation with and among the users;
- e) need for and possible form of an action plan (or agenda) to be financed by the Fund; role of users of the Fund in the preparation and implementation of the action plan;
- f) the relationship of the Fund with other elements of the FAO Global System of Plant Genetic Resources (see figure 1).

20. The desirability of an international technical conference, in line with those hosted by FAO in 1967, 1973 and 1981, to assist the Secretariat in further defining and implementing some of these points should also be considered.

21. The guidance of the Working Group would assist the Secretariat to prepare a proposal for the next sessions of the Working Group and the Commission on Plant Genetic Resources.

FAO GLOBAL SYSTEM FOR THE CONSERVATION & UTILIZATION OF PLANT GENETIC RESOURCES

