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y la
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Item 2 of the Draft Provisional Agenda

COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE

Second Inter-sessional Meeting of the Contact Group

Rome, 3-7 April 2000

**COMPOSITE DRAFT TEXT OF THE INTERNATIONAL UNDERTAKING ON
PLANT GENETIC RESOURCES, INCORPORATING THE TEXTS OF
ARTICLES 11, 12 AND 15, NEGOTIATED DURING THE COMMISSION'S
EIGHTH REGULAR SESSION, AND THE TEXT OF ARTICLE 14,
NEGOTIATED DURING THE FIRST INTER-SESSIONAL MEETING OF THE
CONTACT GROUP**

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INTRODUCTION

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

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

This was accordingly prepared and presented to the Eighth Session of the Commission (19-23 April 1999) as document CGRFA-8/99/13/Annex. The Commission decided to continue negotiations for the revision of the International Undertaking, using this *Composite Draft Text*.

The Commission, in authorizing the Chairman to convene sessions of the Contact Group to advance the negotiations, stated that this should be done on the basis of the *Chairman's Elements* derived from the Montreux meeting. These are therefore reproduced in the current document.

During the Commission's Eighth Session, texts of Articles 11, *Multilateral System of Access and Benefit-sharing*, 12, *Coverage of the Multilateral System*, and 15, *Farmers' Rights*, were negotiated. The current text incorporates these texts, which are identified in the document by a box with a single-line border around it, as has been done with this paragraph.

The First Inter-sessional Meeting of the Contact Group negotiated the text of Article 14, *Benefit-sharing in the Multilateral System*. The current text also incorporates this text, which are identified in the document by a box with a double-line border around it, as has been done with this paragraph.

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

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

Coverage

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

Facilitated access

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

Equitable and fair sharing of benefits

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

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

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

Supporting components

- Information system(s).
- PGRFA networks.

- Partnership in research and technology development.

5. Farmers' rights

- Recognition of the enormous contribution that farmers of all regions of the world, particularly those in the centres of origin and crop diversity, have made and will continue to make for the conservation and development of plant genetic resources which constitute the basis of food and agriculture production throughout the world.
- The responsibility for realizing Farmers' Rights, as they relate to PGRFA, rests with national governments. In accordance with their needs and priorities, each Party should, as appropriate, and subject to its national legislation, take measures to protect and promote Farmers' Rights, including:
 - the right to use, exchange, and, in the case of landraces and varieties that are no longer registered, market farm-saved seeds;
 - protection of traditional knowledge;
 - the right to equitably participate in benefit-sharing;
 - the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of PGRFA.

6. Financial resources

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

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

7. Legally-binding instrument

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

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

**COMPOSITE DRAFT TEXT OF THE INTERNATIONAL UNDERTAKING
ON PLANT GENETIC RESOURCES,
INCORPORATING THE TEXTS OF ARTICLES 11, 12 AND 15,
NEGOTIATED AT THE EIGHTH SESSION OF THE COMMISSION
(19-23 April 1999)**

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

PREAMBLE

The Parties to this Undertaking:

...

PART I - INTRODUCTION

Article 1 – Objectives

1.1 The objectives of this Undertaking are the conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of the benefits arising out of their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security.

1.2 [Relationship of the International Undertaking with the Food and Agriculture Organization of the United Nations and the Convention on Biological Diversity.]

Article 2 – Definitions

For the purpose of this Undertaking, the following terms shall have the meanings hereunder assigned to them:

Article 3 – Scope

This Undertaking relates to plant genetic resources for food and agriculture.

Article 4 – Relationship of the Undertaking with Other International Agreements

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

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

PART II - GENERAL PROVISIONS

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

5.1 Each Party shall, subject to national legislation, [in accordance with the relevant provisions of the Convention on Biological Diversity,] and in cooperation with other Parties where appropriate, promote an integrated approach to the exploration, conservation and sustainable use of plant genetic resources for food and agriculture and shall in particular¹, as appropriate:

- (a) Survey and inventory plant genetic resources for food and agriculture, taking into account the status and degree of variation in existing populations, including those that are of potential use and, as feasible, assess any threats to them;
- (b) Promote the collection of plant genetic resources for food and agriculture and relevant associated information on those plant genetic resources that are under threat or are of potential use;
- (c) Support[, as appropriate,] farmers and local communities' efforts to manage on-farm [their][farmers' varieties and other] plant genetic resources for food and agriculture;
- (d) Promote *in situ* conservation of wild crop relatives and wild plants for food production[, including in protected areas, by supporting[, *inter alia*,] the efforts of indigenous and local communities];
- (e) Cooperate to promote the development of an efficient and sustainable system of *ex situ* conservation, giving due attention to the need for adequate documentation, characterization, regeneration and evaluation, and promote the development and transfer of appropriate technologies for this purpose with a view to improving the sustainable use of plant genetic resources for food and agriculture;
- (f) Monitor the maintenance of the viability, degree of variation, and the genetic integrity of collections of plant genetic resources for food and agriculture.

5.2 Parties shall, as appropriate, take steps to minimize or, if possible, eliminate threats to plant genetic resources for food and agriculture[, including the negative effects of agro-chemicals].

Article 6 – Sustainable Use of Plant Genetic Resources

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

6.2 The sustainable use of plant genetic resources for food and agriculture [may][shall] include such measures as:

- (a) pursuing agricultural policies that promote, as appropriate, the development and maintenance of diverse farming systems that enhance the sustainable use of agricultural biological diversity and other natural resources;
- (b) strengthening [demand-driven] research which enhances biological diversity by maximizing intra- and inter-specific variation for the benefit of farmers, especially smallholder farmers,

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

who generate and use their own [crops][varieties] and apply ecological principles in maintaining soil fertility and in combating diseases, weeds and other pests;

- (c) promoting[, as appropriate,] plant breeding efforts which, with the [full] participation of farmers, particularly in developing countries, strengthen the capacity to develop varieties specifically adapted to the various social, economic and ecological conditions, including in marginal areas;
- (d) broadening the genetic base of crops and increasing the range of genetic diversity available to farmers;
- (e) promoting[, as appropriate,] [in all agro-ecological zones] the expanded use of local and locally adapted crops, varieties and underutilized species; and
- (f) supporting[, as appropriate,] the wider use of diversity of varieties and species in on-farm management, conservation and sustainable use of crops and create strong links to plant breeding and agricultural development in order to reduce crop vulnerability and genetic erosion, and promote increased world food production compatible with sustainable development.

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

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

Article 7 – National Commitments and³ International Cooperation

7.1 Each Party shall, as appropriate, integrate into its agriculture and rural development policies and programmes⁴, activities referred to in Articles 5 and 6, and cooperate with other Parties, directly or through [FAO and/or other] relevant international organizations, in the conservation and sustainable use of plant genetic resources for food and agriculture.

7.2 International cooperation shall, in particular, be directed to:

- (a) establishing or strengthening the capabilities of developing countries and countries with economies in transition with respect to conservation and sustainable use of plant genetic resources for food and agriculture;
- (b) [encouraging][enhancing] international activities to promote conservation, evaluation, documentation, genetic enhancement, plant breeding, seed multiplication, and sharing[, providing access to,] and exchanging, [in conformity with Part IV,] plant genetic resources for food and agriculture and [appropriate][relevant] information and technology;

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

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

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

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

[.....]⁶

PART III - SUPPORTING COMPONENTS FOR THE UNDERTAKING

Article 8 – Global Plan of Action⁷

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

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

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

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

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.

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

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

⁷ Cf. Article 16.2 – 4.

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

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

OR

[Article 9 – International Plant Genetic Resources Networks]

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

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

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

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

OR

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

[10.2¹⁰ Based on notification by parties, early warning should be provided about hazards that threaten the efficient maintenance of plant genetic resources for food and agriculture, with a view to safeguarding the material.]

[10.3 Parties shall cooperate, through the appropriate international organizations, to undertake a periodic reassessment of the state of the world's plant genetic resources for food and agriculture in order to facilitate the updating of the rolling Global Plan of Action provided for in Article 8.]

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

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

PART IV - MULTILATERAL SYSTEM OF ACCESS AND BENEFIT-SHARING¹¹

Articles 11 and 12, including the footnotes in this box, are as negotiated during the Eighth Regular Session of the Commission.

Article 11 – Multilateral System of Access and Benefit-sharing

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

11.2 In exercise of their sovereign rights, 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.

Article 12 – Coverage of the Multilateral System^a

12.1 In furtherance of the objectives of conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of benefits arising out of their use, as stated in Article 1, the multilateral system shall cover the plant genetic resources for food and agriculture listed in Annex I, established according to criteria of food security and interdependence.^b

[12.2 The multilateral system shall also cover:

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

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

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

-
- a. *For further consideration:* the issues of the identification and of the end use of material in collections.
 - b. Adopted *ad referendum*, and pending the adoption of Article 21, including the issue of the adoption of annexes by consensus.
 - c. *For further consideration:* The CGIAR Centres shall respect the rights of countries that provide material or from which material is collected.
 - d. *For further consideration:* Specific Conditions shall apply to international centres other than CGIAR Centres.
 - e. *For further consideration.*

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

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

**Article 13 – Facilitated Access to Plant Genetic Resources for Food and Agriculture
within the Multilateral System**

The Eighth Session of the Commission, in discussing Article 13, agreed to integrate Annex II of the Composite Draft Text into the text of the Articles.

13.1 The Parties agree that the objective of facilitated access to plant genetic resources for food and agriculture under the multilateral system shall be to minimize transaction costs, obviate the need to track individual accessions, and ensure expeditious access, in accordance with applicable property regimes.

13.2 The Parties agree that access to material included in the multilateral system shall be for the purpose of research, breeding and/or training, for food and agriculture only. Access for other uses (including but not limited to chemical, pharmaceutical, non-food and agricultural industrial uses), shall be on mutually agreed terms in accordance with the Convention on Biological Diversity.

13.3 The Parties agree that access to material included in the multilateral system shall be provided to other Parties and to international centres that agree to be bound by the provisions of Annex V to this Undertaking in accordance with the conditions of access set out in Annex II to this Undertaking.

13.4 The Parties agree that access for non-Parties to material included in the multilateral system shall be in accordance with terms decided upon by the Governing Body.

*Article 14, including the footnotes in this box, is as negotiated during the
First Inter-sessional Meeting of the Contact Group.*

Article 14 - Benefit-sharing in the Multilateral System^a

14.1 Parties agree that access to PGRFA in the Multilateral System is subject to the benefit-sharing under this article.^b The Parties recognize that facilitated access to PGRFA within the Multilateral System constitutes itself a major benefit of the Multilateral System and agree that benefits accruing therefrom shall be shared fairly and equitably in accordance with the provisions of this Article.

14.2 The Parties agree that benefits arising from the use[, including commercial] of PGRFA under the Multilateral System shall be shared through the transfer of technology, capacity-building, the exchange of information, and [funding][the fair and equitable sharing of the results of research and development and the benefits arising from commercial and other utilization of these PGRFA], taking into account the priority activity areas in the rolling GPA, under the guidance of the Governing Body,^c [and] as set forth below:

(a) Exchange of information:

Parties agree to make available information which shall, inter alia, encompass catalogues and inventories, information on technologies, results of technical, scientific and socio-economic research, including characterization, evaluation and utilization, regarding those PGRFA under the Multilateral System. Such information shall be made available, where non-confidential, subject to applicable law and in accordance with national capabilities.^d Such information shall be made available to all Parties to the International Undertaking through the information system of the Multilateral System.^e

(b) Access to and transfer of technology:

(i) [Parties undertake to provide and/or facilitate access to technologies for the conservation, characterization, evaluation and use of PGRFA which are under the Multilateral System. Recognizing that some technologies can only be transferred through genetic material, Parties shall provide and/or facilitate access to such technologies and genetic material which is under the Multilateral System and to improved varieties and genetic material developed through the use of PGRFA under the Multilateral System. Access to these technologies, improved varieties and genetic material shall be provided and/or facilitated, while respecting applicable property rights and access laws, and in accordance with national capabilities.]

(ii) Access to and transfer of technology to countries, especially to developing countries and countries with economies in transition, shall be carried out through a set of measures, such as the establishment and maintenance of, and participation in, crop-based thematic groups on utilization of PGRFA,^f all types of partnership in R & D and in commercial joint ventures on the material received, human resource development, and effective access to research facilities.

[(iii) Access to and utilization of information and technology protected by intellectual property rights and confidentiality shall be freely available for conservation purposes of PGRFA in the Multilateral System, and for the use of small farmers in developing countries and countries with economies in transition, whereas, for commercial purposes, access to and transfer of technology as referred to in (i) and (ii) above to developing country Parties and the countries with economies in transition shall be provided and/or facilitated under fair and most favourable terms, including on concessional and preferential terms, where mutually agreed, through partnerships in research and development under the Multilateral System. In the case of technology subject to patents and other intellectual property rights, access and transfer shall be provided on terms which recognize and are consistent with the adequate and effective protection of intellectual property rights.]

(c) Capacity building

Taking into account the needs of developing countries and countries with economies in transition, [as expressed through the priority they accord to building capacity in PGRFA in their plans and programmes,] in respect of those PGRFA covered by the Multilateral System, Parties [shall endeavour to]/[agree to], (i) establish and/or strengthen programmes for scientific and technical education and training in conservation and sustainable use of PGRFA, (ii) develop and strengthen facilities for conservation and sustainable use of PGRFA, in particular in developing countries and countries with economies in transition, and (iii) carry out scientific research preferably, and where possible, in developing countries and countries with economies in transition, in cooperation with institutions of such countries, and develop capacity for such research in fields where they are needed.

(d) Sharing of [monetary] benefits on commercialisation

[(i) Each Party to this Undertaking undertakes to pay, in accordance to the agreed Funding Strategy to be established under Article 16, an annual contribution representing percent of the value of the crops produced in its territory through the use of PGRFA listed in Article 12 to this Undertaking where such crops are produced from or through plant genetic materials or related processes in respect of which IPR protection has been sought under its national legislation. For this purpose, the value of the crops shall be calculated on the basis of the hectareage of the crops harvested multiplied by the average national yield per hectare for those crops and the average ex-farm price for the current year.

(ii) Developed countries, party to this Undertaking, undertake to make annual contributions to the Agreed Funding Strategy established under Article 16 in the proportions of their national contributions according to the United Nations Scale of Assessment.]

CHAIRMAN'S NOTE: FOR THE FIRST TIME, MEMBER COUNTRIES HELD A VERY RICH AND CONSTRUCTIVE DEBATE ON THIS CRUCIAL ISSUE. A NUMBER OF COUNTRIES AND GROUPS OF COUNTRIES STATED THAT THEY WERE CONSIDERING THE ISSUE VERY SERIOUSLY, AND COMMITTED THEMSELVES TO PRESENT TO THE NEXT MEETING OF THE CONTACT GROUP MODALITIES TO GIVE PRACTICAL EXPRESSION TO THE FAIR AND EQUITABLE SHARING OF COMMERCIAL BENEFITS, AND THE POSSIBILITY OF INVOLVING THE PRIVATE SECTOR.

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

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

14.5 Parties recognize that the ability to fully implement the GPA, in particular of developing countries and countries with economies in transition, will depend largely upon the effective implementation of this Article and of the funding strategy as provided in Article 16.

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- a. Pending the adoption of symmetrical terms in Articles 12 and 13.
 - b. Pending the adoption of symmetrical text in Article 13.
 - c. Pending the adoption of Article 17.
 - d. Pending discussion of Articles 12 and 13.
 - e. The information system shall be described later.
 - f. Pending discussion as appropriate under other Articles.

PART V - FARMERS' RIGHTS

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

Article 15 – Farmers' Rights

15.1 The Parties recognize the enormous contribution that the local and indigenous communities and farmers of all regions of the world, particularly those in the centres of origin and crop diversity, have made and will continue to make for the conservation and development of plant genetic resources which constitute the basis of food and agriculture production throughout the world.

15.2 The Parties agree that the responsibility for realizing Farmers' Rights, as they relate to Plant Genetic Resources for Food and Agriculture, rests with national governments. In accordance

with their needs and priorities, each Party should, as appropriate, and subject to its national legislation, take measures to protect and promote Farmers' Rights, including:

- (a) protection of traditional knowledge relevant to plant genetic resources for food and agriculture;
- (b) the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture;
- (c) the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture.

15.3 Nothing in this Article shall be interpreted to limit any rights that farmers have to save, use, exchange and sell farm-saved seed/propagating material, subject to national law and as appropriate.

PART VI - FINANCIAL PROVISIONS

Article 16 – Financial Resources

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

16.2 The funding strategy shall include the following components:

- (a) Budget and contributions to manage the operations of the Governing Body/Secretariat *etc.* (Some of their activities could be delegated.);
- (b) Agreed and predictable contributions to implement agreed plans and programmes,¹³ in particular in developing countries, as set out in Annex IV to this Undertaking, from sources such as:
 - (i) the Consultative Group on International Agricultural Research;
 - (ii) the Global Environment Facility;
 - (iii) other multilateral funds such as the International Fund for Agricultural Development and the Common Fund for Commodities, for project funding;
 - (iv) Country contributions;
 - (v) Private sector and non governmental organizations; and
 - (vi) Other contributions.
- (c) National allocations to implement national programmes for plant genetic resources for food and agriculture, according to national priorities.

16.3 The Parties shall keep under review the provisions of Annex IV.

¹³ Cf. Article 8.

16.4 Priority will be given to implementation of the rolling Global Plan of Action referred to in Article 8, in particular in support of Farmers' Rights in developing countries.

PART VII - INSTITUTIONAL PROVISIONS

Article 17 – Governing Body¹⁴

17.1 A Governing Body of the Undertaking is hereby established [within the framework of the Food and Agriculture Organization of the United Nations].

17.2 The functions of the Governing Body shall be to promote the full implementation of the objectives of the Undertaking and, in particular, to:

- (a) review the state of plant genetic resources for food and agriculture and implications for world food security;
- (b) periodically review and, as necessary, update the rolling Global Plan of Action provided for in Article 8;
- (c) provide policy direction for, and monitor, the implementation of the Undertaking and, in particular, for the operation of the Multilateral System of Access and Benefit Sharing;
- (d) adopt the plans and programmes for the implementation of the Undertaking;
- (e) adopt and periodically review the funding strategy for the implementation of the Undertaking and adopt the budget of the Undertaking;
- (f) establish such subsidiary bodies as may be necessary for the proper implementation of its functions;
- (g) establish rules and procedures for the resolution of disputes in accordance with Article 19;
- (h) establish cooperation with other relevant international organizations on matters covered by this Undertaking;
- (i) adopt amendments to the Undertaking, in accordance with the provisions of Article 20;
- (j) periodically review and as necessary amend the annexes to this Undertaking, in accordance with the provisions of Article 21;
- (k) adopt such recommendations for the implementation of the Undertaking as necessary; and
- (l) perform such other functions as may be necessary to the fulfilment of the objectives of this Undertaking.

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

17.4 Each Party may be represented at sessions of the Governing Body by a single delegate who may be accompanied by an alternate, and by experts and advisers. Alternates, experts and advisers may take

¹⁴ These provisions are based on those of revised text of the International Plant Protection Convention as adopted by the FAO Conference in November 1997.

part in the proceedings of the Governing Body but may not vote, except in the case of an alternate who is duly authorized to substitute for the delegate.

17.5 The Parties shall make every effort to reach agreement on all matters by consensus. If all efforts to reach consensus have been exhausted and no agreement is reached, the decision shall, as a last resort, be taken by a two-thirds majority of the Parties present and voting.

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

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

17.8 The Governing Body may adopt and amend, as required, its own Rules of Procedure, which shall not be inconsistent with this Undertaking [or with the Constitution of FAO].

17.9 The Governing Body shall hold regular sessions at least once every two years.

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

17.11 The Governing Body shall elect its Chairperson and Vice-Chairpersons (collectively referred to as “the Bureau”), each of whom shall serve for a term of two years.

Article 18 - Secretariat

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

18.2 The Secretary shall be assisted by such secretariat staff as may be required.

18.3 The Secretary shall be responsible for implementing the policies and activities of the Governing Body and carrying out such other functions as may be assigned to it by this Undertaking and shall report thereon to the Governing Body.

18.4 The Secretary shall disseminate to all Parties:

- (a) decisions of the Governing Body within sixty days of adoption;
- (b) information received from Parties in accordance with the provisions of the Undertaking.

18.5 The Secretary shall provide translations in the official languages of FAO, of documentation for meetings of the Governing Body.

18.6 The Secretary shall cooperate with other organizations and treaty bodies, including in particular the secretariat and Conference of Parties of the Convention on Biological Diversity, in achieving the aims of the Undertaking.

Article 19 - Settlement of Disputes¹⁵

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

19.2 If the Parties concerned cannot reach agreement on the resolution of the dispute by negotiation, they may jointly seek the good offices of, or request mediation by, a third party.

19.3 When ratifying, accepting, approving or acceding to this Undertaking, or at any time thereafter, a State or Member Organization of FAO may declare in writing to the Depositary that for a dispute not resolved in accordance with paragraph 1 or paragraph 2 above, it accepts one or both of the following means of dispute settlement as compulsory:

- a) Arbitration in accordance with the procedure laid down in Part 1 of Annex VI to this Undertaking;
- b) Submission of the dispute to the International Court of Justice.

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

Article 20 – Amendments of the Undertaking¹⁶

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

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

20.3 The Parties shall make every effort to reach agreement on any proposed amendment by consensus. If all efforts to reach consensus have been exhausted and no agreement is reached, the decision on the adoption of the amendment shall, as a last resort, be taken by a two-thirds majority of the Parties present and voting.

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

20.5 For the purpose of this Article, an instrument deposited by a member organization of FAO shall not be counted as additional to those deposited by member states of such an organization.

Article 21 – Amendments of Annexes¹⁷

21.1 The annexes to this Undertaking shall form an integral part of this Undertaking and, unless expressly provided otherwise, a reference to this Undertaking shall constitute at the same time a reference to any annexes thereto.

¹⁵ This Article draws on the text of Article 27 of the Convention on Biological Diversity.

¹⁶ This Article draws on the text of Article 29 of the Convention on Biological Diversity.

¹⁷ This Article draws on the text of Article 30 of the Convention on Biological Diversity.

21.2 Amendments to the annexes to this Undertaking shall be proposed and adopted in accordance with the procedure for the proposal and adoption of amendments to the Undertaking as set out in Article 20.

21.3 An amendment to an annex to this Undertaking shall come into force for all Parties on the expiry of one year from the date of adoption of the amendment to the annex by the Governing Body.

Article 22 – Signature

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

Article 23 – Ratification, Acceptance or Approval

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

Article 24 – Accession

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

Article 25 – Member Organizations of FAO

25.1 When a member organization of FAO deposits an instrument of ratification, acceptance or approval of, or accession to, this Undertaking, the member organization shall[, in accordance with the provisions of Article II. 7 of the FAO Constitution, as appropriate,] notify such modifications or clarifications to its declaration of competence submitted under Article II. 5 of the FAO Constitution as may be necessary in light of its acceptance of this Undertaking. Any contracting party to this Undertaking may, at any time, request a member organization of FAO that is a contracting party to this Undertaking to provide information as to which, as between the member organization and its member states, is responsible for the implementation of any particular matter covered by this Undertaking. The member organization shall provide this information within a reasonable time.

25.2 Instruments of ratification, acceptance, approval or accession deposited by a member organization of FAO shall not be counted as additional to those deposited by its member states.

Article 26 – Entry into Force¹⁸

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

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

Article 27 – Reservations¹⁹

No reservations may be made to this Undertaking.

Article 28 – Non-parties

The Parties shall encourage any Member of FAO or other State, not a party to this Undertaking to accept this Undertaking, and shall encourage any non-party to act consistently with the provisions of this Undertaking.

Article 29 – Languages

The authentic languages of the Undertaking shall be all official languages of FAO.

Article 30 – Technical Assistance

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

Article 31 – Withdrawals

31.1 Any Party may at any time after two years from the date on which this Undertaking has entered into force for it, withdraw from this Undertaking by notification addressed to the Director-General of FAO. The Director-General shall at once inform all Parties.

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

Article 32 – Depositary

The Director-General shall be the Depositary of this Undertaking. The Depositary shall:

- (a) send certified copies of this Undertaking to each Member of FAO and to such non-Member States as may become party to this Undertaking;
- (b) arrange for the registration of this Undertaking, upon its entry into force, with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations;
- (c) inform each Party and each Member of FAO that is not a Party of:

¹⁸ This Article draws on the text of Article 36 of the Convention on Biological Diversity.

¹⁹ This Article draws on the text of Article 37 of the Convention on Biological Diversity.

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- (i) the deposit of instruments of ratification, acceptance or approval in accordance with Article 23;
 - (ii) the date of entry into force of this Undertaking in accordance with Article 26;
 - (iii) proposals for the amendment of this Undertaking or of the Annexes thereto;
 - (iv) the adoption of amendments to this Undertaking in accordance with Article 20 and their entry into force;
 - (v) the adoption of amendments to the Annexes this Undertaking in accordance with Article 21, and the entry into force of amendments to annexes; and
 - (vi) withdrawals from this Undertaking pursuant to Article 31.

ANNEX I

LIST OF CROPS COVERED BY THE MULTILATERAL SYSTEM

<u>Common name</u>	<u>Genus</u> ¹	<u>Common name</u>	<u>Genus</u> ¹
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>
Millet	<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>
Maize	<i>Zea</i>		<i>Melinis</i>
Sorghum	<i>Sorghum</i>		<i>Panicum</i>
Wheat	<i>Triticum</i>		<i>Paspalum</i>
Peanut	<i>Arachis</i>		<i>Pennisetum</i>
Cowpea	<i>Vigna</i>		<i>Phalaris</i>
Pea	<i>Pisum</i>		<i>Phleum</i>
Beans	<i>Phaseolus</i>		<i>Poa</i>
Lentils	<i>Lens</i>		<i>Schizachyrium</i>
Soybean	<i>Glycine</i>		<i>Setaria</i>
Potato	<i>Solanum</i>		<i>Themeda</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.

ANNEX II

CONDITIONS OF ACCESS²⁰

- (i) Access shall be accorded expeditiously and free of charge, or where a fee is charged, this shall not exceed the minimal costs involved;²¹
- (ii) material to which access is granted will be used for research, breeding and/or training in food and agriculture only;²²
- (iii) the collection of material *in situ* shall be in accordance with national legislation governing the collection of germplasm or, in the absence of such legislation, in accordance with such standards as may be set by the Governing Body or by generally accepted standards such as the FAO Code of Conduct for Plant Germplasm Collecting and Transfer as modified from time to time;²³
- (iv) adequate information shall be provided on the material to which access is provided;²⁴
- (v) plant genetic resources received may be given to non-parties to this Undertaking only as provided for by the Governing Body;²⁵
- (vi) rights that limit the facilitated access to and/or utilization of the plant genetic resources for food and agriculture obtained shall not be claimed;²⁶
- (vii) 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;²⁷
- (viii) access to material protected by intellectual property rights will be consistent with the relevant international legislation;²⁸
- (ix) access to materials under the multilateral system will be subject to benefit sharing in accordance with the provisions of Article 14 and Annex III of the Undertaking;²⁹
- (x) 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

²⁰ This Annex is based upon Article 11 of CGRFA/IUND/CNT/Rev.1.

²¹ CNT Article 11.3.1, without the words "included in the multilateral system", as this is covered in Article 13.3 of the Current *Composite Text*.

²² Reflects CNT Article 11.3.2 (a).

²³ Reflects CNT Article 11.6.

²⁴ Reflects CNT Article 11.3.2 bis (a).

²⁵ Formulated in accordance with point 4 of the *Chairman's Elements*, that "Access for non-Parties shall be in accordance with terms to be established in the IU".

²⁶ CNT Article 11.3.2 (f).

²⁷ CNT Article 11.3.2 (g).

²⁸ CNT Article 11.3.2 tris (a).

²⁹ In accordance with Article 14.1 of the current *Composite Text*.

provisions of the Convention on Biological Diversity, especially with regard to the fair and equitable sharing of the benefits resulting from such use.³⁰

ANNEX III
ARRANGEMENTS FOR BENEFIT-SHARING

ANNEX IV
FUNDING STRATEGY

ANNEX V

CONDITIONS FOR PARTICIPATION OF INTERNATIONAL INSTITUTIONS IN THE MULTILATERAL SYSTEM AND PLACING OF INTERNATIONAL *EX SITU* COLLECTIONS IN THE MULTILATERAL SYSTEM

(Institutions that formally agree to be bound by this Annex agree thereby also to accept and abide by the policy direction of the Governing Body of the Undertaking with respect to matters relating to their ex situ collections, conditions of access to material under the multilateral system and the equitable sharing of benefits resulting from the use of such material.)

International Institutions holding international collections of germplasm that accept the provisions of this Annex agree as follows:

Article 1 – Application of this Annex

This Annex shall be open to acceptance by any centre holding international collections of germplasm (hereinafter referred to as the “Institution”).

Article 2 – Basic Undertaking

- a) Institutions accepting this Annex agree thereby to participate in the multilateral system established under the International Undertaking in accordance with the provisions of this Annex.
- b) The Institution hereby places its *ex situ* collection of plant genetic resources for food and agriculture in the multilateral system, in accordance with the terms and conditions set forth in this Annex.
- c) Lists of the germplasm contained in the collection shall be provided to FAO by the Institution and periodically updated in print or machine-readable form, together with such other information on the germplasm as may be required.

Article 3 – Status of Germplasm in the Collection

- a) The Institution shall hold the germplasm in the collection in trust for the benefit of the international community, in particular the developing countries in accordance with the International Undertaking and the terms and conditions set out in this Annex.
- b) The Institution shall not claim legal ownership over the germplasm, nor shall it seek any intellectual property rights over that germplasm or related information.

Article 4 – Premises

- a) The premises in which the germplasm is conserved shall remain in the charge of the Institution.
- b) FAO shall have a right of access to the premises at any time and the right to inspect all activities performed therein directly related to the conservation and exchange of the germplasm.

Article 5 – Management and Administration

- a) The Institution undertakes to manage and administer that part of the germplasm that is held for the purposes of long-term conservation in accordance with internationally accepted standards, including, with respect to the storage, exchange and distribution of seeds, international Genebank Standards, and ensuring that all the germplasm is duplicated in order to ensure its safety.
- b) FAO may recommend action, if it considers such action to be desirable, in order to ensure the proper conservation of that part of the germplasm that is held for long-term conservation purposes.
- c) If the orderly maintenance of the germplasm collection of the Institution is impeded or threatened by whatever event, including *force majeure*, FAO shall assist in the evacuation and/or transfer of the collections, to the extent possible. The cost of such an operation will be covered by the Institution concerned.

Article 6 – Policies

The Institution recognizes the intergovernmental authority of the Governing Body of the International Undertaking in setting policies for the multilateral system.

Article 7 – Staff

- (a) Staff responsible to manage and administer the germplasm shall be employed and remunerated by the Institution.
- (b) As and when deemed appropriate, FAO shall furnish technical backstopping on request by the Institution, either directly or through an implementing mechanism.

Article 8 – Finances

Except as otherwise provided for in the International Undertaking, the Institution shall remain entirely responsible for financing the maintenance of the germplasm.

Article 9 – Availability of Germplasm and Related Information

The Institution undertakes to make samples of the germplasm and related information available directly to users or through FAO, for the purpose of scientific research, plant breeding or genetic resource conservation, in accordance with Article 12 of the International Undertaking and the conditions of access set out in Annex II to the International Undertaking, and in accordance with the conditions set out in the International Undertaking relating to the equitable sharing of benefits arising from the use of such material.

Article 10 – Transfer of Germplasm and Related Information

Where samples of the germplasm and/or related information are transferred to any other person or institution, the Institution shall ensure that such other person or institution, and any further entity receiving samples of the germplasm from such person or institution, are bound by the conditions set out in Article 3 (b) and, in the case of samples duplicated for safety purposes, to the provisions of Article 5 (a).

This provision shall not apply to the repatriation of germplasm to the country that provided such germplasm.

ANNEX VI
SETTLEMENT OF DISPUTES