

April 2000



منظمة الأغذية
والزراعة
للأمم المتحدة

联合国
粮食及
农业组织

Food
and
Agriculture
Organization
of
the
United
Nations

Organisation
des
Nations
Unies
pour
l'alimentation
et
l'agriculture

Organización
de las
Naciones
Unidas
para la
Agricultura
y la
Alimentación

COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE

Second Inter-sessional Meeting of the Contact Group
(Rome, 3-7 April 2000)

REVISION OF THE INTERNATIONAL UNDERTAKING ON PLANT GENETIC RESOURCES, IN HARMONY WITH THE CONVENTION ON BIOLOGICAL DIVERSITY

TEXTS FOR ARTICLE 13, FACILITATED ACCESS, ARTICLE 14.2(d), THE
SHARING OF MONETARY BENEFITS ON COMMERCIALIZATION, AND
ARTICLE 16, FINANCIAL RESOURCES, ESTABLISHED
BY THE CONTACT GROUP DURING ITS
SECOND INTER-SESSIONAL MEETING

The Second Inter-sessional Meeting of the Chairman's Contact Group addressed only one item: the continuation of the negotiations for the revision of the International Undertaking on Plant Genetic Resources, in harmony with the Convention on Biological Diversity. It negotiated texts for Articles 13, 14.2(d), and 16.

The present document makes available the following for the record.

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**TEXT FOR ARTICLE 13, FACILITATED ACCESS, ESTABLISHED BY THE CONTACT
GROUP DURING ITS SECOND INTER-SESSIONAL MEETING**

**Article 13 - Facilitated access to plant genetic resources for food and agriculture
within the Multilateral System**

13.1 The Parties agree that the objective of facilitated access to plant genetic resources for food and agriculture[, as defined in Article 12^a [.1,]] under the multilateral system[, as defined in Article 11,] shall be to minimize transaction costs, obviate the need to track individual accessions, and ensure expeditious access, in accordance with applicable [national legislation] /[property regimes]

13.2 The Parties agree to provide facilitated access¹ [to other Parties] under the Multilateral System[, as defined in Article 11,] to plant genetic resources for food and agriculture [defined [according to the criteria stated] in Article 12[.1]], where it is being sought solely for the purpose of [conservation and] utilization in research, breeding and training, for food and agriculture, in accordance with the conditions of access set forth below [and applicable property regimes] [according to national legislation], provided such purpose does not include chemical, pharmaceutical, and other non-food and non-agricultural uses, [[which shall be on mutually agreed terms in accordance with the Convention on Biological Diversity][which will be[, as appropriate,] subject to benefit-sharing arrangements mutually agreed between the provider and the user of the accessed plant genetic resources for food and agriculture.]]

[13.2 bis In emergency disaster situations, Parties agree to provide facilitated access to appropriate plant genetic resources for food and agriculture within the Multilateral System to restore agricultural systems.]

13.3 Parties agree to provide such access¹ to other Parties, in accordance with the conditions below:

- (a) Access shall be accorded expeditiously and free of charge, or, when a fee is charged, it shall not exceed the minimal cost involved (*i.e.*, packing, phytosanitary treatment, transportation);
- (b) Associated available non-confidential descriptive information, such as passport data, shall be made available [,subject to applicable law], with the material provided;
- (c) [Rights that limit the facilitated access to and/or utilization of the plant genetic resources for food and agriculture obtained shall not be claimed]/[No plant varietal or patent protection will be sought by recipient Parties on the plant genetic resources for food and agriculture received under this Multilateral System];
- (d) Access to material under development, including farmers' varieties, will be at the discretion of their developers, during the period of their development;
- (e) [Access to material protected by intellectual and other property rights shall be consistent with national law, and with relevant international law, in a manner that does not restrict others from

using this material]/[In addition, access to material protected by intellectual and other property rights shall be in accordance with relevant national law and other international law.]

[]^b

- (f) Material accessed under the Multilateral System and conserved will continue to be available to the Multilateral System by the recipients of that material, under the terms of this Undertaking;

[]^c

13.4 [[Parties agree that access to plant genetic resources for food and agriculture under the Multilateral System shall not be provided to non-Parties^d unless they agree to be bound by the obligations and conditions set out in this International Undertaking. In addition, where access is granted, non-Parties shall be subject, *inter alia*, to a standardized MTA, agreed by the Parties, containing the following elements^e and any other terms as decided by the Governing Body:] / [Material received under Article 13.3 may be provided to non-Parties, subject to the provisions of Articles 13.3 (b) to (f) and the terms of Article 14, and to the condition that the material will be used for research, breeding or training for food and agriculture only];

- (a) Recipients will not seek any form of intellectual property protection over the materials received from the Multilateral System;
- (b) Material received under the MLS shall be used for the purpose of utilization in research, breeding or training, for food and agriculture only, in accordance with Article 13.2 of this International Undertaking.]^f

13.5 [Parties agree that access to plant genetic resources for food and agriculture found in *in situ* conditions will be provided according to national legislation, or in the absence of such legislation, in accordance with such standards as may be set by the Governing Body.]^{g,h}

a. [Provided that:

- (i) appropriate benefit-sharing arrangements are adopted;
- (ii) adequate financial arrangements are adopted;
- (iii) revision of the Undertaking and its eventual annexes, if any, is by consensus only;
- (iv) end use of material provided under the Multilateral System is defined and restricted; and
- (v) the Governing Body is constituted if all Parties.]

b. The following text being deleted, the matter will be dealt with in Article 14:

“Access to improved plant genetic resources for food and agriculture and technologies applicable to improve them, protected by intellectual property rights, shall be facilitated under fair and most favourable terms, including on concessional and preferential conditions, to developing countries and countries with economies in transition”.

c. The following concept will be formulated, and dealt with in a relevant Article:

“Parties shall periodically inform to the information system, in a manner to be established by the Governing Body, about the materials transferred under the Multilateral System”.

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- d. The term, “non-Parties”, will be defined in an appropriate place in the text.
 - e. Arrangements regarding access, including to collections in CG Centres, will depend on further discussions on Article 12 and its annexes.
 - f. This sub-paragraph was not fully discussed, for lack of time.
 - g. The placing and content of this sub-article need to be further discussed.
 - h. A sub-article should be added, as requested by footnote b of Article 14.

**TEXT FOR ARTICLE 14.2(d), THE SHARING OF MONETARY BENEFITS ON
COMMERCIALIZATION, ESTABLISHED BY THE CONTACT GROUP DURING ITS
SECOND INTER-SESSIONAL MEETING**

(d) Sharing of [monetary] benefits on commercialisation

Text in CGRFA/CG-2/00/2 should remain as it now is, including Chairman's note.

- (iii) Parties agree, under the Multilateral System, to [share]/[promote] commercial benefit[s][
-sharing] through measures that involve the private sector in activities identified under Article
14 of the International Undertaking through partnerships in research and technology
development;]
- (iv) [Whenever the use of plant genetic resources for food and agriculture accessed under the
Multilateral System results in a product protected by patents, or any form of commercial
protection that restricts further access to the genetic material involved for research and plant
breeding, Parties agree that a fixed share of royalties shall be paid into a mechanism to be
decided by the Governing Body as a contribution to the implementation of agreed plans and
programmes as established in accordance with Article 16.^g].

g Based on ASSINSEL's proposal.

TEXT FOR ARTICLE 16 FINANCIAL RESOURCES, ESTABLISHED BY THE CONTACT GROUP DURING ITS SECOND INTER-SESSIONAL MEETING

[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 objectives of the funding strategy shall be to [enhance]/[improve and increase] the availability, transparency, efficiency and effectiveness of the provision of financial resources to implement activities under the International Undertaking[, in particular by:

- (a) [facilitating] the enhanced provision of necessary funding at the national, sub-regional, regional and global levels; [promoting] multiple source funding approaches and improved co-ordination between funding agencies;
- (b) providing information on available sources of funding;
- (c) identifying priority activities, plans and programmes in need of funding, in particular, in developing country Parties and Parties with economies in transition.]]

16.3 To achieve this objective, the Governing Body shall periodically establish a target for the funding strategy, initially taking into account estimated financial requirements of the priority activity areas of the Global Plan of Action.

16.4 [To secure this targeted amount of funding]/[Pursuant to the development of the funding strategy]:

- (a) Parties [shall take appropriate measures to ensure] [shall seek to ensure] [undertake to facilitate] the allocation of predictable and agreed resources by relevant international mechanisms, funds and bodies for the implementation of agreed plans and programmes, taking into account the priority activity areas of the rolling Global Plan of Action for Plant Genetic Resources for Food and Agriculture. [In this regard, Parties reaffirm the commitments for the new and additional resources that they made under the Convention on Biological Diversity;]^a
- (b) The extent to which developing country Parties and Parties with economics in transition will effectively implement their commitments under this Undertaking will depend on the effective allocation of predictable and agreed resources referred to above;
- (c) The developed country Parties also provide, and developing countries and countries with economies in transition avail themselves of, agreed and predictable financial resources related to the implementation of the Global Plan of Action through bilateral and regional channels. The contribution from developed country Parties shall, where possible, be used to facilitate the leveraging of funding sources and mechanisms in bilateral and regional cooperative arrangements and networks;

- [(d) Parties undertake to provide the agreed and predictable financial benefits arising from Article 14.2(d);]
 - (e)] Parties undertake to provide, in accordance with their national capabilities, financial support and incentives in support of their national activities for the conservation and sustainable use of plant genetic resources for food and agriculture;
 - (f) Voluntary contributions may also be provided by Parties, the private sector, non-governmental organisations and other sources.
- 16.5 The Governing Body, through the Secretariat, shall pursue appropriate arrangements, as mutually agreed, with the responsible bodies of relevant financial and other institutions and organisations to secure their participation in the funding strategy.]^b

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- a. Reaffirmation of the commitment, and the funding amount, would be stated in a parallel resolution, to be adopted at time that the International Undertaking is adopted.
 - b. Basic text for the negotiations.

APPENDIX A

**Statement by the Iranian delegation
6 April 2000**

Plant genetic resources for food and agriculture are not only important for the present but also for the future generation. Iranian government in exercise of its responsibility as a member of international community has participated and contributed actively in the negotiation of the revised International Undertaking in the past four years. Effective conservation and utilization of plant genetic resources for food and agriculture, whether *ex situ* or *in situ* material and whether collection prior or after CBD, for the present and the future generation has been the objective throughout this negotiation. Effective access to these resources for conservation and sustainable utilization and fair and equitable sharing of benefits arising out of their use are the principles that should be maintained throughout the negotiation, and, as long as this is the case, it should include all the PGRFA. To make this happen, necessary instruments and mechanisms should be tailored and put in place within the International Undertaking during the negotiation process, this include effective financial support by the international community to help achieving the objectives of the International Undertaking.

It is unfortunate to see that the negotiation is near to a closure without having a transparent solid and logical reason. If one should look for a reason for the break of this negotiation it should be the failure to achieve the above said objectives and this at a time that the negotiation is continuing would be regarded as a premature judgement.

Therefore the Iranian delegation strongly urge all the delegations to exercise their utmost tolerance and skill in making their concerns transparent and work towards a conclusion that would ensure the conservation and utilization of plant genetic resources for food and agriculture for the present and future generation close to reality.

APPENDIX B

**Statement by the Brazilian delegation
7 April 2000**

Let me start by reiterating the great importance Brazil has always attached to the revision of the International Undertaking on Plant Genetic Resources, to bring it in line with the Convention on Biological Diversity. It is our hope that the result of this process will be a fully operational, cost-effective and dynamic regime for access to plant genetic resources, the equitable sharing of benefits arising out of their utilization and for the realization of farmers' rights.

Brazil firmly believes that the urgent task the international community has on hand is to guarantee our contribution to world food security, and this should be the underlying principle guiding our negotiations.

For this reason, back in December 1996, Brazil proposed in this forum the establishment of a facilitated regime for access to those staples that constitute the basis of human world food production. Such crops would be selected on the basis of two criteria:

- a) importance for world food consumption, and
- b) worldwide interdependence.

As one of the main megabiodiversity countries in the world, Brazil is well aware of the fact that its proposal would open facilitated access to a range of plant genetic resources, some of which are of Brazilian origin. This had to be explained and justified to the Brazilian people, who had followed with great interest the negotiation of the Convention on Biological Diversity. To that end, the Brazilian Government organized a series of workshops in different regions of the country, to explain that this "window" we were opening on the bilateral benefit-sharing arrangements of the CBD was indeed justifiable, because:

- a) the "window" would be small;
- b) the "window" would have clearly defined limits; and
- c) the "window" would be an important contribution for food security, represented by the basic staple food crops, to the benefit of all countries.

Allow me to remind you, Mr. Chairman, that Brazil was the first country to make a concrete, balanced proposal on access to plant genetic resources. But to this day, we have not yet detected any clear and meaningful reaction concerning finance and benefit-sharing.

Mr. Chairman,

Any "window" on the CBD opened under different conditions, would pose serious difficulties for us. Because the "window" has to be limited, we expect to work with a list. Because the "window" has to be clearly defined, now and in the future, we expect to have full participation of all Parties to the Undertaking in the Governing Body and revision of the Undertaking and its Annexes, if any, only by consensus. Because the "window" is to be justified for the purpose of food production, we need a

clear definition of the end use as a guarantee that the genetic material that the developing countries, and mainly those with megabiodiversity, are willing to put in a multilateral system of facilitated access will not be used for other uses, such as chemical, pharmaceutical and industrial uses.

Mr. Chairman, Brazil is willing to continue to negotiate, on a very clear and transparent basis. But these negotiations are going on and on, without definition of these main principles that are so important for us. These are the principles that we must define as soon as possible, as a common basis for our negotiations to move forward.

Mr. Chairman, colleagues, this was an open-hearted declaration. By doing so, we decided to give up all our strategies of negotiation. Everybody knows from now on what we have in mind and what are the very limits of the mandate given by our Government to negotiate. We decided to do so for the sake of this whole exercise to be successful.

With your permission, I now invite all parties to do the same.

APPENDIX C

**Statement by the European delegation
7 April 2000**

Mr. Chairman,

As informal consultations have shown, and much to our regret, lack of clarity of certain proposals, as well as mistrust, have resulted in a slow down of the negotiation process. But we would like to stress that we are very much committed to the negotiation process and to its rapid conclusion.

Informal consultations have also shown that there is much common ground between all delegations, which make us believe that there is a lot to build upon.

Our vision of this Undertaking is driven by the objective of world food security within which sustainable agriculture plays an important part.

We believe the main elements to achieve this objective are free flow of genetic material, particularly towards those developing countries which are poor in PGRFA, together with providing those countries with the means of utilising that material.

As other Delegations will be well aware, our preferred approach would be for all PGRFA to be included in the Multilateral System but, recognising the position of many other Delegations we are prepared to negotiate on a list of PGRFA on a without prejudice basis. We will then reconsider our position in the light of the outcome of that negotiation.

We see the Benefit Sharing arrangements largely as a way of providing Developing Countries and Countries with economies in transition with the means to utilise PGRFA in their own way through technology transfer, capacity building and information. But we also accept the principle that when PGRFA obtained under the Multilateral System results in commercial benefits, that those benefits would be shared.

In this regard we welcome the proposals tabled by Norway and Japan yesterday and we will be actively considering these with our private industry immediately after this meeting.

One of the misunderstandings we would like to resolve is on the structure of the Governing Body. I would like to state clearly that we have always assumed that this should be made up of all the Parties to the Undertaking.

Mr. Chairman, this has been a difficult week, but we are encouraged by the fact that some progress has been made. We have also had an opportunity to gain a better understanding of the concerns of other Delegations and we believe that this understanding will help us to move towards a conclusion acceptable to all.

APPENDIX D – ANNEXE D – ANEXO D - _____

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- * At the Second Inter-sessional Meeting of the Contact Group, Portugal, having replaced Finland in the Presidency of the European Union, replaced Finland in the Contact Group.
- * Dans la Deuxième réunion inter-sessions du Groupe de contact, Portugal, ayant remplacé la Finlande comme Président de l'Union européenne, a remplacé la Finlande dans le Groupe de contact.
- * En la Segunda reunión entre períodos de sesiones del Grupo de Contacto, Portugal, habiendo sustituido a Finlandia en la Presidencia de la Unión Europea, sustituyó asimismo a Finlandia en el Grupo de Contacto.

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