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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

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COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE

Fifth Inter-sessional Meeting of the Contact Group
(Rome, Italy, 5-10 February 2001)

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

TEXTS ESTABLISHED BY THE CONTACT GROUP DURING ITS
FIFTH INTER-SESSIONAL MEETING FOR ARTICLES 17, 18, 20 AND 21;
A CHAIRMAN'S PROPOSAL FOR A NEW ARTICLE 8 BIS; AND TEXTS
PROPOSED FOR ARTICLES 11, 12.2 AND 12.5 (FOR POSSIBLE
MOVING TO ARTICLE 13)

The Fifth 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 established texts for Articles 17, 18, 20 and 21; a Chairman's proposal for an new Article 8 bis. The present document makes available the following for the record:

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**TEXT FOR ARTICLE 17, ESTABLISHED BY THE CONTACT GROUP
DURING ITS FIFTH INTER-SESSIONAL MEETING**

Article 17 – Governing Body

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

- (a) provide policy direction and guidance for, monitor, and adopt such recommendations as necessary for the implementation of the Undertaking and, in particular, for the operation of the Multilateral System of Access and Benefit-Sharing;
- (b) take into account the state of plant genetic resources for food and agriculture and its implications for world food security;
- (c) [periodically review and, as necessary, update the rolling Global Plan of Action provided for in Article 8;]
- (d) adopt plans and programmes for the implementation of the Undertaking;
- (e) adopt and periodically review the funding strategy for the implementation of the Undertaking;
- (f) [adopt the budget of the Undertaking];
- (g) consider and establish such subsidiary bodies as may be necessary, and their respective mandates and composition;
- (h) establish, as needed, an appropriate mechanism, such as a Trust Account, for receiving and utilizing financial resources that will accrue to it for purposes of implementing the International Undertaking;
- (i) establish cooperation with other relevant international organizations on matters covered by this Undertaking, including their participation in the funding strategy;
- (j) consider and adopt, as required, amendments to the Undertaking, in accordance with the provisions of Article 20;
- (k) periodically review and, as necessary, adopt amendments to the annexes to this Undertaking, in accordance with the provisions of Article 21;
- (l) consider modalities of a strategy to encourage voluntary contributions, in particular, with reference to Articles 14 and 16;
- (m) 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 shall have one vote¹ and 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 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 United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not Party to this International Undertaking, may be represented as observers at meetings of the Governing Body. Any other body or agency, whether governmental or non-governmental, qualified in fields relating to conservation and sustainable use of plant genetic resources for food and agriculture, which has informed the Secretariat of its wish to be represented as an observer at a meeting of the Governing Body, may be admitted unless at least one third of the Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Governing Body.

[17.6 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 unless, where specifically stated, that consensus is required.²]

[REPLACING 17.6 AND 17.9. The Governing Body shall by consensus agree upon and adopt rules of procedure for itself and for any subsidiary body it may establish, as well as financial rules, which would be consistent with this Undertaking.]

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

17.8 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.¹

17.9 [The Governing Body may adopt and amend, as required, its own Rules of Procedure, which shall not be inconsistent with this Undertaking.²]

17.10 The presence of delegates representing a majority of the Parties shall be necessary to constitute a quorum at any session of the Governing Body.

17.11 The Governing Body shall hold regular sessions at least once every two years. These meetings shall, as far as possible, be held back-to-back with the regular sessions of the Commission on Genetic Resources for Food and Agriculture.

17.12 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.

17.13 The Governing Body shall elect its Chairperson and Vice-Chairpersons (collectively referred to as “the Bureau”), in conformity with its rules of procedure.

¹ Subject to the legal basis of this Undertaking.

² The final negotiation of these texts will be subject to the negotiation of Articles 20 and 21.

**TEXT FOR ARTICLE 18, ESTABLISHED BY THE CONTACT GROUP
DURING ITS FIFTH INTER-SESSIONAL MEETING**

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]].]

or

[18.1 The Secretariat of the Commission on Genetic Resources for Food and Agriculture shall act as the Secretariat of the Governing Body, assisted by such staff as may be required.]

18.2 The Secretariat shall comprise such staff as may be required, with the approval of the Governing Body.

18.3 Some activities could be delegated or shared by the Secretariat, under conditions to be approved by the Governing Body.

18.4 The Secretariat shall perform the following functions:

- (a) arrange for and service meetings of the Governing Body;
- (b) assist the Governing Body in carrying out its functions and responsibilities, including performing specific tasks that the Governing Body shall decide to assign to it;
- (c) report on its activities to the Governing Body.

18.5 The Secretariat 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.

18.6 The Secretariat shall provide translations in the official languages[of FAO], of documentation for meetings of the Governing Body.

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

**TEXT FOR ARTICLE 20, ESTABLISHED BY THE CONTACT GROUP
DURING ITS FIFTH INTER-SESSIONAL MEETING**

Article 20 – Amendments of the Undertaking³

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 Secretariat 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, the meeting for that purpose counting upon a minimum attendance of two thirds of the Parties, members of the IU, unless, where specifically stated, consensus is required.] / [All amendments to the present Undertaking shall only be made by consensus of all Parties to this Undertaking.]

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.

³ This Article draws on the text of Article 29 of the Convention on Biological Diversity.

**TEXT FOR ARTICLE 21, ESTABLISHED BY THE CONTACT GROUP
DURING ITS FIFTH INTER-SESSIONAL MEETING**

Article 21 – Amendments of Annexes⁴

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.

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.] [Amendments to the annexes to this Undertaking shall be proposed in accordance with the procedure for the proposal of amendments to the Undertaking as set out in Article 20.] [Amendments shall only be adopted by consensus of all Parties to this Undertaking.]

21.3 An amendment to an annex to this Undertaking shall enter into force in accordance with the procedures set out in Article 20.4.

⁴ This Article draws on the text of Article 30 of the Convention on Biological Diversity.

**CHAIRMAN'S PROPOSAL FOR A NEW ARTICLE 8 BIS,
DURING THE FIFTH CONTACT GROUP, AND DELEGATIONS' COMMENTS**

New Article 8 bis - *Ex Situ* Collections of Plant Genetic Resources for Food and Agriculture held by the International Agricultural Research Centres of the CGIAR and other International Institutions

8 bis.1 Parties recognize that the *ex situ* collections of plant genetic resources for food and agriculture held by the International Agricultural Research Centres (IARCS) of the CGIAR are an important element of this Undertaking. The Parties invite the IARCs to sign agreements with the Governing Body, in accordance with the following terms and conditions:

- (a) Material listed in Annex I to this International Undertaking, and held by IARCs, shall be provided according to the provisions set out in Part IV of this Undertaking;
- (b) Material other than that listed in Annex I to this Undertaking and collected before its entry into force, which is held by IARCS, shall be provided in accordance with a standardized Material Transfer Agreement. At its first meeting, the Governing Body will determine the conditions to be contained in the Material Transfer Agreement, in accordance with the relevant provisions of Articles 13 and 14, and taking into account any sovereign rights of the country of origin there may be over those materials;
 - (i) IARCs shall periodically inform the country in whose jurisdiction the material was collected, of Material Transfer Agreements entered into, according to a schedule to be established by the Governing Body;
 - (ii) Parties in whose jurisdiction materials were collected shall be provided with samples of such materials on simple demand;
 - (iii) Any monetary benefits deriving from the commercial use of such material shall accrue to the mechanism mentioned in article 17.2.h and be applied in particular to the conservation and sustainable use of the crops in question, particularly in national and regional programmes in developing countries, especially the least developed countries;
 - (iv) IARCs shall take all the relevant measures, in accordance with their capacity, in cases of violation of the MTA.
- (c) IARCs recognize the authority of the Governing Body to provide policy guidance relating to *ex situ* collections held by them, in accordance with this Undertaking.
- (d) The scientific and technical facilities in which the *ex situ* collections are conserved shall remain in charge of the IARCs, which undertake to manage and administer the *ex situ* collections in accordance with internationally accepted standards, including, with respect to storage, exchange and distribution of seeds, International Genebank Standards, and ensuring that all the material is duplicated in order to guarantee its safety.
- (e) Whenever appropriate, the Secretariat of the International Undertaking shall provide technical support, on request by the IARC, either directly or through an implementing mechanism.
- (f) The Secretariat of the International Undertaking shall have, at any time, right of access to the facilities, as well as right to inspect all activities performed therein directly related to the conservation and exchange of the material.

(g) If the orderly maintenance of the *ex situ* collections held by IARCs is impeded or threatened by whatever event, including *force majeure*, the Secretariat of the International Undertaking, with the approval of the host country, shall assist in its evacuation and/or transfer, to the extent possible.

8 bis.2 Access to material other than that listed in Annex I, received by International Institutions after the coming into force of this International Undertaking, shall be on mutually agreed terms to be decided by the country where the material is collected and the International Institutions that receive the material, and in harmony with the terms of the Convention on Biological Diversity.

8 bis.3 The Governing Body will also seek to establish agreements for the purposes stated in this Article with other relevant International Institutions.

Delegations' comments

[New Article 8 bis] / [New Article 12 bis {EU⁵}] - Ex Situ Collections of Plant Genetic Resources for Food and Agriculture held by the International Agricultural Research Centres of the CGIAR and other International Institutions

8 bis.1 Parties recognize that the *ex situ* collections of plant genetic resources for food and agriculture held [in trust {G77 US+ EU+}] by the International Agricultural Research Centres (IARCS) of the CGIAR [should {US Chair-}] [are] [constitute (G77+ EU+)] an important [element] / [component {G77 US+ EU+}] of this Undertaking. [To that effect {US EU+}], [the Parties [shall {US}]] invite the IARCs to sign agreements with the Governing Body, in accordance with the following terms and conditions:] / [the Governing Body, in signing agreements with IARCs regarding such collections, shall do so in accordance, *inter alia*, with the following terms and conditions: {G77 US-}]

- (a) Material [covered by {G77}] / [listed in] Annex I to this International Undertaking, and held by IARCs, shall be [provided according] / [subject {CAN}] to the provisions set out in Part IV of this Undertaking;
- (b) Material other than that [listed in] / [covered by {G77}] Annex I to this Undertaking [and collected before its entry into force {CAN delete and 8.2 EU+ ANG- at this stage}], which is held by IARCS, shall be provided in accordance with a standardized Material Transfer Agreement[, legally accepted by Parties to it, before access is granted{G77}]. At its first meeting, the Governing Body will determine [by consensus {CAN}] the conditions to be contained in the Material Transfer Agreement, in accordance with the relevant provisions of Articles 13 [regarding obligations of recipients of material {G77}] and [Article {G77}]14 {CAN proposes deleting rest of this chapeau} [EU more precise words needed like “applied with equivalent effect”], and taking into account any sovereign rights of the country of origin {EU sovereign rights should be treated under a new article 11.3} there may be over those materials[;] /[,besides, {G77}]
 - (i) IARCs shall periodically inform [the] [each {CAN}] country [providing plant genetic resources for food and agriculture about the {CAN EU+}] / [in whose jurisdiction the material was collected, of] Material Transfer Agreements entered into, according to a schedule to be established by the Governing Body;
 - (ii) [Parties] [Countries] [that have provided plant genetic resources for food and agriculture] / [in whose jurisdiction materials were collected {EU find a better word} {CAN EU+}] shall be provided with samples of such materials on simple demand;
 - (iii) Any monetary benefits deriving from the commercial use of such material shall accrue to the mechanism mentioned in article 17.2.h and be applied in particular to the conservation and sustainable use of the crops in question, particularly in national and regional programmes in developing countries, especially the least developed countries[, and the regions from which the material was collected. {G77}]{CAN delete EU-, but link to provisions of 14}{POL adds “countries with economies in transition”}
 - (iv) [IARCs shall take all the relevant measures, in accordance with their capacity, in cases of violation of the MTA.] / [IARCS and the Governing Body shall develop appropriate guidelines to address cases of violation of MTAs {USA Chair+ EU+}]
- (c) IARCs recognize the authority of the Governing Body to provide policy [direction and {G77}] guidance relating to *ex situ* collections held by them, in accordance with this Undertaking.

⁵ NOR supported all the EU amendments.

- (d) The scientific and technical facilities in which the *ex situ* collections are conserved shall remain in charge of the IARCs, which undertake to manage and administer the *ex situ* collections in accordance with internationally accepted standards, including, with respect to storage, exchange and distribution of seeds, International Genebank Standards, and ensuring that all the material is duplicated in order to guarantee its safety.
- (e) Whenever appropriate, the Secretariat of the International Undertaking shall provide technical support, on request by the IARC[, either directly or through an implementing mechanism [either directly or indirectly{CAN EU+}]].
- (g) If the orderly maintenance of the *ex situ* collections held by IARCs is impeded or threatened by whatever event, including *force majeure*, the Secretariat of the International Undertaking[, with the approval of the host country] [{EU suggests stipulating the responsibility of the Governing Body}], shall assist in its evacuation and/or transfer, to the extent possible.

[8 bis.2 Access to material other than that listed in Annex I, received by International Institutions after the coming into force of this International Undertaking, shall be on mutually agreed terms to be decided by the country where the material is collected and the International Institutions that receive the material, and in harmony with the terms of the Convention on Biological Diversity. {US delete POL+ G77- NOR+ IND- BRA-}]

8 bis.3 The Governing Body will also seek to establish agreements for the purposes stated in this Article with other relevant International Institutions.

[8 bis.4 Parties are encouraged to provide access, as appropriate, to plant genetic resources for food and agriculture of [present mandate {BRA}] crops not listed in Annex 1 that are important to the programmes and activities of the IARCs of the CGIAR. Such access should be [consistent with the provisions of this Article {BRA}], and to the extent possible, on terms consistent with the in trust nature of the CGIAR *ex situ* collections. {US modified by BRA}]

**TEXTS PROPOSED DURING THE FIFTH CONTACT GROUP FOR ARTICLES 11;
12.2; AND 12.5 (FOR POSSIBLE MOVING TO ARTICLE 13)**

EU PROPOSAL FOR AN ADDENDUM TO ARTICLE 11

[11.3 In the exercise of their sovereign rights, Parties agree to establish a system for the plant genetic resources for food and agriculture covered by Article [8] / [12 bis]. The system shall be efficient, effective, and transparent, both 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, on a complementary and mutually re-inforcing basis.]

US PROPOSAL FOR ARTICLE 12.2

[12.2 Parties are encouraged to include in the Multilateral System, as identified in paragraph 12.1, plant genetic resources for food and agriculture listed in Annex 1 from diverse holdings within their territory. At a minimum the Multilateral System, as identified in paragraph 12.1, shall encompass plant genetic resources for food and agriculture that are under the management and control of the national government of a Party.]

**EU PROPOSAL FOR TEXT FOR ARTICLE 12.5
(FOR POSSIBLE MOVING TO ARTICLE 13)**

[12.5 Parties shall provide information, as far as possible and in accordance with their national capabilities, on plant genetic resources for food and agriculture in Annex 1, available for facilitated access under Article 13 of this Undertaking. Such information shall include details of contacts through which the plant genetic resources for food and agriculture may be obtained, and shall be provided through the information system referred to in Article 10 of this Undertaking. The International Agricultural Research Centres of the Consultative Group on International Agricultural Research and other international institutions which make plant genetic resources for food and agriculture available to the Multilateral System under paragraph 2 above shall, as far as possible, also provide such information.]

APPENDIX A – ANNEXE A – ANEXO A –

**LIST OF DELEGATES AND OBSERVERS
LISTE DES DELEGUES ET OBSERVATEURS
LISTA DE LOS DELEGADOS Y OBSERVADORES**

	:	
	:	
Chair	:	Fernando GERBASI
Président	:	(Venezuela)
Presidente	:	
	:	
	:	
Vice-Chairs	:	Abebe DEMISSIE
Vice-présidents	:	(Ethiopia) (Acting Vice-Chair)
Vicepresidentes	:	
	:	Gert KLEIJER
	:	(Switzerland)
	:	Eng Siang LIM
	:	(Malaysia)
	:	Ms Kristiane HERRMANN
	:	(Australia)
	:	Javad MOZAFARI
	:	(Islamic Republic of Iran) (Acting Vice-Chair)
	:	Brad FRALEIGH
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APPENDIX B

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Benin	New Zealand
Brazil	Norway
Burkina Faso	Philippines
Canada	Poland
China	Romania
Colombia	Samoa
Cuba	Senegal
Ethiopia	South Africa
European Community	Sweden
France	Switzerland
Germany	Tanzania, United Republic of
India	United Kingdom
Iran, Islamic Republic of	United States of America
Japan	Uruguay
Korea, Republic of	Venezuela
Libya	Zambia
Malaysia	Zimbabwe
Malta	