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CONFERENCE

Twenty-eighth Session

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PROGRESS REPORT ON THE REVISION OF THE INTERNATIONAL UNDERTAKING ON PLANT GENETIC RESOURCES

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I. INTRODUCTION

1. Conference Resolution 7/93 requested the revision of the International Undertaking on Plant Genetic Resources, in harmony with the Convention on Biological Diversity, through negotiations among governments. Section II of this document provides background information on the International Undertaking and the mandate for its revision. Section III reports progress to date. Section IV provides a schedule of negotiating sessions of the Commission on Plant Genetic Resources and their financial implications.

II. CONTEXT AND BACKGROUND

2. The International Undertaking was adopted by the FAO 1983 Conference as Resolution 8/83, with reservations by eight countries.¹ It was the first comprehensive agreed international instrument on plant genetic resources. It seeks to "ensure that plant genetic resources of economic and/or social interest, particularly for agriculture, will be explored, preserved, evaluated and made available for plant breeding and scientific purposes". The implementation of the Undertaking is monitored by the Commission. Currently, 110 countries have adhered to the Undertaking.²

3. In order to meet the concerns of those countries that expressed reservations, the Undertaking has been qualified and interpreted by a number of FAO Conference resolutions unanimously adopted in 1989 and 1991. The first such resolution (4/89) recognized that Plant Breeders' Rights, as provided for by the International Union for the Protection of New Varieties of Plants (UPOV) Convention of 1978, were not inconsistent with the Undertaking. It simultaneously recognized "Farmers' Rights", which were defined in a second resolution (5/89). The third resolution (3/91) recognized the sovereign rights of nations over their genetic resources and agreed that Farmers' Rights will be implemented through an international fund for plant genetic resources. The third resolution also agreed "that breeders' lines and farmers' breeding material should only be available at the discretion of their developers during the period of development". This process has sought to achieve and maintain a balance between access to the new products of biotechnology (commercial varieties and breeders' lines) on the one hand, and farmers' varieties and wild material on the other, together with the interests of developed and developing countries, by balancing the rights of breeders (formal innovators) and farmers (informal innovators).

4. The 1991 FAO Conference, which endorsed Resolution 3/91, in recognizing "the important consensus reached on a number of delicate issues such as sovereignty over plant genetic resources, access to breeders' and farmers' material and implementation of Farmers' Rights through an international fund", also recognized that "other relevant matters, such as conditions of access to plant genetic resources and the nature and size of the fund, needed to be further discussed and negotiated in the light of the decisions on funding mechanisms and access to biodiversity of the 1992 United Nations Conference on Environment and Development" (UNCED).

5. In May 1992, Resolution 3 of the Nairobi Final Act identified access to *ex situ* collections not acquired in accordance with the Convention, and Farmers' Rights, as outstanding issues not addressed by the Convention, and recognized that solutions should be sought within the FAO Global System on Plant Genetic Resources. Background information, summary analysis, and the identification of matters to be resolved on these issues, were provided by FAO to the First Conference of the Parties.³ In June 1992 the United Nations Conference on Environment and

¹ Canada, France, Germany, Japan, New Zealand, Switzerland, the United Kingdom and the United States of America.

² For a list of these countries, see Appendix 1 of document C 95/INF/19, *Progress Report on the Global System for the Conservation and Utilization of Plant Genetic Resources for Food and Agriculture*.

³ UNEP/CBD/COP/1/Inf.3.

Development (UNCED) called for the strengthening of the FAO Global System on Plant Genetic Resources and its adjustment in line with the Convention on Biological Diversity, as well as for the realization of Farmers' Rights.

6. The FAO Conference, at its Twenty-seventh Session, in November 1993, unanimously adopted Resolution 7/93, "Revision of the International Undertaking on Plant Genetic Resources" (see *Appendix 2*), which requested the Director-General to provide a forum for negotiation among governments for:

- the adaptation of the International Undertaking on Plant Genetic Resources, in harmony with the Convention on Biological Diversity⁴;
- consideration of the issue of access on mutually agreed terms to plant genetic resources, including *ex situ* collections not addressed by the Convention;⁵ and
- the issue of the realization of Farmers' Rights.

7. The Resolution urged that the process be carried out through the Commission on Plant Genetic Resources, with the help of its Working Group, in close collaboration with the Governing Body of the Convention on Biological Diversity, and recognized the importance of mutual reporting in these matters between the Commission and the Governing Body of the Convention.

8. FAO has regularly reported to the contracting Parties to the Convention on Biological Diversity. In the Intergovernmental Committee on the Convention, there was strong support for the negotiating process for the revision of the International Undertaking, and for bringing the revised Undertaking within the framework of the Convention, possibly in the form of a protocol. The meeting of the Conference of the Parties has included this subject in its Medium-term Programme of Work, as Item 5.9.

9. The Fifth Session of the Commission considered that "the revision of the International Undertaking should be conducted carefully, as a gradual pragmatic and step-by-step process, building on the consensus already achieved through the Commission's previous discussions, as embodied in the International Undertaking and its annexes". This was endorsed by the 1993 FAO Conference.

III. THE NEGOTIATING PROCESS

10. The implementation of FAO Conference Resolution 7/93 for the revision of the International Undertaking, is being addressed through both regular and extraordinary sessions of the Commission, assisted by its intergovernmental Working Groups.

11. Following discussions by the Working Group, a first draft of the consolidated text, incorporating the annexes into the main body of the Undertaking, was submitted to the First Extraordinary Session of the Commission, which undertook a first reading of Articles 1 to 14, noting alternative wordings that countries wished to suggest, identifying subjects that would require further negotiation and making additional comments on the structure of the text and proposals for modifications. It requested the Secretariat to incorporate these into a second draft of the consolidated text, to be considered at its Sixth Session.

⁴ While the Convention on Biological Diversity covers all kinds of biological diversity, the scope of the Undertaking is limited to plant genetic resources for food and agriculture.

⁵ It should be noted that this formulation, adopted after careful negotiations, although limited to plant genetic resources for food and agriculture, is not limited only to *ex situ* collection not addressed by the Convention.

12. In discussing the second draft of the consolidated text of the International Undertaking, the Sixth Session⁶ concentrated on Articles 3 ("Scope"), 11 ("Availability of Plant Genetic Resources"), and 12 ("Farmers' Rights"), taking into consideration a number of secretariat documents⁷ analysing scientific, economical, legal and institutional aspects of the issues. It also undertook a first reading of the preamble. The Commission requested the Secretariat to integrate proposed new texts put forward by countries into a new consolidated text, for further negotiation.

13. The report of the First Extraordinary Session of the Commission was made available to the First Conference of the Parties. The report of the Sixth Session of the Commission will be made available to the second session of the Conference of the Parties. It contains, *in extenso*, the proposals made by countries for the next consolidated draft negotiating text.

14. The Commission has foreseen the continuation of its negotiations for the revision of the International Undertaking, through extraordinary and regular sessions in 1996 and 1997.

15. A question that remains to be addressed is the possible legal and institutional status of the revised International Undertaking. In the light of the discussions of the Commission, the options for the status of the revised Undertaking (each of which implies different legal and institutional arrangements) appear to include the following:

- a) Continuation of the present legal status of the Undertaking;
- b) Adoption as a legally-binding agreement under Article XIV of the FAO Constitution;
- c) Adoption as a legally-binding agreement under the auspices of FAO but outside its constitutional framework;
- d) Adoption as a legally-binding Protocol to the Convention on Biological Diversity.

16. The Commission, in its First Extraordinary Session, agreed that it was premature to decide on matters related to the legal and institutional status of the revised Undertaking, until later in the process, and that the first steps of revising the Undertaking should not pre-empt or prejudge this question. The approach has therefore been to keep options open, by drafting revisions in such a way as to facilitate conversion to a legally-binding instrument, if so decided in due course, and by ensuring consultation with the Conference of the Parties to the Convention on Biological Diversity.

17. A comprehensive legal study of the various possibilities, and an analysis of the implications of each of the options, was prepared by the secretariat⁸ and presented to the Sixth Session of the Commission. The Commission is expected to address the issue in 1996.

IV. SCHEDULE OF MEETINGS AND FINANCIAL IMPLICATIONS

18. Conference Resolution 7/93 urged that the process of revising the International Undertaking "be carried out through regular and extraordinary sessions of the Commission on Plant Genetic Resources, convened, if necessary, with extra-budgetary financing and with the help of its subsidiary body"⁹. It agreed that an extraordinary session of the Commission should be held in 1994 to begin the negotiating process.¹⁰ The negotiating sessions held in the 1994-95 biennium are indicated in the following table:

⁶ The Report of the Commission's Sixth Session is available to the Conference of the Parties as an information document.

⁷ CPGR-6/95/8, *Revision of the International Undertaking on Plant Genetic Resources: Issues in Stage II: Access to Plant Genetic Resources and Farmers' Rights*, CPGR-6/95/8-Supp., *Revision of the International Undertaking on Plant Genetic Resources: Analysis of some Technical, Economic and Legal Aspects for Consideration in Stage II: Access to Plant Genetic Resources and Farmers' Rights* and CPGR-6/95/8 Annex, *Survey of Existing Data on ex situ Collections of Plant Genetic Resources for Food and Agriculture*.

⁸ CPGR-6/95/9, *Revision of the International Undertaking on Plant Genetic Resources, Stage III - Legal and Institutional Matters*.

⁹ The Conference emphasized the need to secure "the full participation of developing countries". Appendix 3 provides information on the funds that have been made available, and that are still needed.

¹⁰ Sessions of the Working Group (the first of which was an extraordinary session) preceded the sessions of the Commission to facilitate the negotiations.

NEGOTIATING SESSIONS OF THE COMMISSION IN THE 1994-95 BIENNIUM	
SESSION	PURPOSE
First Extraordinary Session, 7-11 November 1994 (1 week)	Considered a first draft of the revised International Undertaking, integrating the annexes of the Undertaking into the main text.
Sixth Regular Session, 19-30 June 1995 (2 weeks)	The meeting considered the regular agenda as well as a consolidated draft of the revised Undertaking, and prepared a new negotiating text for the Preamble, Article 3 (Scope), Article 11 (Availability of PGR) and Article 12 (Farmers' Rights).

19. The financial resources required to prepare and convene this series of meetings were made available within the Regular Programme, through an appropriate reallocation of resources.

20. The Commission, at its Sixth Session, considered its future work and, after much discussion, agreed that there should be two extraordinary sessions of one week each, subject to the availability of funds:

"The Commission *agreed* that the extraordinary session to be held in April 1996 should be of six days duration and should entail evening sessions. While the main focus of the meeting would be to finalize preparation for the Technical Conference, an adequate period of time should be devoted to questions relating to the Undertaking to prepare well the substantive negotiations to be held at the extraordinary session which, it had been agreed, should be held in the second half of 1996".

"The Secretariat informed the Commission that in FAO's 1996-97 Programme of Work and Budget, provision had been made for one extraordinary session of two weeks, preceded by a Working Group in 1996, and regular sessions in 1997. The holding of two sessions of one week each would require additional resources. The Commission urged the Secretariat to secure allocation of these resources from the Regular Programme budget of FAO. The need for a clear time-table for completing this process was stressed".¹¹

21. The proposed negotiating sessions of the Commission for the 1996-97 biennium, agreed in its Sixth Session, are given in the table on the following page.

22. In the 1996-97 proposed Programme of Work and Budget, provision has been made for a two-week extraordinary session of the Commission in 1996 and a one-week regular session in 1997. The holding of the two extraordinary sessions agreed by the Commission for 1996 (one of six days, with evening meetings, and another of a regular week), instead of the two-week extraordinary session programmed in the PWB will mean an increase in costs of US\$200 000.

¹¹ The Commission considered that if funds were not obtained for a second extraordinary session from the Regular Programme budget of FAO, the agenda for a single one-week session, to be held in April 1996, would have to be reconsidered to ensure that both issues were definitely addressed, first the Global Plan of Action, and then the revision of the Undertaking.

23. In addition, should further negotiation be required to complete the revision of the Undertaking for the 1997 Conference, the Commission may call for a further negotiating session, in which case, a further sum of between US\$350 000 and 500 000 (depending on the length of the session) would be required.

NEGOTIATING SESSIONS OF THE COMMISSION, AS AGREED AT THE SIXTH SESSION OF THE COMMISSION ON PLANT GENETIC RESOURCES	
SESSION	PURPOSE
Second Extraordinary Session, April 1996 (six working days with night sessions)	To finalize the report on the State of the World's Plant Genetic Resources, negotiate the Global Plan of Action for the Fourth International Technical Conference, and to prepare substantive negotiations on the Undertaking for its next session.
Third Extraordinary Session, late 1996 (one regular week)	Negotiations for the revision of the International Undertaking.
Seventh Regular Session, early 1997 ¹²	Regular agenda and further negotiations of the Undertaking. This may also be the first meeting of a broadened Commission on Genetic Resources for Food and Agriculture.

24. The question of the budgetary funds for the participation of developing countries in the negotiating process is dealt with in *Appendix 3*.

¹² The Commission did not discuss the length of its Seventh Regular Session scheduled for early 1997. This may be the first meeting of the broadened Commission, and may need to be of two weeks' duration to allow the regular agenda to be addressed and to provide adequate time for further negotiations on the text of the International Undertaking.

APPENDIX 1

**RESOLUTION 3 OF THE NAIROBI CONFERENCE FOR THE ADOPTION OF
THE AGREED TEXT OF THE CONVENTION ON BIOLOGICAL DIVERSITY****THE INTERRELATIONSHIP BETWEEN THE CONVENTION ON BIOLOGICAL DIVERSITY
AND THE PROMOTION OF SUSTAINABLE AGRICULTURE***THE CONFERENCE,*

Having agreed upon and adopted the text of the Convention on Biological Diversity at Nairobi on 22 May 1992,

Recognizing the basic and continuing needs for sufficient food, shelter, clothing, fuel, ornamental plants and medicinal products for peoples of the world,

Emphasizing that the Convention on Biological Diversity stresses the conservation and sustainable use of biological resources,

Recognizing the benefits from the care and improvement by the peoples of the world of animal, plant and microbial genetic resources to supply those basic needs and from the institutional research on and development of those genetic resources,

Recalling that broadly-based consultations in international organizations and forums have studied, debated and achieved consensus on urgent action for the security and sustainable use of plant genetic resources for food and agriculture,

Noting that the Preparatory Committee of the United Nations Conference on Environment and Development has recommended that policies and programmes of priority for *in-situ*, on-farm and *ex-situ* conservation and sustainable use of plant genetic resources for food and sustainable agriculture, integrated into strategies and programmes for sustainable agriculture, should be adopted not later than the year 2000 and that such national action should include *inter alia*:

- a) Preparation of plans or programmes of priority action on conservation and sustainable use of plant genetic resources for food and sustainable agriculture based, as appropriate, on country studies on plant genetic resources for food and sustainable agriculture;
- b) Promotion of crop diversification in agricultural systems where appropriate, including new plants with potential value as food crops;
- c) Promotion of utilization of, as well as research on, poorly known but potentially useful plants and crops, where appropriate;
- d) Strengthening of national capabilities for utilization of plant genetic resources for food and sustainable agriculture, plant breeding and seed production capabilities, both by specialized institutions and farmers' communities;
- e) The completion for the first regeneration and safe duplication of existing *ex-situ* collections on a world-wide basis as soon as possible; and
- f) The establishment of *ex situ* base collection networks,

Noting further that the Preparatory Committee for the United Nations Conference on Environment and Development has recommended:

- a) The strengthening of the Global System for the Conservation and Sustainable Use of Plant Genetic Resources for Food and Sustainable Agriculture operated by the Food and Agriculture Organization of the United Nations in close cooperation with the International Board for Plant Genetic Resources, the Consultative Group on International Agricultural Research and other relevant organizations;
- b) The promotion of the Fourth International Technical Conference on the Conservation and Sustainable use of Plant Genetic Resources for Food and Sustainable Agriculture in 1994 to adopt the first State-of-the-World Report and the first Global Plan of Action on the Conservation and Sustainable Use of Plant Genetic Resources for Food and Sustainable Agriculture; and
- c) The adjustment of the Global System for the Conservation and Sustainable Use of Plant Genetic Resources for Food and Sustainable Agriculture in line with the outcome of the negotiations on a Convention on Biological Diversity,

Recalling the agreement in the Preparatory Committee for the United Nations Conference on Environment and Development on provisions regarding conservation and utilization of animal genetic resources for sustainable agriculture,

1. *Confirms* the great importance of the provisions of the Convention on Biological Diversity for the conservation and utilization of genetic resources for food and agriculture;
2. *Urges* that ways and means should be explored to develop complementarity and cooperation between the Convention on Biological Diversity and the Global System for the Conservation and Sustainable Use of Plant Genetic Resources for Food and Sustainable Agriculture;
3. *Recognizes* the need for the provision of support to the implementation of all activities agreed upon in the programme area on conservation and sustainable utilization of plant genetic resources for food and sustainable agriculture and in the programme area on conservation and utilization of animal genetic resources for sustainable agriculture in the Agenda 21 proposed to be adopted at the United Nations Conference on Environment and Development in Rio de Janeiro;
4. *Further recognizes* the need to seek solutions to outstanding matters concerning plant genetic resources within the Global System for the Conservation and Sustainable Use of Plant Genetic Resources for Food and Sustainable Agriculture, in particular:
 - a) Access to *ex situ* collections not acquired in accordance with this Convention; and
 - b) The question of farmers' rights.

Adopted on 22 May 1992

APPENDIX 2
FAO CONFERENCE RESOLUTION 7/93, ON FOLLOW-UP TO RESOLUTION 3
OF THE NAIROBI FINAL ACT

REVISION OF THE INTERNATIONAL UNDERTAKING ON PLANT GENETIC RESOURCES

THE CONFERENCE,

Noting that

- a) the United Nations Conference on Environment and Development (UNCED), in Chapter 14 of its Programme of Action, Agenda 21, recommended that the Global System on the Conservation and Sustainable Use of Plant Genetic Resources for Food and Sustainable Agriculture be strengthened, and that the System should be adjusted to be in line with the outcome of the negotiations of a Convention on Biological Diversity,
- b) the Convention on Biological Diversity, signed at UNCED by 156 governments and the European Communities, covers plant genetic resources, and recognizes that the authority to determine access to genetic resources rests with the national governments, that access to genetic resources shall be subject to the prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that party, and shall be on mutually agreed terms,
- c) the Final Act of the Nairobi Conference for the adoption of the agreed text of the Convention on Biological Diversity, in a resolution on the interrelationship between the Convention on Biological Diversity and the promotion of sustainable agriculture, urged that ways and means should be explored to develop complementarity and cooperation between the Convention on Biological Diversity and the Global System for the Conservation and Sustainable Use of Plant Genetic Resources for food and sustainable agriculture, and recognized the need to seek solutions to outstanding matters concerning plant genetic resources,
- d) the Fourth Session of the FAO Commission on Plant Genetic Resources agreed that conditions of access to plant genetic resources needed further clarification,

Recognizing

- a) the importance and urgency of revising the International Undertaking, in harmony with the Convention on Biological Diversity, on a step-by-step basis, starting with the integration of the Undertaking and its annexes,
- b) the need to ensure fair and equitable sharing of benefits with the countries providing plant genetic resources,
- c) the need to consider agreement on the terms of access to samples of plant genetic resources, including those preserved in *ex situ* collections, and not addressed by the Convention on Biological Diversity,
- d) the need to realize Farmers' Rights,

- e) the importance of close collaboration, including mutual reporting, in these matters, between the Commission on Plant Genetic Resources and the Governing Body of the Convention on Biological Diversity, the Intergovernmental Committee on the Convention on Biological Diversity, as well as the Commission on Sustainable Development;
1. *Requests* the Director-General to provide a forum for negotiations among governments:
 - a) for the adaptation of the International Undertaking on Plant Genetic Resources, in harmony with the Convention on Biological Diversity,
 - b) for consideration of the issue of access on mutually agreed terms to plant genetic resources, including *ex situ* collections not addressed by the Convention, as well as
 - c) for the issue of realization of Farmers' Rights;
 2. *Urges* that the process be carried out through regular and extraordinary sessions of the Commission on Plant Genetic Resources, convened, if necessary, with extra-budgetary financing, and with the help of its subsidiary body, in close collaboration with the Intergovernmental Committee on the Convention on Biological Diversity, and after the entry into force of the Convention, with its Governing Body;
 3. *Expresses* the hope that the process be concluded in time for the FAO International Technical Conference on Plant Genetic Resources; and
 4. *Suggests* that the outcome be submitted to the International Technical Conference and to the Conference of the Parties to the Convention on Biological Diversity.

(Adopted 22 November 1993)

APPENDIX 3

SUPPORT FOR THE PARTICIPATION OF DEVELOPING COUNTRIES IN THE NEGOTIATION OF THE REVISION OF THE INTERNATIONAL UNDERTAKING

1. Conference Resolution 7/93 urged that the process of revising the International Undertaking be carried out through regular and extraordinary sessions of the Commission and its Working Group, "convened, if necessary, with extrabudgetary financing", emphasized the need to secure "the full participation of developing countries", and "*requested* the Director-General to seek resources from the regular budget to expedite the process and to enable full participation of developing countries". FAO made available the sums necessary to allow the preparation and holding of the planned regular and extraordinary sessions of the Commission and its Working Group in the 1994-95 biennium by reallocation within the regular budget and approached potential donors or called donor meetings to seek support for the participation of developing country representatives in the negotiating sessions.
2. Canada made available a sum of approximately US\$25 000 at the time of the Commission's First Extraordinary Session (7-11 November 1994). At that session, "the importance of ensuring the presence of representatives from developing countries (particularly scientists and policy-makers), in the process of negotiating the International Undertaking [...] was again stressed". The Hundred-and-Seventh Session of the Council subsequently "*requested* the Director-General to seek extra-budgetary funds to ensure the participation of developing countries in the Commission, and *invited* potential donors to contribute generously". FAO accordingly convened a further donor meeting in early 1995.
3. At the time of the Commission's Sixth Session (19-30 June 1995), the Government of Canada made a second donation of about US\$25 000, and the Government of Italy a donation of US\$20 000, which made it possible to support some developing country delegates in that Session. The Commission thanked the countries that had made contributions and "reiterated the need for funds to be made available to facilitate the participation of developing countries in the negotiating process".
4. At the time of preparing the current document (July 1995), no new commitments had been announced, though there had been strong expressions of interest from one country. The amount of US\$630 660 is needed to cover the participation of developing country delegations (14 in the Working Group and 65 in the Commission) in the proposed sessions of the Commission and its Working Group in 1996 and 1997 agreed by the Commission's Sixth Session, at a cost of US\$33 880 for a session of the Working Group, and US\$184 660 for a session of the Commission.¹

¹ US\$193 700 for the six-day session.