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pour  
l'alimentation  
et  
l'agriculture

Organización  
de las  
Naciones  
Unidas  
para la  
Agricultura  
y la  
Alimentación



## Item 3 of the Provisional Agenda

### COMMISSION ON PLANT GENETIC RESOURCES

Sixth Session

Rome, 19-30 July 1995

**REPORT BY THE CHAIRMAN OF THE TENTH MEETING OF THE  
WORKING GROUP OF THE COMMISSION  
ON PLANT GENETIC RESOURCES**

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1. The first part of the document is a list of names and addresses of the members of the committee.



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## REPORT BY THE CHAIRMAN OF THE TENTH MEETING OF THE WORKING GROUP OF THE COMMISSION ON PLANT GENETIC RESOURCES

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### I. INTRODUCTION

1. The tenth meeting of the Working Group, which was held on 3, 4 and 5 May 1995, was attended by representatives of Australia, Brazil, Canada, Cape Verde, Congo, Egypt, Ethiopia, France, Germany, India, Israel, Japan, Lesotho, Libya, Madagascar, Malaysia, Mexico, Peru, Sweden, Tunisia and Venezuela. The European Union was also represented at the meeting under the terms of para. 8 and 9 of Article II of the FAO Constitution. The meeting was chaired by Mr J. M. Bolivar (Spain). The list of participants is given in Annex 1.
2. Professor A. Sawadogo, Assistant Director-General for Agriculture, opened the meeting and emphasized the relevance and importance which FAO and its Director-General attached to plant genetic resources and the issues to be examined by the Working Group, and specifically the negotiated revision of the International Undertaking and the Fourth International Technical Conference on Plant Genetic Resources. Before taking the floor, all the delegations congratulated Professor Sawadogo.

### II. ADOPTION OF THE AGENDA AND TIMETABLE FOR THE MEETING

3. The Working Group adopted the provisional agenda (Annex 2) and drew up a timetable. It adopted the proposal made by two delegations to discuss the agenda and timetable for the next meeting of the Commission, the public aspects of the negotiations for the revision of the Undertaking, and to be given a briefing on the informal meeting sponsored by SAREC in Stockholm, under "Any other business".
4. The possibility of inviting observers from international organizations to the Working Group meetings was then discussed. It was recalled that under the present terms of reference and procedures, this was only possible as an exception and at the request of the Group itself, while in the new draft terms of reference and procedures to be submitted to the Commission for eventual approval at its 6th Session, provision was made for the routine participation of observers. At the request of several delegations, the meeting discussed the advisability of inviting representatives of the International Plant Genetic Resources Institute (IPGRI), other Centres of the Consultative Group on International Agricultural Research (CGIAR) and the Secretariat of the Convention on Biological Diversity (CBD) to attend the meeting with observer status. The Group agreed to request the Secretariat to invite IPGRI as an exceptional measure to attend the debate on agenda item 3 "The Fourth International Technical Conference on Plant Genetic Resources" as an observer.

### III. REVISION OF THE INTERNATIONAL UNDERTAKING ON PLANT GENETIC RESOURCES

5. The Legal Advisor introduced this item, recalling the points that had been left pending at the last meeting of the Commission, and said that the Commission had defined three stages for the revision of the Undertaking, even though all three stages were linked.
6. It was decided that in order to debate this agenda item each delegate in turn should make general comments before moving on to the substantive debate on the issues which the extraordinary session of the Commission had specifically requested the Working Group to examine: Articles 3, Scope; 11, Access to genetic resources; and 12, Farmers' rights. The speakers considered that these were interrelated issues, and that it was necessary to define and explore all possible options.

7. The importance of cooperation and complementarity between the CBD and the FAO Global System for the Conservation and Utilization of Plant Genetic Resources. The Undertaking could be the instrument used by the CBD for plant genetic resources for food and agriculture.

8. The meeting appealed to donor countries to support the participation of the developing countries at the negotiating sessions of the Commission and its Working Group. A conservative estimate of the support required was 33 600 US dollars for each meeting of the Working Group, and 214 500 US dollars for each meeting of the Commission.

#### Scope of the International Undertaking

9. It was suggested that the revised International Undertaking should comprise both *in situ* and *ex situ* conservation, and sustainable utilization. It was suggested that the revised International Undertaking should also include the objectives of the CBD adapted to the case of Plant Genetic Resources for Food and Agriculture and Farmers' Rights, and other objectives intended to enhance food security.

10. The meeting then discussed whether the scope of the Undertaking should be limited to resources acquired before the entry into force of the CBD or to those acquired subsequently, or whether it should include both.

11. It was felt that the revised Undertaking should encompass all plant genetic resources for food and agriculture. It was pointed out that the Undertaking should provide a solid legal framework for the FAO Global System for the Conservation and Utilization of Plant Genetic Resources as a necessary element for ensuring worldwide food security.

12. Some countries were opposed to the inclusion of forest genetic resources in the Undertaking. Others held the opposite view, and it was recalled that these resources formed part of the mandate of FAO, and that approximately 20 percent of all farmers lived in woodlands. Different options were open in this regard:

- to keep the present formula used by the Undertaking, to cover "plant genetic resources of economic and/or social interest, particularly for agriculture";
- to restrict the scope of the Undertaking to genetic resources of cultivated plants, their wild relatives and wild food crops which are harvested, specifically excluding forestry genetic resources;
- not to exclude any group of plants that were actually or potentially of relevance to food and agriculture, but to add a list of mutually agreed species to which specific provisions of the Undertaking would apply, particularly in relation to access to and the distribution of benefits. This list would be an appendix to the revised Undertaking and could be periodically updated. It was suggested that the concept of "genepool" might be the best criterion for the list.

13. The Working Group discussed this latter possible option which, in principle, would reconcile different points of view. The option received fairly broad acceptance. However, one objection raised was that the incorporation of this list might lead to greater attention being given to major crops to the detriment of minor or local crops. It was felt that detailed consideration should be given to whether or not such a list should be incorporated into the revised Undertaking, bearing in mind both the practical and the scientific aspects.

#### Access to plant genetic resources

14. The question of how the Undertaking should treat material acquired before and after the entry into force of the CBD was then raised. Attention was drawn to the difficulty of making a distinction in practice between plant genetic resources acquired before the CBD and those acquired afterwards, and of identifying the place of origin of the former. The importance of national

sovereignty and the need to take account of national legislation were stressed. It was acknowledged that there was a difference between sovereignty and ownership, and that the latter could be private.

15. Many delegations considered it necessary to distinguish between PGR acquired before and after the CBD, and that Model A (CPGR-6/95/7, p. 34, Art. 11) might help to facilitate this distinction. This being so, the option for Model A could be reformulated by splitting the article in two: the new Article "11" would refer to material acquired before CBD and the new Article "11-bis" to material acquired subsequently.

16. Access to previously existing collections could be governed by Article "11" on the basis of free access and the implementation of Farmers' Rights on mutually agreed terms in a multilateral framework. Article "11-bis" would deal with the conditions of access to material acquired after the CBD, which would be negotiated by the Parties on mutually agreed terms. This would also be reflected in Article 14 (Financial Security). However, the difficulty of maintaining different access regimes was raised. Some delegations wished to be able to apply a common multilateral regime, at least to those species or gene-pools of relevance to food security, and those for which there was strong interdependency between countries. These could be the species or gene-pools set out in the list annexed to the Undertaking, to which reference was made earlier.

17. FAO has an important role to play in any multilateral agreement on plant genetic resources for food and agriculture, particularly with regard to the material being kept in the International Agricultural Research Centres (IARCs).

18. Article 16 of the CBD on access to technology and the need for this to be linked to plant genetic resource access was also recalled. It was recognized that access to plant genetic resources, biotechnology and the funds should be linked, in both multilateral agreements and bilateral agreements. Against this background, reference was made to document CPGR-6/95/8 Sup., which highlighted the technical constraints on applying bilateral agreements to certain types of plant genetic resources.

#### Farmers' Rights

19. While these rights were not incorporated into the CBD, Resolution 3 in the Nairobi Final Act had requested FAO to develop them within the Global System. The meeting acknowledged the importance of this concept, the pioneering work performed by FAO and its Commission on Plant Genetic Resources, and the need to make the concept operational within the framework of the International Undertaking and in the context of sustainable agriculture.

20. It was noted that it was difficult to exercise these rights in the absence of legislation, and they required a legal framework, perhaps beginning at the level of "international law". Many delegations considered that Farmers' Rights should be developed on an equal footing with Plant Breeders' Rights.

21. The meeting then discussed whether collective or individual rights were at issue here, and considered that these concepts to be compatible and that a collective compensation system should facilitate the fair and equitable distribution of the commercial benefits accruing as a result of the use of the material, which would encourage farmers to continue their work of conserving and developing plant genetic resources.

22. The concept of "added value" inherent in Farmers' Rights was emphasized, which justified their collective character, as was the difficulty of likening them to the concept of Plant Breeders' Rights. Farmers could be considered beneficiaries of the work performed by plant breeders, and Farmers' Rights should be considered as being complementary, and not opposed, to Plant Breeders' Rights.

23. Agreement was expressed on the need to develop the International Fund on Plant Genetic Resources agreed upon in Resolution 3/91 in order to make Farmers' Rights effective. The proposals made by certain countries on the (sometimes interrelated) purposes/objectives to which the fund would contribute included the following:

- financing the *in situ* and *ex situ* conservation and sustainable use of plant genetic resources, particularly through a Global Plan of Action;
- compensating farmers to make good their reduced income as a result of maintaining traditional varieties instead of cultivating more productive commercial varieties;
- making possible the fair and equitable participation of farmers and their communities in the benefits deriving from the use of their plant genetic resources; and
- raising the living standards of farmers and agricultural communities.

24. Some delegations considered that Farmers' Rights should be considered socio-economic rights, and that their implementation should not be limited to the Fund but should also include aspects such as the following:

- the traditional rights of farmers and their communities to keep, use, exchange, share and market their seeds and plant reproductive material, including the right known as the "farmers' privilege";
- access by farmers to new technologies and other research achievements;
- protecting local technologies, traditional cropping practices and other informal innovative systems; and
- the rights of communities as custodians of indigenous knowledge and of their own plant genetic resources.

25. Many delegations considered that Farmers' Rights should be developed through a *sui generis* system (whether or not based on intellectual property rights) at the national and international levels.

26. It was pointed out that the concept of Farmers' Rights had several operational dimensions, and in order to avoid confusion these dimensions should be dealt with separately, perhaps in separate articles. Three articles were suggested dealing with the following points:

- i) restating and balancing the concept of Farmers' Rights against the concept of Plant Breeders' Rights; including the acknowledgement of the right to "the farmers' privilege" namely the right to continue the traditional practice of re-using on their own holdings the seeds they harvest themselves;
- ii) linking Farmers' Rights to the funding mechanism, which would not only make it possible to compensate and incentivate farmers to contribute towards the conservation and development of plant genetic resources, but would also lay the foundations for just and equitable sharing of the benefits deriving from plant genetic resources, with a possible reference to the Global Plan of Action;
- iii) establishing the rights of traditional farmers and communities in the national context, as custodians of indigenous knowledge and plant genetic resources (in line with Article 8(j) of the CBD).

27. On the subject of funding sources (related to Art. 14) several delegations felt that the Fund for implementing Farmers' Rights should be replenished through "fixed contributions" regulated under international agreements. It was also felt that the resources of the Fund could come from both public sector and private sector sources. It was also suggested that it did not necessarily have to be a completely new Fund, but could be an autonomous "window" of existing funding mechanisms.

#### Legal and institutional options

28. The Working Group decided to examine this item in view of the relationship between the issues on the agenda and legal and institutional considerations. The Legal Counsel introduced

document CPGR-6/95/9, on "The Revision of the International Undertaking. Stage III: Legal and Institutional Options" which had been prepared for the Commission's Fifth Session.

29. There were four options for the legal status of the revised Undertaking:
- a non-legally binding instrument;
  - a legally binding instrument under Article XIV of the FAO Constitution;
  - a legally binding instrument adopted at a diplomatic conference (outside the framework of FAO);
  - a protocol to the CBD.

The status as a legal instrument would have implications for the nature of its governing body: the advisory, technical and scientific body; the secretariat and the financial mechanism, and ultimately on the type of support which FAO might give the Undertaking. The Working Group thanked the Legal Adviser for his clear and specific account of document CPGR-6/95/9, which would facilitate the work of the Commission when it examined these points.

30. It was noted out that the revised Undertaking could be a protocol to the CBD, but that it could also have a different multilateral financing instrument from the financing mechanism specific to the Convention. Nevertheless, it was still premature to decide on whether the Undertaking should be a protocol to the CBD.

31. Several countries considered that it was very important to ensure FAO's support for the revised Undertaking. If the Undertaking were to be adopted outside the ambit of FAO's Constitution, the Parties could seek financial support from FAO and FAO could act as the Secretariat, but in no case could the Conference act as the governing body. Two options were open regarding the adoption of the Undertaking: wait for the FAO Conference, or convene a diplomatic conference. The first option was felt to be the most economical.

32. The meeting then discussed whether the Undertaking could be adopted under Article XIV of the FAO Constitution and whether it could, at the same time, be a protocol to the Convention. The Legal Adviser felt that this was possible in principle. The matter was left pending for subsequent examination.

33. The future role of the Commission was discussed in the event that the Undertaking were adopted under Article XIV. Even if the governing body were formally the Conference, or more specifically, the FAO members who were parties to the instrument, meeting in the Conference, the Commission would still remain the forum for discussion.

#### IV. THE FOURTH INTERNATIONAL TECHNICAL CONFERENCE ON PLANT GENETIC RESOURCES

34. The Project Director of the Trust Fund for the preparation of the Fourth International Technical Conference introduced this item. He explained that the report before the Working Group was still provisional, and that the Commission would be issuing a more detailed and updated version. He therefore gave an informal progress report on the preparations for the Conference.

35. Letters of Agreement had been signed with the offices of the International Plant Genetic Resources Institute and its regional offices in various countries, and 16 regional consultants had been contracted to help with the preparation of the country reports. FAO and IPGRI personnel had visited about 90 countries; 125 countries had already designated their Focal Points and over 120 reports were expected. Reports had also been submitted by 12 CGIAR (Consultative Group on International Agricultural Research) Centres. Twelve sub-regional meetings had been organized for the latter half of 1995. Contact had been made with NGOs, and with many scientists and representatives of commercial organizations. The project had set up an electronic Bulletin Board to

facilitate participation in the preparatory process. There were still financing problems. 1 468 000 US dollars were needed for the basic budget, plus a further 881 000 dollars to enable 200 delegates from developing countries to attend the Conference.

36. A representative of IPGRI was invited to address the Working Group. He said that IPGRI attributed great importance to the Conference and its preparatory process, and wished to cooperate fully with FAO.

37. During the following debate a number of countries expressed an interest in convening regional meetings to complement the scheduled sub-regional meetings, where the possibility existed.

38. It was felt that the Report on the State of the World's Plant Genetic Resources should concentrate more on assessing their status rather than on describing it. The Global Plan of Action should be geared to action, with a portfolio of projects and an order of priorities. The importance of involving funding institutions in this project portfolio was also emphasized.

39. The Global Plan of Action had to be based on a strategy, but a distinction needed to be drawn between the strategy and the Plan of Action itself. The Commission had to be the forum for developing the strategy. Similarly the project portfolio and the funding mechanisms had to be negotiated in this forum.

40. It was important to establish a clear methodology for project evaluation. Each project had to set out the problem, the objectives, the activities and the benefits, so that they could be systematically evaluated.

41. While the Undertaking laid down the legal framework for the Global System on Plant Genetic Resources, the Global Plan of Action would be one of the instruments to reach its objectives and facilitate the realization of Farmers' Rights. As a result, the Undertaking and the Technical Conference were very closely related within the Global System. Some delegations pointed out that until the revised Undertaking was ready, uncertainty would remain that would hamper the implementation of any Plan of Action.

42. Many countries mentioned the interdependency between Plant Genetic Resources and food security. Some considered that the Food Summit convened by FAO for the end of 1996 should draw on the results of the Fourth International Technical Conference on Plant Genetic Resources and the negotiation of the International Undertaking.

43. The Secretariat was asked whether it would be possible to convene another extraordinary meeting before the end of 1995. The Secretariat said that while this was technically feasible, no funds had been allocated to it for the 1994-95 biennium. It had been suggested that an Extraordinary Session of the Commission should be convened in March 1996, even though the 1996 budget had not yet been adopted.

## V. ANY OTHER BUSINESS

44. The agenda for the next meeting of the Commission was then discussed. It was emphasized that as much time as possible should be devoted to negotiating the International Undertaking and preparing the Fourth International Technical Conference. It was suggested that, as far as possible, the other issues should be discussed during the first three days of the meeting, and to facilitate this it was proposed that the provisional agenda items 5 (Progress Report on the Global System for the Conservation and Utilization of Plant Genetic Resources for Food and Agriculture) and 9 (Progress Reports on the Preparation of other International Agreements) should be discussed together, within the framework of the Global System.

45. Agreement was also reached to link the various stages proposed for the revision of the International Undertaking, and to suggest that the Commission open the negotiations by discussing the three aspects (the Scope of the Undertaking, Access to Plant Genetic Resources, Farmers' Rights) that had already been debated in the Working Group.

46. With regard to the Code of Conduct on Biotechnology, the Group recalled that the Fifth Meeting of the Commission had discussed the first draft and had asked the Working Group to advise the Secretariat as to whether the new draft should be submitted to the Sixth Meeting of the Commission. Bearing in mind the heavy workload on the provisional agenda and the fact that some of the issues covered by the first draft of the Code had been discussed in the framework of the revision of the International Undertaking and the preparatory work for the Fourth International Technical Conference, the Group felt that it would be better to wait for a later meeting of the Commission to discuss a new draft of the Code. Meanwhile, the Sixth Meeting could examine a document prepared by the Secretariat giving details of the biotechnological developments of the last two years of relevance to the various aspects covered by the first draft of the Code.

47. At the request of the Working Group, the Secretariat gave a wide-ranging report on the status of cooperation with the Secretariat of the Convention on Biological Diversity and the conclusions of the First Conference of the Parties to the Convention, saying that these issues had been dealt with in detail in one of the documents prepared for the meeting of the Commission. The Group asked the Secretariat to ensure that the report of the last session of the Conference of the Parties to the CBD and the relevant parts of the report of the Third Session of the Commission on Sustainable Development were submitted to the Commission as information documents.

48. The meeting then discussed the proposals made by several delegations to enlist external support to publicize the negotiations of the Commission through the media (for example through the Earth Negotiations Bulletin). It was also suggested that the relevant documents of the Commission should be disseminated through Internet.

49. One delegation submitted the report of the Informal Meeting organized by SAREC in Stockholm on 1 and 2 March 1995, entitled "Plant Genetic Resources for Food and Agriculture. Towards a Multilateral Agreement".

50. The Working Group requested the Chairman to send his report of the meeting to the delegations as soon as it was ready in the original language, and asked the Secretariat to have it translated into the other official languages as soon as possible.

51. Before adjourning the meeting, the Director of the Plant Production and Protection Division emphasized the importance of the ongoing negotiations and congratulated the delegates on the high level of the debate. Lastly, the Chairman thanked the delegates for their constructive contributions to the meeting, the Secretariat for the excellent documentation and organisational arrangements, and the interpreters for their good work.



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ANNEX 1  
LIST OF PARTICIPANTS

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**10th Session of the Working Group of the Commission on Plant Genetic Resources  
10ème reunion du Groupe de travail de la Commission des ressources phylogénétiques  
10ma Reunión del Grupo de Trabajo de la Comisión de Recursos Fitogenéticos**

Mexico Room, 3 - 5 May 1995  
Salle du Mexique, 3 - 5 mai 1995  
Sala de México, 3 - 5 de Mayo de 1995

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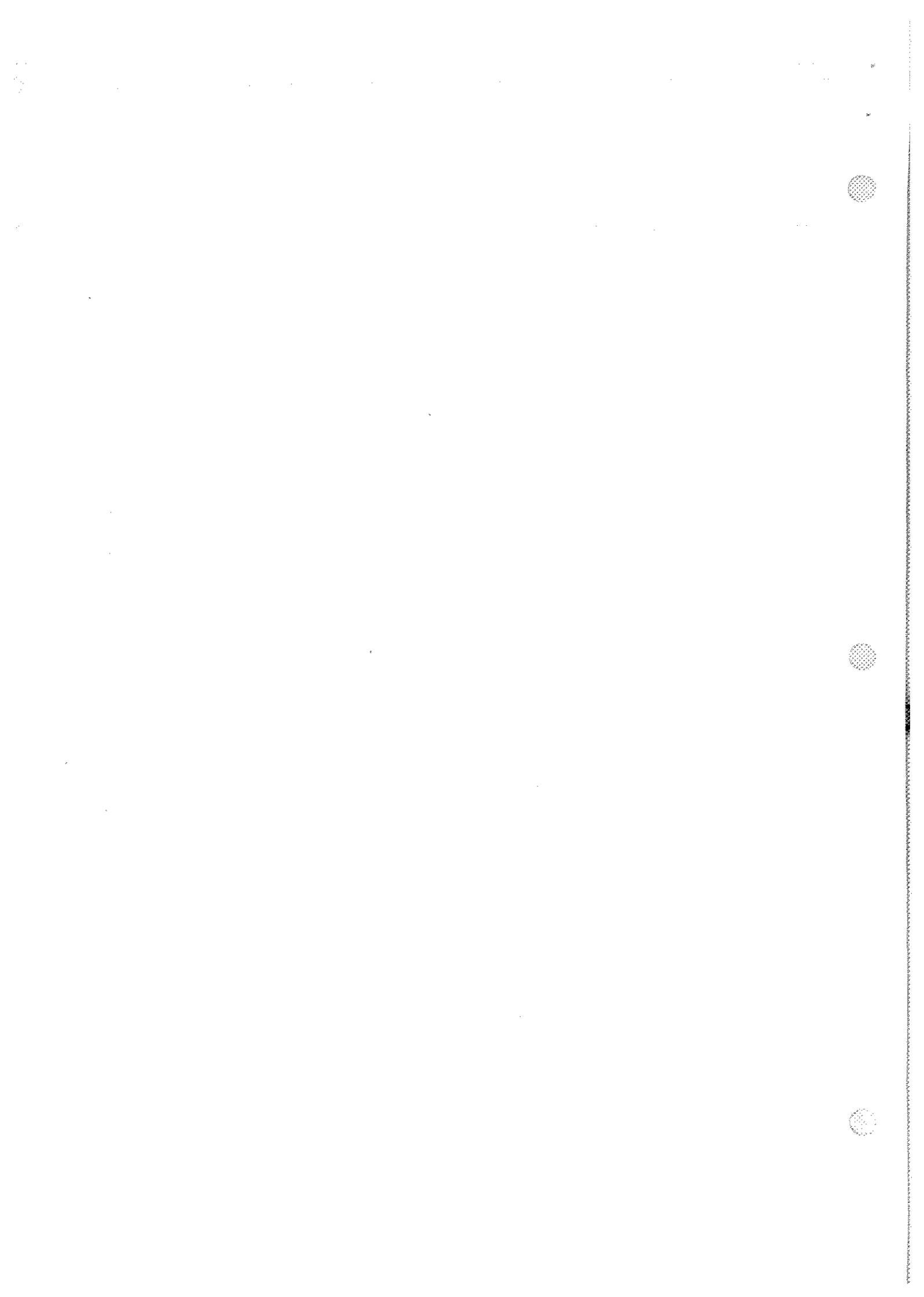
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ANNEX 2  
ANNOTATED PROVISIONAL AGENDA

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1. **Adoption of the Agenda and Timetable for the Meeting**
2. **Revision of the International Undertaking on Plant Genetic Resources**

At its First Extraordinary Session, the Commission on Plant Genetic Resources agreed that the Tenth Meeting of the Working Group should prepare the work of the Commission for future negotiations, relating to the revision of the International Undertaking, and examine, among other matters, Articles 3, Scope, 11, Access and 12, Farmers' Rights, using the documents that had been tabled before the Extraordinary Meeting of the Commission but which had not been examined due to lack of time, as well as the results of that First Extraordinary Session.

At its First Extraordinary Session, the Commission embarked on Stage I of the revision of the International Undertaking, namely, incorporating the annexes in the main text of the Undertaking and adjusting it to harmonize it with the Convention on Biological Diversity. It was decided to use the new version of the text as set out in document CPGR-Ex.1/94/4 as its Working Paper. The Commission made a number of remarks regarding the structure of the documents and the proposals for amendments to the text, including alternative and new wording; it also identified the issues requiring further negotiation. The Commission agreed that the Secretariat should prepare a new draft for the negotiation of the International Undertaking, incorporating all the proposals that had been made by the members of the Commission at that meeting, and that the text of the Undertaking and the relevant provisions of the Convention on Biological Diversity should be set out in parallel columns in order to facilitate the work of the Sixth Meeting of the Commission. This has now been done and the new draft is ready as document CPGR-6/95/7. For the sake of brevity, the Secretariat has not included all the relevant information previously set out in document CPGR-Ex.1/94/4 Alt. in the new CPGR-6/95/7 document (for example it does not contain the comments and proposals made by the Working Group at its Ninth Meeting or the explanations and notes given by the Secretariat). Accordingly, document CPGR-Ex.1/94/4 Alt is at the disposal of the Tenth Meeting of the Working Group and the Sixth Meeting of the Commission as document CPGR-6/96/Inf.2.

At its First Extraordinary Meeting, the Commission on Plant Genetic Resources did not have time to examine Stage II of the revision of the International Undertaking, on Conditions of Access to Genetic Resources and Farmers' Rights. The documents prepared by the Secretariat for the Commission's debate on these issues will therefore be available once again for the deliberations of the Tenth Meeting of the Working Group and the Sixth Meeting of the Commission: these were documents CPGR-Ex.1/94/5 (now CPGR-6/95/8), CPGR-Ex.1/94/5 Sup. (now CPGR-6/95/8 Sup.) and CPGR-Ex.1/94/5 Annex (now CPGR-6/95/8 Annex). Document CPGR-Ex.1/94/3, laying down the general framework, the background and the proposed procedure for the revision of the International Undertaking, will also be available as document CPGR-6/95/Inf.1.

3. **The Fourth International Technical Conference on Plant Genetic Resources**

At its First Extraordinary Session, the Commission decided that the Tenth Meeting of the Working Group should continue to monitor progress to date, and lay down guidelines for the further preparation of the International Technical Conference on Plant Genetic Resources. A document will be submitted for examination by the Working Group.

4. **Any Other Business**