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des
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Organización
de las
Naciones
Unidas
para la
Agricultura
y la
Alimentación

**COMMISSION ON GENETIC RESOURCES
FOR FOOD AND AGRICULTURE**

Fourth Extraordinary Session

**REGIONAL POSITIONS PRESENTED DURING THE SEVENTH SESSION OF
THE COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE**

**Continuation of the Negotiations for the Revision of
the International Undertaking on Plant Genetic Resources**

As the Commission decided at its Third Extraordinary Session, regional groups met at the beginning of the Seventh Session, to prepare regional positions on the revision of the International Undertaking on Plant Genetic Resources. At the request of the Chairman, the Regional Groups concentrated on Articles 3 (Scope), 11 (Access) and 12 (Farmers' Rights), taking into account the Fourth Negotiating Text of the International Undertaking (available as document CGRFA/IUND/4 Rev. 1), and the Secretariat Non-Paper contained in *Appendix D, Attachment 5*, of CGRFA-Ex3/96/Rep (Report of the Third Extraordinary Session). Some Groups also proposed texts on other Articles. These regional positions are collected in the present information document. In preparing this document, the Secretariat has limited itself to completing the regional positions by incorporating actual text from the Fourth Negotiating Text, in accordance with the instructions that these regional positions contained.

The regional positions were then consolidated by the Bureau. Two *Ad Hoc* Working Groups subsequently met to review the consolidated text. One Working Group examined Articles 3 (Scope) and 11 (Access). The other examined Article 12 (Farmers' Rights). The negotiated text and that part of the consolidated text of these Articles which was not negotiated for lack of time, as reported to the Commission, are available as document CGRFA/IUND/4 Rev. 1 Add. 1 (extracted from *Appendix I* of CGRFA-7/97/Rep, Report of the Seventh Session).

It was agreed that negotiations during the Fourth Extraordinary Session should be on the basis of:

- Document CGRFA/IUND/4 Rev. 1: Revision of the International Undertaking on Plant Genetic Resources. Fourth Negotiating Draft.
- Document CGRFA/IUND/4 Rev. 1 Add. 1: Revision of the International Undertaking on Plant Genetic Resources. Negotiated Text and Consolidated Text of Articles 3 (Scope), 11 (Access) and 12 (Farmers' Rights), resulting from the Negotiations during the Seventh Regular Session.
- Document CGRFA-Ex4/Inf. 1: Regional Positions Presented during the Seventh Session of the Commission on Genetic Resources for Food and Agriculture.

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**Group 77 Position:
16 May 1997**

GROUP 77 CONSOLIDATED POSITION

**PROPOSAL FOR THE REVISION OF THE INTERNATIONAL UNDERTAKING ON
PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE**

Articles 3 (Scope), 11 (Access) and 12 (Farmers' Rights)

Article 3 - Scope

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

Article 11 - Access to Plant Genetic Resources

- 11.1 Parties to this Undertaking recognize the sovereign rights of States over their plant genetic resources for food and agriculture, including the authority to determine access to those resources, in accordance with the CBD.
- 11.2 Parties agree to establish a multilateral system of access and exchange (MSA&E) of plant genetic resources for food and agriculture under the auspices of FAO with respect to the plant genetic resources for food and agriculture.
- 11.3 Conditions of access and benefit sharing under the MSA&E shall cover all categories of plant genetic resources for food and agriculture as an integral part of this Undertaking.
- 11.4 Parties agree that recipients of plant genetic resources for food and agriculture under the MSA&E shall undertake commitments to share benefits, as determined under Article 11.3 derived from any commercial use, to the country/countries of origin, or in the case of plant genetic resources for food and agriculture whose country/countries of origin cannot be determined, to the International Fund established under Article
- 11.5 Conditions of access and benefit sharing under the bilateral system of access shall be determined by the contracting parties concerned on mutually agreed terms, keeping in view the provisions of the CBD.
- 11.6 Parties agree that PGR received under the terms of this Undertaking for use for food and agriculture and later utilized for any other commercial purposes shall also be obliged to ensure fair and equitable benefit sharing arising from such non-agriculture use.

Article 12 - Farmers' Rights

- 12.2 Recognizing that the responsibility for realizing Farmers' Rights at the national level rests with the national governments, the international community, as a beneficiary of the plant genetic resources developed and conserved by farmers, has the responsibility to recognize Farmers' Rights and assist national governments in this regard for the purpose of ensuring full benefits to farmers, indigenous and local communities embodying traditional lifestyles, supporting their rights to have access to and build capacities in developing and conserving a wide range of plant genetic resources for the continuation of their contributions as well as the attainment of the overall purpose of this Undertaking for the present and future generations of farmers. In order to ensure the implementation of these responsibilities, Parties to this Undertaking shall take measures, including, as appropriate, legislative measures, to:
- (a) Protect, promote and compensate the use of knowledge, innovations and practices of farmers relevant for the conservation and sustainable use of plant genetic resources for food and agriculture and promote their wider application with the consent and involvement of holders of such knowledge and innovations, and promote the equitable sharing of benefits arising from the utilization of plant genetic resources, knowledge, innovations and practices.

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- (b) Protect and promote the collective rights of farmers with respect to their innovations, knowledge and culturally diverse systems, underlying the conservation, sustainable use and development of plant genetic resources by farmers and local communities.
 - (c) Assist farmers in different regions of the world, especially in areas of origin/diversity of plant genetic resources in the evolution, conservation, improvement and sustainable use of plant genetic resources, through appropriate arrangements, including regional mechanisms;
 - (d) Promote the establishment and advise on the elaboration, in each country, of [*sui generis*] systems and/or mechanisms pertaining to the fair and equitable sharing of the benefits arising out of the utilization of plant genetic resources.
 - (e) Promote the establishment and advise on the development of an international *sui generis* system for the recognition, protection and compensation of knowledge, innovations and practices of farmers and traditional communities.
 - (f) Recognize and ensure the rights of farmers, in fully sharing the benefits arising from the use of plant genetic resources on a fair and equitable basis, and as mutually agreed, including through transfer of technology, participation in research, and access to its results, derived at present, and in future, from the improved use of plant genetic resources through plant breeding and other modern scientific methods, as well as from their commercial use.
 - (g) Support measures for research training and institutional capacity building activities at the local level, with the full participation of the communities concerned, particularly focusing on women farmers, including measures for review of credit facilities and market provisions governing farmers' access to plant genetic resources for enhancing traditional genetic resources, development and the exchange systems through, *inter alia*, the removal of financial and market barriers against such systems, for conservation, development and sustainable use, and transfer of technologies that protect, integrate, enhance and develop traditional farmers' knowledge, know-how and practices;
 - (h) Facilitate as appropriate the adaptation of traditional farmers' knowledge, know-how and practices, to widely use and integrate them with modern technologies as appropriate.
 - (i) Promote scientific and technological agricultural research that support and enhance farmer-based knowledge systems with adequate assessment and reorientation of current national and international research efforts as appropriate.
 - (j) Establish and implement an international fund (referred to in Article 14.6) and develop its operational mechanism to ensure conservation and sustainable use of plant genetic resources and traditional farmers' knowledge, and facilitate and ensure access to new technologies and equitable sharing of benefits derived from the products obtained through the use of plant genetic resources for the benefit of present and future generations of farmers.
 - (k) Ensure that the prior informed consent of the concerned farmers and local communities is obtained before the collection of plant resources is undertaken; [to endeavour to develop adapted current variety registration systems so as to identify and record, as appropriate, varieties of plant genetic resources provided by farmers

and farming communities]; and require, as appropriate and according to national legislation, disclosure of the origin of plant genetic resources utilized in the development of commercial varieties.

- (l) Recognize and protect traditional rights of farmers and their communities to keep, use, exchange, share and market their seeds and any other plant reproductive material, including the right to re-use farm-saved seed.
- (m) Take the necessary measures to ensure that farmers and local communities fully participate in the definition and implementation of the measures and legislation on Farmers' Rights at national and international levels, and through their active participation in the development, implementation and review of this Undertaking and the International Fund referred to in Article 14.6. A permanent and flexible consultative mechanism should be initiated to meet this aim.
- [(n) Review, assess and, if appropriate, modify intellectual property rights systems, land tenure, and seed laws in order to ensure their harmony with the provisions of this Article.]
- (o) Ensure that the collective knowledge and resources held and developed by farmers and local communities are protected and promoted by adopting and implementing appropriate legislation in the form of a collective rights regime that provides for the protection of traditional or indigenous knowledge, innovations, materials and practices of and by farmers and local communities.

**Regional Position:
Africa
16 May 1997**

AFRICA REGION

REVISED INTERNATIONAL UNDERTAKING ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

The African Regional Conference on Genetic Resources, Food Security and Rural Development for Survival held in Addis Ababa, 21-25 April 1997, developed the following version of the Revised Undertaking in preparation for the negotiations to revise the International Undertaking on Plant Genetic Resources for Food and Agriculture by the FAO Commission on Genetic Resources for Food and Agriculture in May 1997. This draft was discussed, amended and approved by the Africa Group in Rome on 15 May 1997.

PREAMBLE

THE PARTIES TO THIS UNDERTAKING

Recalling Resolution 7/93 of the Conference of the Food and Agriculture Organization which calls for the revision of the International Undertaking on Plant Genetic Resources in harmony with the Convention on Biological Diversity,

Taking into account the objectives of the Convention on Biological Diversity under Article 1 which refer to the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over these resources and to technologies, and by appropriate funding,

Recognizing that the system of access to genetic resources that existed prior to the Convention on Biological Diversity has not sufficiently contributed to the conservation and sustainable use of these resources, and that the protection of genetic resources under patent and other intellectual property rights systems lacks fairness and provides no economic incentive for the continued generation and conservation of these resources by the countries of origin,

Recalling Resolution 3 of the Nairobi Final Act of the Conference for the adoption of the agreed text of the Convention on Biological Diversity which recognizes the question of access to *ex situ* collections not acquired in accordance with the Convention, and the question of Farmers' Rights as outstanding matters,

Recognizing the enormous contribution that farmers of all regions of the world, and particularly in the centres where genetic resources for food and agriculture originated and/or diversified, have made to the development and conservation of these genetic resources,

Acknowledging that the majority of plant genetic resources come from the developing countries, the contribution of whose farmers, local and traditional communities needs to be recognized and fully rewarded through an appropriate system of sharing benefits from the improved and increased use of plant genetic resources they have developed and conserved,

Mindful of the obligations imposed by Article 8(j) of the Convention on Biological Diversity on each Contracting Party to respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional life-styles relevant for the conservation and sustainable use of biological diversity and promote their wider application with the approval and involvement of the holders of such knowledge, innovations and practices and to encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices, and Article 10(c) which requires each Party to protect and encourage the customary use of biological resources in accordance with traditional cultural practices that are compatible with conservation or sustainable use requirements,

Taking into account the Global Plan of Action for the Conservation and Sustainable Utilization of Plant Genetic Resources for Food and Agriculture and the Leipzig Declaration of 1996, particularly Paragraph 4 of the Declaration which acknowledges the roles played by local and indigenous farming communities in conserving and improving genetic resources, and Paragraph 9 of the Plan of Action that calls for confirming the rights of farmers and developing and/or strengthening policies and legislative measures to promote fair and equitable sharing of benefits arising from the utilization of their genetic resources,

Reaffirming the sovereign rights of States over their natural resources and to determine access to genetic resources subject to national legislation and that where granted access shall be on mutually agreed terms and subject to prior informed consent of the country providing such resources,

Emphasizing the need for each party to develop and carry out scientific research on genetic resources in and with full participation of the other party providing such resources, and that each party takes legislative, administrative and policy measures with the aim of sharing, in a fair and equitable manner, the benefits from results of research and development,

Recognizing the need to promote and facilitate access to and transfer of technology which makes use of genetic resources including technology protected by patents and other intellectual property rights to the Contracting Parties, in particular to developing countries which provide those resources, under fair, most favourable, concessional and preferential terms in accordance with the spirit of Article 16 of the Convention on Biological Diversity,

Acknowledging that traditional and indigenous technologies are important in the conservation and sustainable utilization of plant genetic resources, and that they may be complemented by modern technologies,

Noting the decision III/11 of the third meeting of the Conference of the Parties to the Convention on Biological Diversity regarding the Conservation and Sustainable Use of Agricultural Biological Diversity, in particular paragraph 18 that expresses the willingness of the Parties to consider the legal status of the International Undertaking on Plant Genetic Resources adopted by the Conference of the Food and Agriculture Organization of the United Nations [hereinafter referred to as the FAO] as a protocol to the Convention on Biological Diversity once revised in harmony with the Convention, and paragraph 19 which reflects the recognition of Farmers' Rights, the necessary terms for technology transfer to developing countries, and access and benefit-sharing arrangements,

Determined to have a binding international instrument which promotes the conservation and utilization of plant genetic resources for food and agriculture through the establishment of a system for access to genetic resources and for sharing benefits arising out of the utilization of such resources and which *inter alia* ensures the implementation of Farmers' Rights and resolves the outstanding issues of the sovereign rights over, and ownership of, *ex situ* collections made outside the Convention on Biological Diversity,

Have agreed as follows:

Article 1 - Definitions

For the purpose of this Undertaking:

1. "Country of origin" means any Party that possesses genetic resources in *in situ* conditions or in *ex situ* conditions made from the *in situ* sources of that Party and from which those genetic resources collected from such *in situ* sources or *ex situ* sources, are supplied to another Party or Parties.
2. "Plant genetic resources" means genetic materials, including seed or other planting materials or DNA sequences, taken from plants that have actual or potential value for food and agriculture. These include crops, wild relatives, wild food plants, forage plants, honey bee plants, and plants for land management and the maintenance of soil fertility and weeds.
3. "Collective Rights" means the rights vested in farming and local natural resource-based communities to continue to conserve, maintain and control their diverse livelihood systems, which are based on collective processes of generating biological diversity, indigenous knowledge and technologies, innovations and practices which result in the conservation and sustainable use and development of genetic resources for food security and agriculture. These

rights are of a collective nature, governed in accordance with the diverse customary rights and traditions of the different livelihood systems. Such rights are inalienable and therefore cannot be privatized.

4. "Recipient" means a Party or any person within the jurisdiction of such a Party involved in prospecting, collecting or receiving genetic resources from a country of origin or from a supplier in that country of origin for scientific or commercial purposes.

* This is not an exhaustive list of definitions!

Article 2 - Objectives

The objectives of this Undertaking, being consistent with the objectives of the Convention on Biological Diversity, are to:

- (a) ensure the conservation of plant genetic resources for food and agriculture as a basis for food security;
- (b) promote the sustainable utilization of plant genetic resources for food security and the diversification of agriculture in order to foster development and to reduce hunger and poverty;
- (c) promote a fair and equitable sharing of benefits arising from the use of plant genetic resources;
- (d) implement and protect Farmers' Rights to their agricultural biological diversity, traditional knowledge, innovations and practices relevant to the conservation and sustainable use of plant genetic resources for food and agriculture in order to ensure them a fair and equitable share of benefits and secured livelihood systems; and
- (e) implement a system of access to plant genetic resources for food and agriculture based on the prior informed consent of the country of origin and the relevant local farming communities.

Article 3 - Scope

This Undertaking applies to the conservation and sustainable use of plant genetic resources having actual or potential value for food and agriculture, including wild relatives and wild plants that are gathered, existing both in *in situ* as well as *ex situ* private, public and international collections, acquired before or after the Convention on Biological Diversity.

Article 4 - Relationship of the Undertaking With Other International Agreements

1. The provisions of this Undertaking shall not affect the rights and obligations of any Party deriving from any existing international agreement except where the exercise of those rights and obligations would cause a serious damage or threat to plant genetic resources.
2. Any Party that has not ratified, accepted or approved the Convention on Biological Diversity shall be assumed to accept those provisions of the Convention which relate to the matters covered by this Undertaking.

Article 5 - Exploration, Collection and Conservation of Genetic Resources

1. The Parties shall promote an integrated approach to the conservation of plant genetic resources for food and agriculture employing, as appropriate, *in situ*, including on-farm management of plant genetic resources for food and agriculture as well as *ex situ* conservation, and linking

conservation with utilization activities, in accordance with article 8(j) of the Convention on Biological Diversity.

In particular, the parties shall:

- (a) Survey and inventory plant genetic resources for food and agriculture, including those that are of anticipated use and, as feasible, assess any threats to them;
 - (b) Promote the collection of plant genetic resources for food and agriculture and relevant associated information on those plant genetic resources that are under threat or are of anticipated use;
 - (c) Support farmers and local communities' efforts to manage on-farm, farmers' varieties and other plant genetic resources for food and agriculture;
 - (d) Promote *in situ* conservation of wild plants relevant to food and agriculture, including in protected areas, by supporting the efforts of indigenous and local communities;
 - (e) Cooperate to promote the development of an efficient and sustainable system of *ex situ* conservation, giving due attention to the need for adequate documentation, characterization, regeneration and evaluation, and promote the development and transfer of appropriate technologies for this purpose.
2. Parties shall take steps to minimize or, if possible, eliminate threats to plant genetic resources for food and agriculture, including the negative effects of agro-chemicals.

Article 6 - Sustainable Use of Plant Genetic Resources

1. Parties shall develop or maintain appropriate policy and legal arrangements that promote the sustainable use of plant genetic resources for food and agriculture.
2. The sustainable use of plant genetic resources for food and agriculture shall include such measures as:
 - (a) promoting agricultural policies that ensure the development and maintenance of diverse farming systems that enhance the sustainable use of agricultural biological diversity and other natural resources;
 - (b) guiding/strengthening research in agriculture so that it enhances biological diversity by maximizing intra- and inter- specific variation, and becomes demand driven when it comes to serving smallholder farmers who generate and use their own species or varieties and apply ecological principles in maintaining soil fertility and in combating diseases, weeds and other pests.
 - (c) promoting plant breeding efforts and strengthening, particularly in developing countries the capacity to develop varieties specifically adapted to the various social, economic and ecological conditions, especially those of farmers in areas which are not of high potential for the particular crop, with the full participation of farmers;
 - (d) broadening the genetic base of the various crops;
 - (e) promoting in all agro-ecological zones the expanded use of local crops, varieties and underutilized species; and
 - (f) increasing the range of genetic diversity available to farmers.
3. Parties shall support the wider use of diversity of varieties and species in on-farm generation, conservation and sustainable utilization of crops and create stronger links between plant breeding and agricultural development in order to:
 - (a) [reduce crop vulnerability];

- (b) reduce genetic erosion; and
- (c) ensure increased world food production compatible with sustainable development.

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

4. Parties shall take precautionary measures to control the risks to biological diversity associated with the use and release of plant genetic resources that involve living modified organisms resulting from biotechnology.

Article 7 - International Cooperation

1. Each Party shall, as far as appropriate, cooperate with other Parties, directly or through the FAO and other competent international organizations, on matters of mutual interest for the conservation and sustainable use of plant genetic resources for food and agriculture.
2. International cooperation shall, in particular, be directed to:
 - (a) establishing or strengthening the capabilities of developing countries, where appropriate on a national or sub-regional basis, with respect to conservation and sustainable use of plant genetic resources for food and agriculture;
 - (b) intensifying international activities to promote conservation, evaluation, documentation, access for and exchange of plant genetic resources for food and agriculture, and relevant information for plant breeding and multiplication of seed and other types of plant material;
 - (c) supporting the arrangements outlined in Article 9; and
 - (d) the strengthening or establishing of funding mechanisms to finance activities relating to the conservation and sustainable use of plant genetic resources for food and agriculture.

Article 8 - Institutional Arrangements

1. Parties shall develop and maintain institutional arrangements such as centres at the national, regional and international level for the exploration, collection, conservation, maintenance, evaluation, documentation, exchange and use of plant genetic resources for food and agriculture with a view to developing a global system. The activities of such institutions or centers shall as far as possible, give due regard to the latest scientific standards of practice.
2. Existing relevant institutions or centres shall be strengthened and their roles adjusted to enable the implementation of this Undertaking.
3. Parties shall support the establishment or maintenance of an international network of the relevant institutions or centres, including network of base collections in gene banks.

Article 9 - Multilateral System of Access

1. Parties agree to establish a Multilateral System of access to genetic resources under the auspices of the Food and Agriculture Organization of the United Nations (the "FAO" hereinafter) or any other appropriate international organizations, based on voluntary membership, with respect to:
 - (a) genetic resources for food and agriculture that are willingly decided to be included in the system by the countries of origin; and
 - (b) the *ex situ* collections not acquired in accordance with the Convention on Biological Diversity, and whose countries of origin cannot be determined.

2. Genetic resources under 1(a) and 1(b) above shall be held under the auspices of the FAO or appropriate international organization, on behalf of the country/countries of origin and on behalf of the international community respectively.

Article 10 - Global Information and Early Warning System

1. The Parties shall cooperate to set-up a global information system on scientific, technical environmental, and commercial matters relating to collections of plant genetic resources for food and agriculture, under the coordination of the FAO.
2. The Recipient shall disclose and/or transmit to the country of origin or to the FAO, as appropriate, at least once in a year, information on:
 - (a) The status of the genetic resources it has received or accessed;
 - (b) The newly discovered uses, if any, of the genetic resources it has received or accessed;
 - (c) Material under development for commercialization including varieties, cultivars and breeders' lines; and
 - (d) If there is more than one country of origin, the proportion of the share of the genetic resource of each country that has gone into making the commercialized variety.
3. The FAO shall periodically examine the validity of the information disclosed and transmitted by the recipient and advise the country or countries of origin, as appropriate.
4. The Parties shall provide the international network as envisaged by Article 8 (3), or the FAO, or any other institution designated by it, with an early warning of any natural or man-made hazard that threatens the safe and efficient maintenance and operation of an institution or center mentioned under Article 8, with a view to prompt international action to safeguard the genetic resources or materials maintained by the concerned institution or the centre.
5. The parties shall cooperate and take appropriate measures that ensure the collection and conservation of genetic materials, in a scientific way, in areas where, according to available information, plant genetic resources are in danger of becoming extinct due to natural, socio-economic or other reasons.

Article 11 - Access to Plant Genetic Resources

1. The Parties to this Undertaking recognize the sovereign rights of States over their genetic resources, including the authority to determine access to those resources. The legislation shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other parties and not to impose restrictions that run counter to the objectives of this Undertaking.
2. With respect to genetic materials in *ex situ* collections acquired before/not in accordance with the Convention on Biological Diversity:
 - (a) Parties shall cooperate with one another and use the services of international organizations where necessary to identify the countries of origin of those genetic materials in *ex situ* collections acquired before/not in accordance with the Convention on Biological Diversity;
 - (b) Each Party and international centre or institution with *ex situ* collections of genetic resources acquired prior to the Convention on Biological Diversity shall hold such collections on behalf of the country or countries of origin or, when the country of origin is not known, on behalf of the international community;

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- (c) The rights over the *ex situ* collections acquired before the Convention on Biological Diversity and of which the country of origin has not been identified or disputed shall be vested in the international community until such time that the country of origin is identified or any other arrangement is agreed upon by the meeting of the Parties; and
 - (d) The meeting of the Parties shall determine, on a case by case basis and as far as possible, the sovereign right over, and ownership of, disputed *ex situ* collections made outside the Convention on Biological Diversity.
 3. Nothing in this Article shall prevent smallholder farmers from unconditional access to plant genetic resources. Access to plant genetic resources for food and agriculture by smallholder farmers, their communities and organizations, and national programmes and NGOs working on their behalf for non-profit purposes, shall be unrestricted. Access to plant genetic resources for such purposes, including research and plant breeding, shall be granted, subject to a commitment by the recipient not to use such resources for commercial purposes or apply intellectual property rights protection on any planting materials, products or processes involving those resources or any material derived or containing genes from such resources without the prior informed consent of the country of origin or the FAO, as the case may be.
 4. Sovereign States may take measures to further regulate the access to plant genetic resources for food and agriculture in response to national priorities and needs.
 5. Except as otherwise provided in Article 11.3, access to plant genetic resources for food and agriculture, shall be subject to the prior informed consent of the country of origin, or in the case of material in the multilateral system, the FAO, and to the conditions set out below:
 - (a) The recipient shall request the competent authority of the country of origin or the FAO, as the case may be, for access to plant genetic resources by application in writing that contains information on:
 - (i) The material requested (*i.e.* the name of species, any other taxonomic specification and amounts of resource to be accessed or collected);
 - (ii) The purpose for which it is requested, including where appropriate, the type and extent of commercial use expected to be derived from the resource; and
 - (iii) Proposed mechanisms or arrangements for benefit sharing including technology or financial transfer to the country of origin and its local farming communities, and the manner and extent of intended involvement of the country of origin in the necessary research and development on the genetic resource concerned.
 - (b) in the case of material to be provided from *in situ* sources, the recipient shall meet the requirements of para 4(a) and any generally agreed international standards on collecting, as well as other procedures as required by the Country of origin, ensure that farmers and communities are involved in PIC procedures in accordance with Article 12, and provide information on:
 - (i) The expected site of exploring or collecting; and
 - (ii) Whether any collection of the genetic resource endangers any component of biological diversity;
 - (c) the recipient shall undertake commitments to share benefits, derived from any commercial use, on mutually agreed terms, to the country or countries of origin, or in case of genetic resources described under Article 9 (1) (b) to the international fund, in accordance with Article 11.6;
 - (d) The country of origin, or the FAO, as the case may be, shall respond to the application of the recipient in writing consenting to grant access to the plant genetic resource concerned with or without conditions, denying access, or requesting additional information in accordance with the provisions of this Undertaking;

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- (e) No entry of any genetic resources shall be allowed by Parties to their territories unless their competent authority confirms that a prior informed consent has been obtained from the country of origin or the FAO, as the case may be, for that specific genetic resource;
 - (f) The recipient shall not transfer the genetic resource to any third party without the prior informed consent of the country of origin or the country or the FAO;
 - (g) Whenever the recipient becomes aware of relevant new information or discovers new use about the genetic resource it has acquired, it shall immediately inform the country of origin or the FAO, as the case may be, and the terms of the prior informed consent be changed accordingly; and
 - (h) The country of origin or the FAO can unilaterally withdraw its consent and refuse access to and/or further use of the genetic resource concerned whenever it has become apparent, that the recipient has violated any of the mutually agreed terms, or the overriding public interest so demands.
6. Access to plant genetic resources, including those for scientific research and genetic resources conservation, shall be subject to commitments, by the recipient, to share benefits arising from the commercial utilization of those resources, including technology and the results of research and development with the country of origin based upon mutually agreed terms and the following provisions:
- (a) The recipient shall repatriate to the country of origin or to the international fund, as the case may be, a fixed proportion of the benefits derived from the commercial use of plant genetic resources to which it has been granted access, as determined by the meeting of the Parties;
 - (b) In addition, the recipient shall ensure that relevant information and technology be made available in the country of origin following a direct or indirect commercialization of plant genetic resources to which it has been granted access;
 - (c) The country of origin shall ensure that at least half of the benefits obtained in accordance with (a) and of the net profits derived from any commercial use of plant genetic resources at the local level is channelled to or shared with the farmers and local communities from which such resources are taken. It shall also ensure that a substantial part of the benefits derived is allocated for the conservation of biological diversity in the area where the collection of the genetic resources is undertaken;
 - (d) In cases where a commercial use is derived from plant genetic resources or species endemic to the country of origin, benefit shall be shared only with that country of origin;
 - (e) In cases where the genetic material commercialized occurs *in situ* in more than one country, benefits shall be shared with the country in which the specific trait or traits in question is found;
 - (f) In cases where a trait occurs *in situ* in more than one country or where traits have been combined from various countries of origin, the recipient shall disclose the percentage contributions of the various traits to the commercialization, to all the countries of origin and to the FAO, and the benefits accruing from commercialization shall be divided among those countries of origin accordingly;
 - (g) The FAO shall establish or maintain a multilateral fund to collect the benefits accruing from accessing *ex situ* collections described under Article 9(1) (b) of the multilateral system as well as from other contributions as to be determined by the meeting of the Parties, and utilize the fund, upon the decisions of the meeting of the Parties, for promoting national, regional or international priority programmes designed for the conservation and sustainable utilization of plant genetic resources, ensuring that at least half of the benefits be directed towards activities in support of farmers' rights, in accordance with Article 12;

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- (h) The Party in whose jurisdiction the recipient operates shall, through its competent authority, ensure the conformity of the recipient's conduct with the requirements of this Undertaking and guarantee the equitable share of benefits arising from the commercialization of plant genetic resources to the country of origin or the multilateral fund, as the case may be.
7. Each Party shall ensure that appropriate policy, legal and institutional arrangements are created or strengthened for the regulation and administration of access to genetic resources, and shall, in particular, adopt domestic legislation that prevents and punishes illegal access to genetic resources in accordance with the following paragraphs:
- (a) Any prospecting or collecting activity or acquisition of plant genetic resources, other than as provided for in Article 11.3, without the prior informed consent of the country of origin and the concerned local farming communities and any transfer to a third party, or any use that is not specified in the prior informed consent, shall be deemed to be illegal access to genetic resources;
 - (b) Any seed or other generative biological material used for commercial purposes without informing of the fact to, and without signing the necessary benefit sharing agreement with, the country or countries of origin or the FAO, as the case may be, shall be deemed to be illegal access to genetic resources; and
 - (c) In case of access to plant genetic resources deemed to be illegal, the country of origin shall have the right to claim the return or complete destruction of the resources in question and any associated damages from the recipient through the relevant competent authority.
8. Non-participants in the International Network will not be granted access to plant genetic resources for food and agriculture within the International Network except on terms to be agreed with the country or organization holding the plant genetic resources for food and agriculture.

Article 12 - Farmers' Rights

1. The parties to this Undertaking shall protect Farmers' Rights to lifestyles, land and biological diversity and promote the exercise of these rights in accordance with appropriate national laws and the provisions of this Undertaking.
2. Parties shall ensure that the genetic resources, traditional and indigenous knowledge, innovations and practices of farmers and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of plant genetic resources are protected under a Collective Rights Regime developed through local and national consultative processes. Each Party shall ensure that these rights are implemented through the full participation of farming and local natural resource-based communities. This participation should be facilitated by supporting and strengthening these communities and their organizations and by developing relevant national legislation to enable them to exercise their collective rights.
3. In this respect, Parties shall take measures, including legislative measures, in order to ensure that intellectual property rights are supportive of and do not counter to the objectives of this Undertaking in general and Farmers' Rights in particular. Where necessary, existing national and international agreements, *inter alia*, intellectual property rights, land tenure and seed legislation, should be modified.
4. Parties shall ensure that farmers and local communities receive an equitable share in the benefits derived from the utilization of their genetic resources, traditional and indigenous knowledge, innovations and systems which support and enhance the conservation and sustainable use of plant genetic resources for food and agriculture, including access to genetic resources. The Parties to this Undertaking shall take the necessary measures including, as appropriate, legislative measures to guarantee that farming and local communities which provide plant

- genetic resources, participate fully in the definition and disbursement of any national and international funding mechanism and any agreement on bilateral sharing of benefits.
5. The Parties shall take necessary measures, including, as appropriate, legislative measures, to assist farming communities, particularly in the areas of origin or diversification of plant species used for food and agriculture, in the conservation and sustainable utilization of their genetic resources and to support research and training activities and the transfer of technologies. Research and development on plant genetic resources shall be carried out, where appropriate and possible, with the full participation of the farming communities of the country which supplied the genetic resources.
 6. The Parties shall ensure that socio-economic and agricultural research is fully compatible with and supportive of farmer-based knowledge systems, and that current national and international research efforts are assessed and, if necessary, re-oriented with the full participation of local communities.
 7. Parties shall ensure that prior informed consent of the concerned farmers and local communities is obtained before any collection or accession of plant genetic resources is undertaken. The competent authorities shall identify and record the genetic resources provided by farmers and local communities, and require the Recipient to disclose the origin of the genetic resources utilized in the development of varieties for commercial purposes.
 8. Parties shall protect the rights of farming communities to keep, use, exchange, share and market seed and other plant reproductive materials, including the right to re-use farm-saved seed and other plant propagating materials. The Parties shall ensure that no financial and market barriers exist against the traditional exchange systems of plant genetic resources and the development of new farmers' varieties.
 9. Parties shall develop and strengthen the capacity of farming and local communities necessary for the promotion of conservation and sustainable use of plant genetic resources and the implementation of Farmers' Rights.
 10. Parties shall ensure that farmers and local communities effectively participate in the process of decision making relating to the conservation and sustainable utilization of plant genetic resources, in particular in determining access to genetic resources, the implementation of Farmers' Rights, the allocation of funds and in the definition, implementation and review of measures taken at national and international levels to implement this Undertaking. In order to do this, Parties shall ensure that there is an effective and continuous dialogue, consultation and collaboration with farming and local communities on the implementation of this Undertaking.

Article 13 - Monitoring of Activities

1. Parties shall adopt and maintain means for monitoring activities related to exploration, collection, conservation, documentation, exchange and use of plant genetic resources, including monitoring the status of the genetic resources received or accessed by the recipient.
2. Parties shall establish, maintain or strengthen an international mechanism for the purpose of monitoring the operation of relevant international institutions referred to in Article 8, and the effective and prudent transmission of information and early warning system referred to in Article 10 and to take appropriate actions that improve the conservation and sustainable use of plant genetic resources for food and agriculture.

Article 14 - Financial Arrangements

1. Parties shall provide adequate funds, including an international fund, from different sources, for the purpose of implementing this Undertaking.
2. The provision of financial resources shall take due account of the need to support capacity building in and technology transfer to developing countries, as well as to promote activities of

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- conservation and enhancement of plant genetic resources for food and agriculture that will ensure long-term global benefits.
3. The financial resources of the international fund referred to in Article 11.5 (f) of this Undertaking, and other funding mechanisms established or maintained for the purpose of implementing the objectives of this Undertaking shall be substantial, sustainable and based on the principles of equity and transparency.
 4. The Parties shall determine and review, from time to time, the policies, programmes and priorities of the international fund and of other funding mechanisms in accordance with the objectives of this Undertaking.

Regional Position:
Asia
15 May 1997

ASIA GROUP

**PROPOSAL FOR THE REVISION OF THE INTERNATIONAL UNDERTAKING ON
PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE**

Articles 3 (Scope), 11 (Access) and 12 (Farmers' Rights)

Article 3 - Scope

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

CHAPTER IV. ACCESS TO GENETIC RESOURCES AND FARMERS' RIGHTS

Article 11 - Availability of Plant Genetic Resources

11.1 Parties to this Undertaking recognize the sovereign rights of States over their plant genetic resources for food and agriculture, including the authority to determine access to those resources, in accordance with the CBD.

11.2 Parties agree to establish a multilateral system of access and exchange (MSA&E) of plant genetic resources for food and agriculture under the auspices of FAO with respect to the plant genetic resources for food and agriculture volunteered by Parties or those whose countries of origin cannot be determined.

11.3 Conditions of access and benefit sharing under the MSA&E shall be specific to the categories of plant genetic resources for food and agriculture described in the respective annexes of this Undertaking.

11.4 Parties agree that recipients of plant genetic resources for food and agriculture under the MSA&E shall undertake commitments to share benefits, as determined under Article 11.3 derived from any commercial use, to the country or countries of origin, or in the case of plant genetic resources for food and agriculture whose country/countries of origin cannot be determined, to the International Fund established under Article

11.5 Conditions of access and benefit sharing under the bilateral system of access shall be determined by the contracting parties concerned on mutually agreed terms, keeping in view the provisions of the CBD.

Article 12 - Farmers' Rights

12.1 Governments adhering to this (Undertaking) recognize the enormous contribution that farmers of all regions of the world, particularly those in the centers of origin and crop plant diversity, have made, are making and will continue to make for the conservation and development of plant genetic resources which constitute the basis of food and agriculture production throughout the world, which in turn form the basis for Farmers' Rights and appropriate measures necessary for them to continue to conserve, manage and improve plant genetic resources for food and agriculture.

12.2 Recognizing that the responsibility for realizing Farmers' Rights at the national level rests with the national governments, the international community, as a beneficiary of the plant genetic resources developed and conserved by farmers, has the responsibility to recognize Farmers' Rights and assist national governments in this regard for the purpose of ensuring full benefits to farmers, indigenous and local communities embodying traditional lifestyles, supporting their rights to have access to and build capacities in developing and conserving a wide range of plant genetic resources for the continuation of their contributions as well as the attainment of the overall purpose of this Undertaking for the present and future generations of farmers. In order to ensure the implementation of these responsibilities, Parties to this [Undertaking] shall take measures, including, as appropriate, legislative measures, to:

- (a) Protect, promote and compensate the use of knowledge, innovations and practices of farmers relevant for the conservation and sustainable use of plant genetic resources for food and agriculture and promote their wider application with the consent and

involvement of holders of such knowledge, innovations and promote the equitable sharing of benefits arising from the utilization of plant genetic resources, knowledge, innovations and practices.

- (b) Protect and promote the collective rights of farmers with respect to their innovations, knowledge and culturally diverse systems, underlying the conservation, sustainable use and development of plant genetic resources by farmers and local communities.
- (c) Assist farmers in different regions of the world, especially in areas of origin/diversity of plant genetic resources in the evolution, conservation, improvement and sustainable use of plant genetic resources, through appropriate arrangements, including regional mechanisms;
- (d) Promote the establishment and advise on the elaboration, in each country, of *sui generis* systems pertaining to the fair and equitable sharing of the benefits arising out of the utilization of plant genetic resources.
- (e) Promote the establishment and advise on the development of an international *sui generis* system for the recognition, protection and compensation of knowledge, innovations and practices of farmers and traditional communities.
- (f) Recognize and ensure the rights of farmers, in fully sharing the benefits arising from the use of plant genetic resources on a fair and equitable basis, and as mutually agreed, including through transfer of technology, participation in research, and access to its results, derived at present, and in future, from the improved use of plant genetic resources through plant breeding and other modern scientific methods, as well as from their commercial use.
- (g) Support measures for research training and institutional capacity building activities at the local level, with the full participation of the communities concerned, particularly focusing on women farmers, including measures for review of credit facilities and market provisions governing farmers' access to plant genetic resources for enhancing traditional genetic resources, development and the exchange systems through, *inter alia*, the removal of financial and market barriers against such systems, for conservation, development and sustainable use, and transfer of technology that protect, integrate, enhance and develop traditional farmers' knowledge, know-how and practices;
- (h) Facilitate as appropriate the adaptation of traditional farmers' knowledge, know-how and practices, to wide use and integrate them with modern technologies as appropriate.
- (i) Promote scientific and technological agricultural research that support and enhance farmer-based knowledge systems with adequate assessment and reorientation of current national and international research efforts as appropriate.
- (j) Establish and implement an international fund (referred to in Article 14.6) and develop its operational mechanism to ensure conservation and sustainable use of plant genetic resources, traditional farmers' knowledge, access to new technologies and equitable sharing of benefits derived from the products obtained through the use of plant genetic resources for the benefit of present and future generations of farmers.

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- (k) Ensure that the prior informed consent of the concerned farmers and local communities is obtained before the collection of plant resources is undertaken; adapt current variety registration systems so as to identify and record, as appropriate, varieties of plant genetic resources provided by farmers and farming communities; and require disclosure of the origin of plant genetic resources utilized in the development of commercial varieties.
 - (l) Recognize and protect traditional rights of farmers and their communities to keep, use, exchange, share and market their seeds and any other plant reproductive material, including the right to re-use farm-saved seed.
 - (m) Take the necessary measures to ensure that farmers and local communities fully participate in the definition and implementation of the measures and legislation on Farmers' Rights at national and international levels, and through their active participation in the development, implementation and review of this [Undertaking] and the International Fund referred to in Article 14.6. A permanent and flexible consultative process would be initiated to meet this aim.
 - (n) Review, assess and, if appropriate, modify intellectual property rights systems, land tenure, and seed laws in order to ensure their harmony with the provisions of this Article.
 - (o) Ensure that the collective knowledge and resources held and developed by farmers and local communities are protected and promoted by adopting and implementing appropriate legislation in the form of a collective rights regime that provides for the protection of traditional or indigenous knowledge, innovations, materials and practices of and by farmers and local communities.

Asia: Japan and the Republic of Korea
15 May 1997

Asia: Japan and the Republic of Korea

**PROPOSAL FOR THE REVISION OF THE INTERNATIONAL UNDERTAKING ON
PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE**

Articles 3 (Scope), 11 (Access) and 12 (Farmers' Rights)

The following proposal, including the footnotes, was submitted by the Republic of Korea and Japan, regarding the Articles on Scope, Access and Farmers' Rights, with the specific request that it be distinguished from the Asia Group Proposal, representing the majority position

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

Article 11 - Availability of Plant Genetic Resources¹

11.1 The Parties to this Undertaking recognize the sovereign rights of States over their plant genetic resources, including the authority to determine access to those resources, in accordance with the Convention on Biological Diversity.

11.2 The Parties agree to grant other Parties to this Undertaking access to the plant genetic resources listed in the Annex X to this International Undertaking, for research and plant breeding purposes.

11.3 Prior to being granted access, applicants for access shall meet the requirements set out in any agreed international standards, including in particular the FAO Code of Conduct for Collecting and Transfer of Plant Germplasm.

11.4 Access to proprietary breeders' lines and farmers' varieties under development will be at the discretion of their developers during the period of their development, provided that the exercise of this discretion does not run counter to the objectives of this Undertaking.

Article 12 - Farmers' Rights²

12.1 Governments adhering to this Undertaking recognize the enormous contribution that farmers of all regions of the world, particularly those in the centres of origin and crop plant diversity, have made and will continue to make for the conservation and development of plant genetic resources which constitute the basis for food and agriculture production throughout the world, which in return form the basis for the concept of Farmers' Rights and appropriate measures necessary for them to continue to conserve, manage and improve plant genetic resources for food and agriculture.

12.2 Parties adhering to the Undertaking, for the purpose of strengthening the role of farmers in conservation and sustainable use of plant genetic resources for food and agriculture and ensuring fair and equitable sharing of benefits, shall as far as possible and as appropriate:

- (a) subject to its national legislation, respect, preserve and maintain the knowledge, innovations and practices of farmers relevant to the conservation and sustainable use of plant genetic resources for food and agriculture and promote their wider application with the consent and involvement of holders of such knowledge and encourage the equitable sharing of benefits arising from the use of their plant genetic resources for food and agriculture, related knowledge, innovations and practices;
- (b) assist farmers and traditional communities, especially in areas of origin and crop plant diversity in the evolution, conservation, improvement and sustainable use of plant genetic resources for food and agriculture;

¹ This article was proposed originally in the non-paper by the Secretariat (CGRFA-Ex3/96/Rep, Appendix D), except that the sub-article 11.2 has been shortened by leaving the description of the categories of genetic resources to a single annex.

² This article is shown as Alternative A of the new wording agreed at the Third Extraordinary Session of the Commission, on pages 26 and 27 of the Fourth Negotiating Draft (CGRFA/IUND/4, Rev. 1), except for the exclusion of the bracketed phrase [, which are non-discriminatory and non-trade distorting,] in the sub-article of 12.1.

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- (c) endeavour to share in a fair and equitable manner and upon mutually agreed terms the results of research and development and the benefits arising from the commercial and other use of genetic resources for food and agriculture with the provider of such resources;
 - (d) actively implement the measures referred to in Article 5 in accordance with their national capacities, so contributing to ensure benefits to farmers and traditional communities.

EUROPEAN REGION

**PROPOSAL FOR THE REVISION OF THE INTERNATIONAL UNDERTAKING ON
PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE**

Article 1 - Objectives

The objectives of this [Undertaking] are the conservation and sustainable use of plant genetic resources for food and agriculture for future food security and the fair and equitable sharing of the benefits arising out of their use.

Article 2 - Definitions

See statement at the end of the text.

Article 3 - Scope

This [Undertaking] relates to plant genetic resources for food and agriculture as a basis for meeting present and future needs for world food security and sustainable agriculture.

Article 4 - Relationship of the [Undertaking] with other Legal Instruments

The provisions of this [Undertaking] shall not affect the rights and obligations of any [Party] deriving from any existing international agreement.

Article 5 (and Article 6) - National commitments towards the conservation and sustainable use of plant genetic resources for food and agriculture

Note: This chapter is an amalgam of Article 5, Exploration and Collection of Plant Genetic Resources, and Article 6, Conservation ... Evaluation and Documentation of PGR, in the Fourth Negotiating Draft.³

[Parties] adhering to this [Undertaking] will promote, as appropriate, in accordance with national priorities and having regard to the first Global Plan of Action for the Conservation and Sustainable Utilization of Plant Genetic Resources for Food and Agriculture adopted by the Fourth International Technical Conference on Plant Genetic Resources for Food and Agriculture, and as far as possible in cooperation with other [Parties], national actions and international cooperative activities in -

- (a) *in situ* conservation and development;
- (b) *ex situ* conservation;
- (c) sustainable utilization of plant genetic resources for food and agriculture;
- (d) institution and capacity building.

Article 7 - International Cooperation

7.1 Each [Party] shall as far as possible and as appropriate, integrate in its programmes activities referred to in Article 5 and cooperate with other [Parties], directly or through relevant international organizations, in order to achieve the objectives of this [Undertaking].

7.2 International cooperation in the framework of this [Undertaking] shall, in particular, be directed to:

³ SECRETARIAT NOTE: CGRFA/IUND/4 Rev. 1.

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- (a) strengthening the capabilities of developing countries, where appropriate on a national or sub-regional basis, with respect to conservation and sustainable use of plant genetic resources for food and agriculture;
 - (b) maintaining and strengthening an International Network of plant genetic resources for food and agriculture as described in Article 9;
 - (c) maintaining and strengthening of a World Information Network on plant genetic resources for food and agriculture as described in Article 10;
 - (d) identify ways and means to support activities related to the conservation and sustainable use of plant genetic resources for food and agriculture, such as the strengthening or establishing of technological cooperation.

Article 8 - Role of International Organizations

See statement at the end of the text.

Article 9 - The International Network of Plant Genetic Resources for Food and Agriculture

- 9.1 The International Network of Plant Genetic Resources for Food and Agriculture (IN/PGRFA) will be developed and strengthened. It will include plant genetic resources for food and agriculture held at national, regional and international level, and aim to improve the conservation, the exchange and utilization of plant genetic resources for food and agriculture for the benefit of sustainable agricultural development and of global food security, and contributing to the fair and equitable sharing of benefits arising from the utilization of plant genetic resources for food and agriculture.
- 9.2 [Parties] will designate plant genetic resources for food and agriculture, including material held under *in situ* and *ex situ* conditions, in order to define their contribution to the IN/PGRFA. They will encourage all institutions, including private, non-governmental, research, breeding and other institutions, to participate in the IN/plant genetic resources for food and agriculture.
- 9.3 The collections of the International Agricultural Research Centres of the CGIAR under the auspices of the FAO will be part of the International Network of Plant Genetic Resources for Food and Agriculture.
- 9.4 Modalities of functioning of the Network should be as simple and cost-effective as possible.

Article 10 - The World Information Network on Plant Genetic Resources for Food and Agriculture

- 10.1 The World Information Network on plant genetic resources for food and agriculture (WIN/PGRFA) will be developed and strengthened to improve the knowledge and the understanding of the importance of plant genetic resources for food and agriculture, rationalize existing collections, facilitate the use of collections and ensure and strengthen regional and international cooperation.
- 10.2 Modalities of functioning of the Network should be as simple and cost-effective as possible.

Article 11 - Access to plant genetic resources for food and agriculture

- 11.1 In the exercise of their sovereign rights over natural resources States will determine access to plant genetic resources for food and agriculture in accordance with national legislation.
- 11.2 [Governments] agree to grant other [Parties] to this [Undertaking] access to designated plant genetic resources for food and agriculture identified in Article 9 and will endeavour to facilitate such access without imposing restrictions that run counter to the objectives of the Convention on Biological Diversity and the present [Undertaking].
- 11.3 In the exercise of their sovereign rights, States encourage institutions or other organizations to place designated plant genetic resources for food and agriculture into the International Network. Regional and other international organizations are also encouraged to place designated plant genetic resources for food and agriculture held in their collections into the International Network. Access to designated plant genetic resources for food and agriculture in the International Network is unrestricted for the participants to the Network.
- 11.4 Access to the material of the International Network will be allowed to non-participants under specific conditions to be negotiated [by FAO CGRFA] [by the governing body].

Article 11a - Access to and Transfer of relevant Technology to developing countries

- 11a.1 Access to and transfer of technologies that are relevant to the conservation and sustainable use of plant genetic resources for food and agriculture, including biotechnology, to developing countries should be provided and/or facilitated under fair and most favourable terms, including on conditional and preferential terms, as mutually agreed. In case of technology subject to patents and other intellectual property rights, access and transfer of technology should be provided on terms which recognize and are consistent with the adequate and effective protection of intellectual property rights.
- 11a.2 To that end, adhering [Parties] encourage the private sector to enter into technological cooperation with developing countries and to contribute, as far as possible and appropriate, to the measures provided by this [Undertaking] for the conservation and sustainable utilization of plant genetic resources for food and agriculture.
- 11a.3 Such technology transfer should be provided, among others, by the mechanism established under Article 7, 9 and 10.
- 11a.4 Adhering [Parties] recognize the importance of the International Agricultural Research Centres in cooperation with National Research Systems to facilitate access and transfer of relevant technologies to developing countries.

Article 12 - Farmers' Rights

- 12.1 Governments adhering to this [Undertaking] recognize the enormous contribution that farmers of all regions of the world, particularly those in the centres of origin and crop plant diversity, have made and will continue to make for the conservation and development of plant genetic resources which constitute the basis of food and agriculture production throughout the world, which in turn form the basis for appropriate measures necessary for them to continue to conserve, manage and improve plant genetic resources for food and agriculture.

- 12.2 [Parties] adhering to the [Undertaking], for the purpose of strengthening the role of farmers in conservation and sustainable use of plant genetic resources for food and agriculture and ensuring fair and equitable sharing of benefits, shall as far as possible and as appropriate:
- (a) subject to this national legislation, respect, preserve and maintain the knowledge, innovations and practices of farmers relevant to the conservation and sustainable use of plant genetic resources for food and agriculture and promote their wider application with the consent and involvement of holders of such knowledge and encourage the equitable sharing of benefits arising from the use of their plant genetic resources for food and agriculture, related knowledge, innovations and practices;
 - (b) assist farmers and traditional communities, especially in areas of origin and crop plant diversity in the evolution, conservation, improvement and sustainable use of plant genetic resources for food and agriculture;
 - (c) endeavour to share in a fair and equitable way and upon mutually agreed terms the results of research and development and the benefits arising from the commercial and other use of genetic resources for food and agriculture with the provider of such resources.
 - (d) actively implement the measures referred to in Article 5 in accordance with their national capacities, so contributing to ensure benefits to farmers and traditional communities.

Article 13 - [Intergovernmental Body,] Monitoring of Activities and Related Action by [FAO]

See statement at the end of the text.

Article 14 - Financial Security

See statement at the end of the text.

STATEMENT

Referring to Article 2 of the Fourth Negotiating Draft, the European Region considers that after completion of the full text of the International Undertaking on Plant Genetic Resources for Food and Agriculture, terms used in the text will be defined as appropriate.

Referring to Article 8 and 13 of the Fourth Negotiating Draft, the European Region will examine with much attention, during the next phase of negotiations on institutional aspects, the arrangements to implement and follow up the [Undertaking], *i.e.*:

- the intergovernmental body for policy coordination and political guidance;
- the secretariat that will assist it;
- the role and obligations of FAO;
- the administration and management of the IN/PGRFA and WIN/PGRFA; the continuing review of the international situation concerning the conservation and sustainable use of plant genetic resources for food and agriculture.

European Region views on Article 14

1. The European Region is in favour of a multiple approach on benefit sharing by public and private participants in the networks. Ideally to include benefits such as :
 - mutual access to plant genetic resources for food and agriculture;
 - access to information;
 - access to existing financial mechanisms;
 - multi-stakeholder cooperation, research, training, capacity building and technology transfer;
 - development of integrated strategies for conservation and sustainable use of plant genetic resources for food and agriculture;
 - establishing/broadening existing regional networks;
 - others.

2. Article 14 should include :
 - the use of existing institutions and financing mechanisms for the implementation of activities in support of the networks;
 - a mechanism for the functioning of the networks.

**Regional Position:
Latin America and the Caribbean
15 May 1997**

LATIN AMERICA AND THE CARIBBEAN

**PROPOSAL FOR THE REVISION OF THE INTERNATIONAL UNDERTAKING ON
PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE**

Articles 3 (Scope), 11 (Access) and 12 (Farmers' Rights)

Article 3 - Scope

3.1. Unless otherwise specified, this Undertaking relates to plant genetic resources for food and agriculture. It does not relate to forest genetic resources.

Article 11 - Availability of plant genetic resources

11.1. Access to plant genetic resources for food and agriculture shall be in accordance with the Convention on Biological Diversity.

Article 12 - Farmers' Rights

12.1 Governments adhering to this (Undertaking) recognize the enormous contribution that farmers of all regions of the world, particularly those in the centers of origin and crop plant diversity, have made, are making and will continue to make for the conservation and development of plant genetic resources which constitute the basis of food and agriculture production throughout the world, which in turn form the basis for Farmers' Rights and appropriate measures necessary for them to continue to conserve, manage and improve plant genetic resources for food and agriculture.

12.2 Recognizing that the responsibility for realizing Farmers' Rights at the national level rests with the national governments, the international community, as a beneficiary of the plant genetic resources developed and conserved by farmers, has the responsibility to recognize Farmers' Rights and assist national governments in this regard for the purpose of ensuring full benefits to farmers, indigenous and local communities embodying traditional lifestyles, supporting their rights to have access to and build capacities in developing and conserving a wide range of plant genetic resources for the continuation of their contributions as well as the attainment of the overall purpose of this Undertaking for the present and future generations of farmers. In order to ensure the implementation of these responsibilities, Parties to this [Undertaking] shall take measures, including, as appropriate, legislative measures, to:

- (a) Protect, promote and compensate the use of knowledge, innovations and practices of farmers relevant for the conservation and sustainable use of plant genetic resources for food and agriculture and promote their wider application with the consent and involvement of holders of such knowledge, innovations and promote the equitable sharing of benefits arising from the utilization of plant genetic resources, knowledge, innovations and practices.
- (b) Protect and promote the collective rights of farmers with respect to their innovations, knowledge and culturally diverse systems, underlying the conservation, sustainable use and development of plant genetic resources by farmers and local communities.
- (c) Assist farmers in different regions of the world, especially in areas of origin/diversity of plant genetic resources in the evaluation, conservation, improvement and sustainable use of plant genetic resources, through appropriate arrangements, including regional mechanisms;
- (d) Recognize and ensure the rights of farmers, in fully sharing the benefits arising from the use of plant genetic resources on a fair and equitable basis, and as mutually agreed, including through transfer of technology, participation in research, and access to its results, derived at present, and in future, from the improved use of plant genetic resources through plant breeding and other modern scientific methods, as well as from their commercial use.

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- (e) Support measures for research training and institutional capacity building activities at the local level, with the full participation of the communities concerned, particularly focusing on women farmers, including measures for review of credit facilities and market provisions governing farmers' access to plant genetic resources for enhancing traditional genetic resources, development and the exchange systems through, *inter alia*, the removal of financial and market barriers against such systems, for conservation, development and sustainable use, and transfer of technology that protect, integrate, enhance and develop traditional farmers' knowledge, know-how and practices;
 - (f) Facilitate as appropriate the adaptation of traditional farmers' knowledge, know-how and practices, to wide use and integrate them with modern technologies as appropriate.
 - (g) Promote scientific and technological agricultural research that support and enhance farmer-based knowledge systems with adequate assessment and reorientation of current national and international research efforts as appropriate.
 - (h) Promote the establishment and advise on the elaboration, in each country, of *sui generis* systems and/or mechanisms pertaining to the fair and equitable sharing of the benefits arising out of the utilization of plant genetic resources.
 - (i) Promote the establishment and advise on the development of an international *sui generis* system for the recognition, protection and compensation of knowledge, innovations and practices of farmers and traditional communities.
 - (j) Establish and implement an international fund (referred to in Article 14.6) and develop its operational mechanism to ensure conservation and sustainable use of plant genetic resources, retrieve and reward traditional farmers' knowledge, facilitate access to new technologies and achieve equitable sharing of benefits derived from the products obtained through the use of plant genetic resources for the benefit of present and future generations of farmers.
 - (k) Recognize and protect the traditional rights of farmers and their communities to keep, use, exchange, share and market their seeds and their plant reproductive material, in particular the right to re-use farm-saved seed, as provided for in the International Convention for the Protection of New Varieties of Plants (the so-called "farmers' privilege").
 - (l) Take the necessary measures to ensure that farmers and local communities fully participate in the definition and implementation of the measures and legislation on Farmers' Rights at national and international levels, and through their active participation in the development, implementation and review of this [Undertaking] and the International Fund referred to in Article 14.6. A permanent and flexible consultative mechanism would be initiated to meet this aim.
 - (m) Ensure that the collective knowledge and resources held and developed by farmers and local communities are protected and promoted by adopting and implementing appropriate legislation in the form of a collective rights regime that provides for the protection of traditional or indigenous knowledge, innovations, materials and practices of and by farmers and local communities.

Regional Position:

**Near East
15 May 1997**

THE NEAR EAST REGION

**PROPOSAL FOR THE REVISION OF THE INTERNATIONAL UNDERTAKING ON
PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE**

**Article 2 (Definitions), Article 3 (Scope), Article 11 (Access) and
Article 12 (Farmers' Rights)**

Article 2 - Definitions

2.1 (f) “Plant genetic resources” means any part of plant material of the following categories held in *ex situ* and *in situ* prior or after coming into force of CBD.

- (i) present and past cultivated forms including land races.
- (ii) wild and relatives of cultivated forms.
- (iii) special genetic stocks including mutants, pollen, DNA and breeders lines.

Article 3 - Scope

3.1 This Undertaking applies to the plant genetic resources described in para. 2.1(f) of all species of economic and/or special interest, particularly for agriculture at present or in the future, and has particular reference to food crops.

Article 11 - Availability of plant genetic resources

- 11.1 Governments and institutions adhering to the Undertaking recognize that States have sovereign rights over their plant genetic resources.
- 11.2 It will be the policy of adhering governments having plant genetic resources under their control to allow access to samples of such resources, and to permit their exchange on prior informed consent where the resources have been requested for the purposes of scientific research on mutually agreed terms.
- 11.3 A state may impose only such minimum restrictions on the free exchange of materials covered by Article 2.1 (f) of this International Undertaking as are necessary for it to conform to its national and international obligations;
- 11.4 Breeders’ lines and farmers’ breeding material should only be available at the discretion of their developers during the period of development.

Article 12 - Farmers’ Rights

12.1 Governments adhering to this (Undertaking) recognize the enormous contribution that farmers of all regions of the world, particularly those in the centers of origin and crop plant diversity, have made, are making and will continue to make for the conservation and development of plant genetic resources which constitute the basis of food and agriculture production throughout the world, which in turn form the basis for Farmers’ Rights and appropriate measures necessary for them to continue to conserve, manage and improve plant genetic resources for food and agriculture.

12.2 Recognizing that the responsibility for realizing Farmers’ Rights at the national level rests with the national governments, the international community, as a beneficiary of the plant genetic resources developed and conserved by farmers, has the responsibility to recognize Farmers’ Rights and assist national governments in this regard for the purpose of ensuring full benefits to farmers, indigenous and local communities embodying traditional lifestyles, supporting their rights to have access to and build capacities in developing and conserving a wide range of plant genetic resources for the continuation of their contributions as well as the attainment of the overall purpose of this Undertaking for the present and future generations of farmers. In order to ensure the implementation of these responsibilities, Parties to this [Undertaking] shall take measures, including, as appropriate, legislative measures, to:

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- (a) Protect, promote and compensate the use of knowledge, innovations and practices of farmers relevant for the conservation and sustainable use of plant genetic resources for food and agriculture and promote their wider application with the consent and involvement of holders of such knowledge, innovations and promote the equitable sharing of benefits arising from the utilization of plant genetic resources, knowledge, innovations and practices.
 - (b) Protect and promote the collective rights of farmers with respect to their innovations, knowledge and culturally diverse systems, underlying the conservation, sustainable use and development of plant genetic resources by farmers and local communities.
 - (c) Assist farmers in different regions of the world, especially in areas of origin/diversity of plant genetic resources in the evolution, conservation, improvement and sustainable use of plant genetic resources, through appropriate arrangements, including regional mechanisms;
 - (d) Promote the establishment and advise on the elaboration, in each country, of *sui generis* systems pertaining to the fair and equitable sharing of the benefits arising out of the utilization of plant genetic resources.
 - (e) Promote the establishment and advise on the development of an international *sui generis* system for the recognition, protection and compensation of knowledge, innovations and practices of farmers and traditional communities.
 - (f) Recognize and ensure the rights of farmers, in fully sharing the benefits arising from the use of plant genetic resources on a fair and equitable basis, and as mutually agreed, including through transfer of technology, participation in research, and access to its results, derived at present, and in future, from the improved use of plant genetic resources through plant breeding and other modern scientific methods, as well as from their commercial use.
 - (g) Support measures for research training and institutional capacity building activities at the local level, with the full participation of the communities concerned, particularly focusing on women farmers, including measures for review of credit facilities and market provisions governing farmers' access to plant genetic resources for enhancing traditional genetic resources, development and the exchange systems through, *inter alia*, the removal of financial and market barriers against such systems, for conservation, development and sustainable use, and transfer of technology that protect, integrate, enhance and develop traditional farmers' knowledge, know-how and practices;
 - (h) Facilitate as appropriate the adaptation of traditional farmers' knowledge, know-how and practices, to wide use and integrate them with modern technologies as appropriate.
 - (i) Promote scientific and technological agricultural research that support and enhance farmer-based knowledge systems with adequate assessment and reorientation of current national and international research efforts as appropriate.
 - (j) Establish and implement an international fund (referred to in Article 14.6) and develop its operational mechanism to ensure conservation and sustainable use of plant genetic resources, traditional farmers' knowledge, access to new technologies and equitable sharing of benefits derived from the products obtained through the use

of plant genetic resources for the benefit of present and future generations of farmers.

- (k) Ensure that the prior informed consent of the concerned farmers and local communities is obtained before the collection of plant resources is undertaken; adapt current variety registration systems so as to identify and record, as appropriate, varieties of plant genetic resources provided by farmers and farming communities; and require disclosure of the origin of plant genetic resources utilized in the development of commercial varieties.
- (l) Recognize and protect traditional rights of farmers and their communities to keep, use, exchange, share and market their seeds and any other plant reproductive material, including the right to re-use farm-saved seed.
- (m) Take the necessary measures to ensure that farmers and local communities fully participate in the definition and implementation of the measures and legislation on Farmers' Rights at national and international levels, and through their active participation in the development, implementation and review of this [Undertaking] and the International Fund referred to in Article 14.6. A permanent and flexible consultative process would be initiated to meet this aim.
- (n) Review, assess and, if appropriate, modify intellectual property rights systems, land tenure, and seed laws in order to ensure their harmony with the provisions of this Article.
- (o) Ensure that the collective knowledge and resources held and developed by farmers and local communities are protected and promoted by adopting and implementing appropriate legislation in the form of a collective rights regime that provides for the protection of traditional or indigenous knowledge, innovations, materials and practices of and by farmers and local communities.

Regional Position:

North America

15 May 1997

NORTH AMERICAN REGION

**PROPOSAL FOR THE REVISION OF THE INTERNATIONAL UNDERTAKING ON
PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE**

Article 1 - Objective

The Undertaking seeks to facilitate unrestricted access to plant genetic resources for food and agriculture and farmers' efforts to conserve and sustainably use plant genetic resources for food and agriculture in order to secure global food security for present and future generations.

Article 3 - Scope

This agreement applies to plant genetic resources for food and agriculture.

Article 4 - Nature of the agreement and relationship with other legal instruments

The provisions of this agreement shall not affect the rights and obligations of any States and Regional Economic Integration Organizations party to this agreement deriving from any other existing international agreement.

Article 5 - Exploration and collection of plant genetic resources for food and agriculture

Each Party will, subject to national legislation, in cooperation with other Parties where appropriate, organize, arrange for or facilitate missions to identify and collect plant genetic resources for food and agriculture, in particular those that are in danger of disappearance.

Article 6 - Conservation, characterization, evaluation and documentation of plant genetic resources for food and agriculture

Each Party will, where appropriate and if possible in cooperation with other Parties:

- (a) determine the status of maintenance and the degree of variation in existing populations and collections of plant genetic resources for food and agriculture;
- (b) take measures to protect and conserve plant genetic resources for food and agriculture, *in situ* and *ex situ*;
- (c) monitor the maintenance of the viability and the genetic integrity of such plant genetic resources for food and agriculture;
- (d) promote the characterization and evaluation of plant genetic resources for food and agriculture with a view to improving their sustainable utilization.

Article 7 - International cooperation

1. Each party will cooperate with other parties in the conservation and sustainable use of plant genetic resources for food and agriculture.
2. International cooperation should, in particular, be directed to:
 - (a) establishing or strengthening the capabilities of developing countries and countries with economies in transition with respect to conservation and sustainable use of plant genetic resources for food and agriculture;
 - (b) encouraging international activities to promote conservation, evaluation, documentation, plant breeding, seed multiplication, and sharing and exchanging plant genetic resources for food and agriculture and appropriate information.

Article 8

Delete: institutional matters should be dealt with in article 13.

Article 9 - International plant genetic resources for food and agriculture networks

1. International networks to maintain collections of plant genetic resources for food and agriculture will be encouraged or developed, on the basis of existing arrangements, so as to achieve as complete coverage as possible of plant genetic resources for food and agriculture.
2. Parties will encourage, as appropriate, all institutions, including governmental, private, non-governmental, research, breeding and other institutions, to participate in the international networks.

Article 10 - Information management

1. Systems to manage and make information on plant genetic resources for food and agriculture available will be enhanced or developed on the basis of relevant existing arrangements.
2. Based on notification by parties to the institution designated in article 13, early warning will be provided about hazards that threaten the efficient maintenance of plant genetic resources for food and agriculture, with a view to safeguarding the material.

Article 11 - Access to Genetic Resources

1. States Party to this agreement shall take measures to provide unrestricted access to plant genetic resources for food and agriculture acquired prior to entry into force of this agreement, and held in their national collections or in collections designated by their national government, except where the acquisition was subject to terms which impose specific conditions, in which case access to the genetic resources shall be provided consistent with those terms.
2. States Party to this agreement shall take measures to provide unrestricted access to plant genetic resources for food and agriculture (genus level) listed in Annex 1, acquired after entry into force of this agreement, when they are held in national collections, in collections designated by their national government, or in areas for *in situ* conservation of plant genetic resources for food and agriculture designated by governments for the purposes of this agreement. Any Party may propose an amendment to Annex 1 for consideration by the Commission on Genetic Resources for Food and Agriculture. The text of the proposed amendment shall be communicated by the Secretariat of the Commission on Genetic Resources for Food and Agriculture to Parties at least three months before its meeting. Parties to this agreement are also encouraged to provide unrestricted access to plant genetic resources for food and agriculture not listed in Annex 1.
3. States Party to the agreement shall take no measures to restrict access to the germplasm identified in paragraphs 1 and 2 of this article held in the designated collections of any International Agricultural Research Centre located in their territory.

Article 12 - Farmers' Rights

1. Parties to this agreement recognize the enormous contribution that farmers of all regions of the world, particularly those in the centres of origin and crop plant diversity, have made and will continue to make for the conservation and development of plant genetic resources for food and agriculture which constitute the basis for food and agriculture production throughout the world, which in return form the basis for taking appropriate measures, which are non-discriminatory and non trade-distorting, necessary for them to continue to conserve, manage and improve plant genetic resources for food and agriculture.

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2. Parties to this agreement shall take measures to promote the efforts of their farmers to conserve and sustainably use plant genetic resources for food and agriculture, including through the establishment or strengthening of mechanisms such as:
 - (a) national germplasm systems;
 - (b) programs which preserve and improve native germplasm;
 - (c) initiatives that promote the use of, and research into, crops which are not widely used; and
 - (d) activities that help to control the erosion of arable land.
 3. Parties to this agreement should continue to work with relevant international programs to further farmers' activities to conserve and sustainably use plant genetic resources for food and agriculture activities and should also consider particular support for conservation and sustainable use initiatives that directly benefit farmers.
 4. Parties to this agreement should promote scientific and technological agricultural research that enhances farmer-based knowledge, know-how and practices, to widely use and integrate them with modern technologies as appropriate
 5. Parties to this agreement should make appropriate efforts to mobilize adequate financial resources to support farmers' activities to conserve and use sustainably plant genetic resources for food and agriculture without restricting or distorting trade. In this regard, they should seek the full use and qualitative improvement of all national, bilateral and multilateral funding sources and mechanisms and the involvement of private sector sources and mechanisms: including non-governmental organizations.

Article 14 - Finance

Parties will endeavour to mobilize, and optimize the use of, adequate and predictable financial resources from all existing national and international funding sources, for the conservation and sustainable use of plant genetic resources for food and agriculture. Consideration will also be given, at the international level, to give increased attention and higher priority to activities related to plant genetic resources for food and agriculture. Special consideration will be given to the need of developing countries to strengthen their capabilities in genetic resources activities, plant breeding and multiplication of seed or vegetative propagating material.

Annex 1

PROPOSED LIST OF CROPS ESSENTIAL TO GLOBAL FOOD SECURITY

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- A.
- | | |
|-----------|---------------------|
| Wheat | Rice |
| Maize | Chickpea |
| Sorghum | Bean (Phaseolus) |
| Millet | Cowpea (Vigna) |
| Rye | Faba Bean |
| Oat | Soybean |
| Barley | Pigeon Pea |
| Yam | Peanut |
| Potato | Lentil |
| Tanier | Pea |
| Taro | Sweet Potato |
| Cassava | Banana and Plantain |
| Coconut | Squashes |
| Brassicas | Melons |
| Tomatoes | Flax |
| Citrus | Sunflower |
| Sugarcane | Beets |
| Allium | |
- B.
- Forages