



(This revised text is identical to that in CGRFA/IUND/4, except that it corrects the error reported in CGRFA/IUND/4 Corr.1)

## COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE

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

#### FOURTH NEGOTIATING DRAFT

Following FAO Conference Resolution 7/93 for the revision of the International Undertaking on Plant Genetic Resources, in harmony with the Convention on Biological Diversity, the Commission on Genetic Resources for Food and Agriculture (while still the Commission on Plant Genetic Resources), at its First Extraordinary Session in November 1994, reviewed a **First Negotiating Draft**, which incorporated the three interpretative annexes into the Undertaking, and provided a more rational structure, grouped into 14 Articles. Members of the Commission made extensive comments on this draft.

At its Sixth Session, in June 1995, the Commission considered a **Second Negotiating Draft**, which included the comments made and alternative wording suggested by Members to the First Negotiating Draft. The Commission focussed its discussions on Articles 3, 11 and 12 of the International Undertaking, and undertook a first reading of the Preamble. At the request of the Commission, the formal written proposals made by Members during the session were integrated into a **Third Negotiating Draft**.

The Commission, at its Third Extraordinary Session, in December 1996, again discussed Articles 3, 11 and 12. It agreed on a new draft negotiating text for Articles 12.1 and 12.2, and received various texts on Scope and Access submitted by Members. The present **Fourth Negotiating Draft**, prepared in accordance with the instructions of the Third Extraordinary Session, includes the new draft negotiating text for Articles 12.1 and 12.2 on Farmers' Rights. The various texts submitted by Members on Scope and Access are collected in the Appendix to the present document, and, whenever relevant, cross-references to the Appendix are given in the body of the Fourth Negotiating Draft itself.

In the present document, the text of the International Undertaking, incorporating the three annexes and the preambles to the various Conference Resolutions, are indicated in **bold characters**. Changes proposed by Members during negotiations are set out in *italics*. Proposed new wording for individual articles that cannot easily be incorporated in the text of the Undertaking, and proposals for the restructuring of articles, are set out in single-outline boxes. All proposed deletions and additions to the text are shown in [square brackets]. The texts which the Third Extraordinary Session agreed should replace the earlier texts for Articles 12.1 and 12.2, as well as the accompanying notes, are set out in double-outline boxes. At the Commission's request, relevant extracts from the text of the Convention on Biological Diversity (CBD) accompany the Draft Negotiating Text: for ease of consultation and for reasons of economy, these texts are given in footnotes.

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## PREAMBLE

### NOTE ON THE PREAMBLE

*The Convention on Biological Diversity should be mentioned, and the principle of national sovereignty over plant genetic resources should be reaffirmed.<sup>1</sup>*

*The possibility of developing countries adding value to their plant genetic resources by effective breeding programmes should be mentioned. The transfer of technology, and new and additional resources, should be mentioned.*

*The link between conservation and sustainable utilization should be mentioned.*

### NOTE ON THE PREAMBLE

*Paragraphs (a) and (b) are obsolete. Instead, one paragraph should be introduced, referring to the Convention on Biological Diversity, and another on “common concern of mankind in line with biodiversity conservation”, and a third on sovereign rights over plant genetic resources for food and agriculture;<sup>2</sup>*

*Paragraphs (c) to (v) are also obsolete. Parts of them may be rephrased, following the formulation of the substantive articles.*

*A new paragraph is needed on access, financial resources, technology, etc. It can only be formulated on the basis of the agreed substantive articles.*

### NOTE ON THE PREAMBLE: New general drafting proposals for the Preamble<sup>3</sup>

1. *Reaffirm that the authority to determine access to genetic resources rests with the national governments and is subject to national legislation. Access, where granted, shall be on mutually agreed terms, and be subject to prior informed consent of the country providing such resources. There must be fair and equitable sharing of the benefits arising from the commercial and other utilization of genetic resources with the country providing such resources.*
2. *Acknowledge the need to establish or maintain means to regulate, manage or control the risks associated with the use and release of living modified organisms resulting from biotechnology which are likely to have adverse environmental impacts that could affect the conservation and sustainable use of plant genetic resources, taking into account the risks to human health.*

## THE CONFERENCE

### [Recognizing that]

#### PROPOSALS FOR A NEW PARAGRAPH TO PRECEDE PARAGRAPH (a):

*Conscious of the intrinsic value of plant genetic resources as part of biological diversity;*

**(a) Plant genetic resources are a common heritage of mankind to be preserved, and to be freely available for use, for the benefit of present and future generations;**

<sup>1</sup> CBD PREAMBLE, paragraph 4: “Reaffirming that States have sovereign rights over their own biological resources”.

<sup>2</sup> CBD PREAMBLE, paragraph 3: “Affirming that the conservation of biological diversity is a common concern of humankind”.

<sup>3</sup> CBD: SEE ARTICLE 15, paragraphs 1, 4, 5 and 7.

**PROPOSALS FOR NEW WORDING:**

*Affirming that the conservation and sustainable use of plant genetic resources, for the benefit of present and future generations, are a common concern of humankind;*

**PROPOSALS FOR NEW WORDING:**

*Plant genetic resources for food and agriculture are part of the inheritance of all humanity, because of their importance for world food security, and, because of this, their long-term conservation is a common concern of all countries.*

**PROPOSALS FOR NEW WORDING:**

*Plant Genetic Resources constitute basic genetic material of great importance to mankind which need to be preserved and made freely available, keeping in line with the Convention on Biological Diversity's provision reaffirming that States have sovereign rights over their own biological resources, for the benefit of present and future generations.*

*NOTE: The paragraph should be redrafted, using language more in harmony with the Convention on Biological Diversity. "The conservation and the availability for utilization of plant genetic resources, for the benefit of present and future generations, are of common interest to all humanity".*

**PROPOSALS FOR NEW WORDING OF PARAGRAPHS (a) AND (b):**

*Substitute (a) and (b) by paras. 3 and 4 of the Convention on Biological Diversity.<sup>4</sup>*

**PROPOSALS FOR NEW WORDING OF PARAGRAPHS (a) AND (b):**

*Substitute (a) and (b) by para., 4 of the Convention on Biological Diversity.*

**PROPOSALS FOR NEW WORDING AND NOTE ON PARAGRAPHS (a) and (b):**

*The original wording of the Undertaking relating to "heritage of mankind" was based on a concept previously used in the Convention concerning the Protection of World Cultural and Natural Heritage, adopted under the sponsorship of UNESCO in 1972. This concept, as used in the UNESCO Convention, was not intended to exclude in any way either the overriding sovereign rights of the State over natural or man-made sites located on its territory, or private property rights existing under national law. The United Nations Convention on the Law of the Sea of 1982, on the other hand, used the concept of "the common heritage of mankind" to refer to the sea-bed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction. In the Undertaking, as in the UNESCO Convention, the use of the concept does not entail the exclusion of sovereign rights, as clarified by Resolution 3/91 (see paragraph (b) below) or of rights of private property under national law. For its part, the Convention on Biological Diversity does not refer at all to the concept of "heritage of mankind", but rather to the "common concern of mankind".<sup>5</sup> In order to harmonize this text with the language of the Biodiversity Convention, the Commission may wish either:*

*(a) to delete "freely" in the third line so as to make this paragraph of the Undertaking clearly compatible with the principle of access on mutually agreed terms, as set out in the Biodiversity Convention; or*

*(b) to recast the whole paragraph, using wording closer to that of the Biodiversity Convention, for*

<sup>4</sup> **CBD PREAMBLE, paragraphs 3 and 4:** "Affirming that the conservation of biological diversity is a common concern of humankind," and "Reaffirming that States have sovereign rights over their own biological resources".

<sup>5</sup> **CBD PREAMBLE, paragraph 3:** "Affirming that the conservation of biological diversity is a common concern of humankind".

*example, along the following lines: “The conservation and availability for use of plant genetic resources, for the benefit of present and future generations, are a common concern of mankind”.*

*If paragraph (a) above is redrafted, and the concept of the “heritage of mankind” deleted, paragraph (b) could be modified in order to state simply that: “States have sovereign rights over their plant genetic resources”.*<sup>6</sup>

**(b) [The concept of mankind’s heritage, as applied in the International Undertaking on Plant Genetic Resources, is subject to the sovereignty of the States over their plant genetic resources;]**

*PROPOSALS FOR NEW WORDING:*

*Reaffirming that States have sovereign rights over their plant genetic resources;*

*PROPOSALS FOR NEW WORDING:*

*States have sovereign rights over their plant genetic resources, which include the right to develop them, to profit from this, and to be associated with any advantages that accrue.*

*PROPOSALS FOR A NEW PARAGRAPH AFTER PARAGRAPH (b):*

- *the sovereign rights of States should be exercised, with regards to plant genetic resources for food and agriculture, in consideration of the importance of facilitating access to plant genetic resources for food and agriculture, for conservation and sustainable use by other States, and of not imposing restrictions which run counter to the objectives of this [Agreement];*<sup>7</sup>
- *non-restricted and non-paid access to samples of plant genetic resources for food and agriculture, for research and breeding purposes, is essential to achieve progress in benefiting from these resources, and contribute to sharing those benefits.*

**(c) Full advantage can be derived from plant genetic resources through an effective programme of plant breeding, and that, while most such resources, in the form of wild plants and old land races, are to be found in developing countries, training and facilities for plant survey and identification, and plant breeding, are insufficient, or even not available in many of those countries;**

*PROPOSALS FOR NEW WORDING:*

*Aware that plant genetic resources are indispensable for the genetic improvement of cultivated plants, and that full advantage can be derived from them through an effective programme of plant breeding;*

*PROPOSALS FOR NEW WORDING:*

*Full advantage can be derived from plant genetic resources (cultivated and wild) found in developing countries, through comprehensive and effective programmes on exploration and collection, evaluation and characterization, and identification of potential genes that can be used in the plant breeding programmes for the development of new varieties.*

*NOTE: Could be left as it is, or could be joined to (d) and expressed positively: “Plant genetic resources are indispensable for the genetic improvement of cultivated plants, and full advantage should be taken of them through an effective programme of plant breeding, to meet the needs of the international*

<sup>6</sup> **CBD PREAMBLE, paragraph 4:** “Reaffirming that States have sovereign rights over their own biological resources”.

<sup>7</sup> **CBD ARTICLE 15- Access to Genetic Resources:** “2. Each Contracting Party shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and not to impose restrictions that run counter to the objectives of this Convention”.

*community". If the paragraphs are maintained as they are, it should be stated that they should be explored, and that this requires a transfer of technology.*

**(d) Plant genetic resources are indispensable for the genetic improvement of cultivated plants, but have been insufficiently explored, and are in danger of erosion and loss;**

*NOTE: Paragraph (d) should be merged with paragraph (c).*

**(e) The availability of plant genetic resources and the information, technologies and funds necessary to conserve and utilize them [sustainably], are complementary [and of equal importance];<sup>8</sup>**

*PROPOSALS FOR NEW WORDING:*

*Recognizing that the availability of plant genetic resources, and access to the information, technologies and funds necessary to conserve and utilize them sustainably, are complementary and of equal importance;*

*PROPOSALS FOR NEW WORDING:*

*Access and availability of Plant Genetic Resources and relevant information, and technologies, are linked with the necessary funding to allow sustained conservation and utilization.*

**(f) All nations can be contributors and beneficiaries of plant genetic resources, information, technologies and funds;]**

**(g) The best way to guarantee the maintenance of plant genetic resources is to ensure their [effective and beneficial utilization] [sustainable utilization] [conservation and sustainable use] in all countries;**

*PROPOSALS FOR NEW WORDING:*

*Acknowledging that the best way to guarantee the maintenance of plant genetic resources is to ensure their sustainable use and the fair and equitable sharing of benefits arising out of their utilization;*

**(h) The farmers [and local and traditional communities] of the world have, over the millennia, domesticated, conserved, nurtured, improved and made available plant genetic resources, and continue to do so today;**

*PROPOSALS FOR NEW WORDING:*

*Noting that the farmers of the world have, over the millennia, domesticated, conserved, nurtured, improved and made available plant genetic resources, and continue to do so today;*

*PROPOSALS FOR NEW WORDING:*

*States recognise the enormous contribution that farmers and traditional communities of all regions have made to the conservation and development of plant genetic resources, which constitute the basis of plant production throughout the world, and which form the basis for the concept of Farmers' Rights.*

<sup>8</sup> **CBD ARTICLE 16 - Access to and Transfer of Technology:** "1. Each Contracting Party, recognizing that technology includes biotechnology, and that both access to and transfer of technology among Contracting Parties are essential elements for the attainment of the objectives of this Convention, undertakes subject to the provisions of this Article to provide and/or facilitate access for and transfer to other Contracting Parties of technologies that are relevant to the conservation and sustainable use of biological diversity or make use of genetic resources and do not cause significant damage to the environment".

*Note: This paragraph is drawn from clause 12.1 of the Undertaking. As it sets out a conceptual foundation, but is not an operational paragraph, it could be moved to the Preamble, and placed together with Preambular paragraphs (h), (n) and (o) which deal with Farmers' Rights.*

*(h) Farmers all over the world have, over millennia, acclimatized, conserved, maintained, improved and made available plant genetic resources, and often continue to do so at present.*

*(h bis) Scientists in research institutions and genebanks have greatly contributed to exploring, conserving and better understanding genetic resources, thereby limiting genetic erosion, and have contributed to alerting the international community to the importance of plant genetic resources.*

*(h ter) Plant breeders, in both the public and private sectors, have contributed to supplying farmers with improved varieties and quality seed, and should be encouraged to develop and diversify their activities to cover local species and varieties, so as to promote sustainable agriculture.*

*(h quater) The time has come to mobilize the entire international community, particularly farmers, plant breeders and scientists, within a universal strategy, based on a clear and stable instrument.*

**(i) Advanced technologies and local rural technologies are both important and complementary in the conservation and utilization of plant genetic resources;**

**PROPOSALS FOR NEW WORDING:**

*Stressing that advanced technologies and local rural technologies are equally important and complementary in the conservation and utilization of plant genetic resources;*

**PROPOSALS FOR NEW WORDING:**

*Traditional/rural technologies and advanced technologies are equally important and complementary in the sustainable conservation and utilization of plant genetic resources.*

**(j) *In situ* and *ex situ* conservation are important and complementary strategies for maintaining genetic diversity;**

**PROPOSALS FOR NEW WORDING:**

*Emphasizing that the fundamental requirement for the conservation of plant genetic resources is the *in situ* conservation of ecosystems and natural habitats and the maintenance and recovery of a viable population of species in their natural surroundings, and that *ex situ* measures, preferably in the country of origin, also have an important role to play;*

**NOTE:** *It was suggested to redraft this in harmony with the Convention on Biological Diversity, dividing it into two parts:*

- (i) the fundamental need for the conservation of plant genetic resources is their conservation, *in situ*, in their natural ecosystems and habitats, and the maintenance and recovery of those resources in danger of extinction in their natural environment.*
- ii) ...the adoption of *ex situ* methods, preferably in the country of origin, nonetheless has an important function.*

**Considering that**

**(k) The international Community should adopt a concrete set of principles designed to promote the exploration, preservation, documentation, availability and [full] [sustainable] use of relevant plant genetic resources essential to agricultural development;**

*PROPOSALS FOR NEW WORDING:*

*The International community should adopt a concrete set of principles designed to promote the conservation and sustainable use of relevant plant genetic resources essential to agricultural development;*

**(l) It is the responsibility of governments to undertake such activities as are needed to ensure the exploitation, collection, conservation, maintenance, evaluation, documentation and exchange of plant genetic resources [in the interest of all mankind]; to provide financial and technological support to institutions engaged in such activities; and to ensure the [equitable and unrestricted distribution of the benefits] [equitable distribution of the benefits] [fair and equitable sharing of the benefits] of plant breeding;**

*PROPOSALS FOR NEW WORDING:*

*States are responsible for conserving their biological diversity and for using their biological resources in a sustainable manner;<sup>9</sup>*

*NOTE: A division into three parts was suggested: the first would end at advantage to humanity; the second would go up to activities; and the third would cover plants. Mention could be made of international cooperation and financial resources.*

**(m) Progress in plant breeding is essential to the present and future development of agriculture; and [the need for] the establishment or strengthening of plant breeding and seed production capabilities, at the national, sub-regional and regional levels, is [a prerequisite] [critical] to making efficient use of international cooperation in the exploration, collection, conservation, maintenance, evaluation, documentation and exchange of plant genetic resources;**

*NOTE: This paragraph could be reformulated in such a way as to not put any conditions upon international cooperation.*

**(n) The majority of these plant genetic resources come from developing countries, the contribution of whose farmers [and local and traditional communities] [has not been] [must be] sufficiently recognized [or rewarded] [, protected, and/or rewarded through equitable sharing of benefits];**

*PROPOSALS FOR NEW WORDING:*

*The majority of these plant genetic resources come from developing countries, the contribution of whose farmers and local communities embodying traditional lifestyles should be sufficiently recognized and rewarded through an appropriate system of sharing benefits;*

*All plant genetic resources come (originate) from developing countries, the contribution of whose farmers and indigenous communities should be sufficiently recognized, protected and rewarded through an appropriate system of equitable sharing of benefits;*

*NOTE: The article should be formulated positively, underlining the importance of traditional and local communities in the conservation of germplasm.*

<sup>9</sup> **CBD PREAMBLE, paragraph 5:** “Reaffirming also that States are responsible for conserving their biological diversity and for using their biological resources in a sustainable manner”.



(o) **The farmers [and local and traditional communities], especially those in developing countries, [should] [shall] benefit fully from the improved and increased use of the natural resources they have preserved;**<sup>10</sup>

**PROPOSALS FOR NEW WORDING:**

*The farmers, especially those in developing countries, shall benefit fully from the improved and increased use of the natural resources they have conserved;*

(p) **There is a need to continue the conservation (*in situ* and *ex situ*), development and [sustainable] use of the plant genetic resources in all countries, and to strengthen [, through international cooperation and the transfer of technology,] the capabilities of developing countries in these areas;**<sup>11</sup>

**PROPOSALS FOR NEW WORDING:**

*There is a need to continue the conservation (*in situ* and *ex situ*), development and sustainable use of the plant genetic resources in all countries, and, through international cooperation and transfer of technology, strengthen the capabilities of developing countries in these areas;*

(q) **This International Undertaking on Plant Genetic Resources constitutes [a formal framework] [is within the framework of the Convention on Biological Diversity, and covers plant genetic resources for food and agriculture, and is] aimed at ensuring conservation, use and availability of plant genetic resources, and that it is intended to lay the basis for an equitable and, therefore solid and lasting, global system;**

**PROPOSALS FOR NEW WORDING:**

*This International Undertaking on Plant Genetic Resources constitutes a formal framework aimed at ensuring conservation and sustainable use of plant genetic resources for food and agriculture, subject to a fair and equitable sharing of benefits;*

*This International Undertaking on Plant Genetic Resources constitutes an official framework aimed at ensuring the conservation, sustainable use and access to plant genetic resources, and that it is intended to lay the basis for a global system with a just and equitable sharing of the benefits.*

*NOTE: A definition on “availability” should be included in Art. 2.*

**[(r) Conditions of access to plant genetic resources need further clarification;]**

*NOTE: This concept could be included in Chapter IV.*

**PROPOSALS FOR A NEW PARAGRAPH (x OR y):**

*Stressing the importance of, and the need to promote, international, regional and global cooperation among States and intergovernmental organizations and the non-governmental sector for the conservation and sustainable use of plant genetic resources for food and agriculture.*

**Has agreed as follows:**

<sup>10</sup> **CBD PREAMBLE, paragraph 12:** “Recognizing the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on biological resources, and the desirability of sharing equitably benefits arising from the use of traditional knowledge, innovations and practices relevant to the conservation of biological diversity and the sustainable use of its components”.

<sup>11</sup> **CBD PREAMBLE, paragraph 7:** “Aware of the general lack of information and knowledge regarding biological diversity and of the urgent need to develop scientific, technical and institutional capacities to provide the basic understanding upon which to plan and implement appropriate measures”.

## CHAPTER I. INTRODUCTION

Article 1 - Objective

[ The objective of this [Undertaking] is to ensure that plant genetic resources of economic and/or social interest, particularly for agriculture, will be explored, preserved, evaluated and made available for plant breeding and scientific purposes. This Undertaking is based on the universally accepted principle that plant genetic resources are a heritage of mankind and consequently should be available without restriction.]<sup>12</sup>

*PROPOSALS FOR NEW WORDING:*

1.1 *The objectives of this [Undertaking], to be pursued in accordance with the Convention on Biological Diversity, are the conservation and sustainable use of plant genetic resources for food and agriculture, and the fair and equitable sharing of the benefits arising out of their utilization, including by appropriate access to genetic resources, relevant information and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.*

1.2. *Each Contracting Party shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other contracting Parties and not to impose restrictions that run counter to the objectives of this [Undertaking].*<sup>13</sup>

*NOTE: A wish was expressed to see the concept of “common heritage of humankind” or a derivative there. This could perhaps be achieved by a reference to the conservation and sustainable use of plant genetic resources being a common concern of humankind in the Preamble, as in the Convention on Biological Diversity.*<sup>14</sup>

For Article 1, see also the proposals made during the Third Extraordinary Session: Appendix, Attachment 3.

Article 2 - Definitions**2.1 In this [Undertaking]:**

(a) **“active collection” means a collection which complements a base collection, and is a collection from which [seed samples] [samples of seeds and/or vegetative propagating material] are drawn for distribution, exchange and other purposes such as multiplication and evaluation;**

*NOTE: A suggestion was made to define “plant genetic resources material” or “genetic resources material” and to refer to this concept here and in the definition of base collection.*<sup>15</sup>

(b) **“base collection [of plant genetic resources]” means a collection of seed stock [or genetic resources material] [or vegetative propagating material (ranging from [cells and] tissue cultures to whole plants)] [in**

<sup>12</sup> **CBD ARTICLE 1 - Objectives:** “The objectives of this Convention, to be pursued in accordance with its relevant provisions, are 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 those resources and to technologies, and by appropriate funding”.

<sup>13</sup> **CBD ARTICLE 15 - Access to Genetic Resources:** “2. Each Contracting Party shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and not to impose restrictions that run counter to the objectives of this Convention”.

<sup>14</sup> **CBD PREAMBLE, paragraph 3:** “Affirming that the conservation of biological diversity is a common concern of mankind”.

<sup>15</sup> **CBD ARTICLE 2 - Use of terms:** “‘Genetic material’ means any material of plant, animal, microbial or other origin containing functional units of heredity”.

*any form*] held for long-term security [in order to preserve the genetic variation for scientific purposes and as a basis for plant breeding];

(c) “centre” means an institution holding a base and/or active collection of plant genetic resources, as described in Article 9.

[(d) “Farmers’ Rights” mean rights arising from the past, present and future contributions of farmers in conserving, improving, and making available plant genetic resources, particularly those in the centres of origin/diversity.]

*NOTE: This definition was specifically identified for further discussion.*

*PROPOSALS FOR NEW WORDING:*

*“Farmers’ Rights” mean the rights of farmers and traditional communities to dispose of their plant genetic resources and to [fully benefit from them] [receive equitable and appropriate compensation for them]. These rights arise from the past, present and future contributions of farmers in conserving, improving, and making available plant genetic resources, particularly those in the [centres of origin/diversity] [country of origin].*

*“Farmers’ Rights” mean the rights of farmers and farming communities, which are vested in their national Governments, to equitable and appropriate recompense for their contributions by their knowledge, innovations and practices to the conservation, improvement and availability of plant genetic resources.*

(e) “institution” means an entity established at the international[, regional] or national level, with or without legal personality, for purposes related to the exploration, collection, conservation, maintenance, [documentation,] [establishment of passport data, characterization,] evaluation or exchange of plant genetic resources;

(f) “plant genetic resources” means the reproductive or vegetative propagating material of the following categories of plants:

- i. cultivated varieties (cultivars) in current use and newly developed varieties;
- ii. [obsolete] [heritage] [unused] cultivars;
- iii. [primitive] [traditional] [farmers’] cultivars (land races);
- iv. wild and weed species, near relatives of cultivated varieties;
- v. special genetic stocks (including elite and current breeders’ lines and mutants);
- [vi. Plant DNA stocks.]

*PROPOSALS FOR NEW WORDING:*

*The following reformulation was suggested for paragraph 2.1.f.:*

*“Plant genetic resources” means the seeds or vegetative propagating material or the following categories of plants:*

- i. wild species and weed species, which are near relatives of cultivated species;
- ii. traditional cultivars; unused old or recent cultivars;
- iii. cultivars in current use on a commercial scale, either created recently or not;
- iv. special genetic stocks (including elite and current breeders lines, and mutants).

**PROPOSALS FOR ADDITIONAL DEFINITIONS:**

*“plant genetic resources for food and agriculture” means all reproductive or vegetative propagating material of plants of actual or potential value for uses in food and agriculture, including traditional cultivars, wild relatives of cultivated plants and special genetic stocks.<sup>16</sup>*

*“ex situ conservation of plant genetic resources” means the conservation of plant genetic resources outside their natural habitat.<sup>17</sup>*

*“in situ conservation of plant genetic resources” means the conservation of plant genetic resources in the areas in which they have naturally evolved and, in the case of cultivated species or varieties, in the surroundings where they have developed their distinctive properties.<sup>18</sup>*

*“in situ conditions” means conditions where genetic resources exist within ecosystems and natural habitats, and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties.<sup>19</sup>*

*“Breeder’s Right” means the right provided for in the International Convention for the Protection of New Varieties of Plants (UPOV Convention) to the person or institution who bred or discovered and developed a new variety.*

*“Plant Breeder” means a natural or legal entity who, through natural processes or through genetic work, has discovered and, as a result, obtained a new variety.*

*“Plant Breeders’ Rights” consists in submitting to the exclusive authorization of the Breeder:*

- a) The production of the multiplication material of such variety;*
- b) The sale, offer or exposing for sale of such material;*
- c) The marketing, import or export of the material;*
- d) The repeated use of the new variety for commercial production of another variety;*
- e) The utilization of ornamental plants or of parts thereof which are, usually, marketed for purposes other than propagation, with a view to producing ornamental plants or cut flowers.*

*“Breeders’ Right” means the right provided for in the UPOV Convention to the person or institution who bred, or discovered and developed, a new variety.*

*“Intellectual property rights” means breeders’ rights and other rights provided by a Party or a Granting Authority with respect to intellectual property, consistent with definitions found in the Agreement on Trade Related Aspects of Intellectual Property, including Trade in Counterfeit Goods, of the Uruguay Round Agreement.*

*“Breeders’ rights” means sui generis protection for plant varieties as provided for in the International Convention for the Protection of New Varieties of Plants (UPOV).*

<sup>16</sup> **CBD ARTICLE 2 - Use of terms:** “Genetic resources’ means genetic material of actual or potential value”.

<sup>17</sup> **CBD ARTICLE 2 - Use of terms:** “‘ex-situ conservation’ means the conservation of components of biological diversity outside their natural habitats”.

<sup>18</sup> **CBD ARTICLE 2 - Use of terms:**“‘in-situ conservation’ means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties”.

<sup>19</sup> **CBD ARTICLE 2 - Use of terms:**“‘in-situ conditions’ means conditions where genetic resources exist within ecosystems and natural habitats, and, in the case of domesticated or cultivated species, in the surroundings where they have developed their distinctive properties”. “‘Habitat’ means the place or type of site where an organism or population naturally occurs”.

[2.2 It is understood that the term “free access” does not mean free of charge.]<sup>20</sup>

### Article 3 - Scope

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

#### *PROPOSALS FOR NEW WORDING:*

3.1 *This [Undertaking] relates to plant genetic resources for food and agriculture, [excluding] [including] forest genetic resources, as a basis for meeting present and future needs for adequate food and feed supplies, raw materials and renewable energy for the growing world population.*

3.1. *This [Undertaking] relates to Farmers’ Rights and to ex situ collections of plant genetic resources for food and agriculture not acquired in accordance with the Convention on Biological Diversity.*

3.1 *This Undertaking relates to the plant genetic resources described in para. 2.1(f) of all species of economic and/or social interest, whether in the conventional or transgenic forms, particularly for food and agriculture at present or in the future.*

3.1 *This Undertaking relates to plant genetic resources for food and agriculture. Plant genetic resources for food and agriculture means the reproductive or vegetative propagating material of those species cultivated for food, fibre, fuel, fodder for domesticated animals, or for wood production, and wild relatives of such species [as well as harvested wild food plants].*

*NOTE: This definition renders redundant the definition in Article 2.1(f), which should be deleted.*

3.1 *This Undertaking relates [applies] to the plant genetic resources for food and agriculture, including their wild relatives as well as harvested wild food plants, which are listed in Annex ...*

*NOTE: This Annex would consist of a list of plant genera. It would begin as a comprehensive list and each country could designate genera which will then be excluded from the list and the scope of the Undertaking for all countries. The Annex can be updated as appropriate. An example of such a list of genera important for food and agriculture was proposed and is attached as Annex 1 to this document.*

*A further proposal, attached as Annex 2 to this document, gives examples of two possible scenarios addressing questions of access and scope, the second of which involves a “positive list”.*

#### *PROPOSALS FOR NEW WORDING:*

3.1 *This [Undertaking] relates to plant genetic resources for food and agriculture as a basis for meeting present and future needs for the growing world population and has particular reference to food crops.*

#### *PROPOSALS FOR NEW WORDING:*

3.1 *This Undertaking relates to the conservation and sustainable use of plant genetic resources for food and agriculture including species of economic and social importance having actual and the potential value as a basis of meeting present and future needs for adequate food and agricultural production for the growing world population and that access to plant genetic resources shall be linked within the national sovereignty, legislation, Farmers’ Rights, transfer of technology and equitable sharing of benefits accruing from utilization of such plant genetic resources.*

<sup>20</sup>

**CBD: SEE ARTICLE 15 - Access to genetic resources:** (which provides that the authority to determine access rests with national governments and is subject to national legislation, and that access, where granted, shall be on mutually agreed terms).

For Article 3, see also the proposals made during the Third Extraordinary Session: Appendix, Attachments 1, 2, 3, 4, 4 Add.1, 5, 6 and 7.

#### **Article 4 - Nature of the [Undertaking] and Relationship with other Legal Instruments**

**4.1 At the time of adhering, Parties will advise [the Director-General of FAO] of the extent to which they are in a position to give effect to the principles contained in the [Undertaking]. At [yearly] intervals, they will [provide] [present to] [the Director-General of FAO] [the Governing Body of the [Undertaking]] with [information] [reports] on the measures that they have taken or propose to take to achieve the objectives of this [Undertaking] [measures which they have taken for the implementation of the provisions of this [Undertaking] and their effectiveness in meeting the objectives of this [Undertaking].<sup>21</sup>**

**4.2 The benefits to be derived under this International [Undertaking] are part of a reciprocal system, [and should be limited to [countries] [the Parties] adhering to th-\*e International [Undertaking]].]**

**4.3 This [Undertaking] is to be implemented in harmony with the Convention on Biological Diversity and [, as appropriate,] other legal instruments protecting biological diversity or parts thereof [for the conservation and sustainable use of plant genetic resources for food and agriculture].<sup>22</sup>**

#### *PROPOSALS FOR NEW WORDING:*

**4.3 This [Undertaking] is to be implemented in harmony with national, regional and international legal instruments in force promoting the achievement of the objectives of the [Undertaking].**

**4.4 This [Undertaking] is without prejudice to any measures taken by Governments—in line with the provisions of the International Plant Protection Convention, adopted in Rome on 6 December 1951—to regulate the entry of plant genetic resources with the aim of preventing the introduction or spread of plant pests.**

**4.5 Plant Breeders' Rights, as [exemplified by those] provided for under the International Convention for the Protection of New Varieties of Plants (the UPOV Convention)—are [not incompatible with] [an essential element of] this International [Undertaking];<sup>23</sup>**

#### *PROPOSALS FOR NEW WORDING:*

*Paragraphs 4.4 and 4.5 could be merged into the following text:*

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

*A new paragraph (Arts. 4.4 /4.5) should be added referring to Breeders Rights as follows:*

*“While Farmers Rights will be implemented under this [Undertaking], the contributions of plant breeders to*

<sup>21</sup> **CBD ARTICLE 26 - Reports:** “Each Contracting Party shall, at intervals to be determined by the Conference of the Parties, present to the Conference of the Parties, report on measures which it has taken for the implementation of the provisions of this Convention and their effectiveness in meeting the objectives of this Convention”.

<sup>22</sup> **CBD ARTICLE 22 - Relationship with other international conventions:** “1. The provisions of this Convention shall not affect the rights and obligations of any Contracting Party deriving from any existing international agreement, except where the exercise of those rights and obligations would cause a serious damage or threat to biological diversity”. “2. Contracting Parties shall implement this Convention with respect to the maritime environment consistently with the rights and obligations of States under the law of the sea”.

<sup>23</sup> **CBD ARTICLE 16 - Access to and transfer of technology:** “5. The Contracting Parties, recognizing that patents and other intellectual property rights may have an influence on the implementation of this Convention, shall cooperate in this regard subject to nation legislation and international law in order to ensure that such rights are supportive of and do not run counter to its objectives”.

*the conservation and sustainable utilization of Plant Genetic Resources for Food and Agriculture are recognized by adhering Parties, taking due account of other related international conventions, ratified or negotiated, such as the UPOV Convention”.*

*Paragraphs 4.3-4.5 should be transferred to a new Article on relationship with other legal instruments, including the revised UPOV Convention and Art. 27 of TRIPs/GATT. The new Article would state that the objectives of the [Undertaking] are to be pursued in accordance with the Convention on Biological Diversity.*

*So far as references to other legal instruments are concerned, three alternatives could be considered:*

- 1. Not to make any reference to any agreement;*
- 2. Make reference to some relevant agreements;*
- 3. Make reference to all relevant agreements, perhaps enumerating them in an Annex.*

*The following new structure was proposed, including a text for Article 4, and the revision of Article 9 and other Articles:*

*“Art. 4.- This [Undertaking] is to be implemented in harmony with the CBD and in accordance with the provisions of Articles 2 to 20, 22 and 26 of that Convention.*

*Articles 5, 6, 7 and 8 should be deleted. The rest of present Article 4 and all definitions of Article 2 that are already in the Convention should also be deleted. Articles 1, 3, 9, 10, 11, 12, 13 and 14 should be revised and adjusted as appropriate.”*

For Article 4, see also the proposals made during the Third Extraordinary Session: Appendix, Attachment 3.

## **CHAPTER II: EXPLORATION, CONSERVATION AND SUSTAINABLE USE OF GENETIC RESOURCES**

### *PROPOSALS FOR NEW STRUCTURE:*

*One delegation suggested that this Chapter should be restructured to reflect full Articles on:*

- a) in situ conservation;*
- b) ex situ conservation, and*
- c) Sustainable use of plant genetic resources for food and agriculture.<sup>24</sup>*

### **Article 5 - Exploration and Collection of Plant Genetic Resources<sup>25</sup>**

**5.1 [Governments adhering ][Parties] to this [Undertaking] will [, where appropriate,] [organize [or arrange for] [, arrange for or facilitate] missions of exploration, conducted in accordance with recognized scientific standards, to] identify potentially valuable plant genetic resources [for food and sustainable agriculture] that are in danger of becoming extinct in the country concerned, [as well as other plant genetic resources in the**

<sup>24</sup> **CBD ARTICLE 8 - In-Situ Conservation; CBD ARTICLE 9 - Ex-Situ Conservation; CBD ARTICLE 10- Sustainable use of components of biological diversity.**

<sup>25</sup> **CBD ARTICLE 7 - Identification and Monitoring:** “Each Contracting Party shall, as far as possible and as appropriate, in particular for the purposes of Articles 8 to 10:

- (a) Identify components of biological diversity important for its conservation and sustainable use having regard to the indicative list of categories set down in Annex I;
- (b) Monitor, through sampling and other techniques, the components of biological diversity identified pursuant to subparagraph (a) above, paying particular attention to those requiring urgent conservation measures and those which offer the greatest potential for sustainable use;
- (c) Identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques; and
- (d) Maintain and organize, by any mechanism data, derived from identification and monitoring activities pursuant to subparagraphs (a), (b) and (c) above”.

**country which may be useful for development but whose existence or essential characteristics are at present unknown**][*in order to promote their conservation and sustainable use, in accordance with recognized scientific standards*], [*whenever their cultivation, possession or utilization are not prohibited on the grounds of human or animal health or plant protection*]] **in particular:**

- (a) **known land races or cultivars in danger of becoming extinct due to their abandonment in favour of the cultivation of new cultivars;**
- (b) **the wild relatives of cultivated plants in areas identified as centres of genetic diversity or natural distribution;**
- (c) **species which are not actually cultivated** [*or are neglected or underused*] **but may be used for the benefit of mankind as a source of food or raw materials**][*such as fibres, chemical compounds, medicine or timber.*]

**5.2 Special efforts will be made** [, *in the context of Article 3.1,*] **where the danger of extinction of plant species is certain, or is likely, having regard to circumstances** [*such as the clearance of vegetation from tropical rain forests and semi-arid lands with a view to the expansion of cultivated areas.*]

For a possible amalgam of Articles 5 and 6, see also the proposals made during the Third Extraordinary Session: Appendix, Attachment 3

**Article 6 - Conservation, [*Characterization,*] Evaluation and Documentation of Plant Genetic Resources**

**6.1 Appropriate legislative and other measures will be maintained and, where necessary, developed and adopted to** [*protect and preserve*] [*conserve and sustainably manage*] **the plant genetic resources of plants growing** [*in areas of their natural habitat*] [*in situ*] [*in in situ conditions*] [*in the major centres of genetic diversity*].<sup>26</sup>

**6.2 Appropriate measures will also be taken with respect to plant genetic resources held** [, *outside their natural habitats, in gene banks or living collections of plants*][*ex situ*]. [*Governments and institutions adhering to this* [*Undertaking*]][*Parties*] **will, in particular, ensure that the said resources are conserved and maintained in such a way as to preserve their valuable characteristics for use in** [*agriculture,*] **scientific research and plant breeding, and are also evaluated and fully documented.** [*Such documentation should be regularly reviewed.*]<sup>27</sup>

**PROPOSALS FOR NEW WORDING:**

*Articles 5 and 6 could be merged in one Article, with a common chapeau. The Article should read as follows: Each Party shall, where appropriate and if possible in cooperation with other Parties:*

- (a) *promote explorations conducted in accordance with recognized scientific standards, to identify potentially valuable plant genetic resources for food and agriculture that are in danger of becoming extinct in the country concerned, as well as other plant genetic resources for food and agriculture in the country which may be useful but whose existence or essential characteristics are presently unknown.*
- (b) *determine the status of maintenance and the degree of variation in existing populations and collections*

<sup>26</sup> **CBD ARTICLE 6 - General Measures for Conservation and Sustainable Use;**

**CBD ARTICLE 8 - In-Situ Conservation:** “Each Contracting Party shall, as far as possible and as appropriate: (a) Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity”.

<sup>27</sup> **CBD ARTICLE 9 - Ex-Situ Conservation:** “Each Contracting Party shall, as far as possible and as appropriate, and predominantly for the purpose of complementing in-situ measures: (a) Adopt measures for the ex-situ conservation of components of biological diversity, preferably in the country of origin of such components”.



*of the relevant plant genetic resources and assess current measures, strategies and programmes for their appropriate conservation;*

- (c) *develop and maintain appropriate legislative and other measures to protect and preserve the plant genetic resources for food and agriculture, in particular in areas of their natural habitat and in the major centres of genetic diversity;*
- (d) *develop and maintain appropriate measures with respect to plant genetic resources for food and agriculture held outside their natural habitat, in gene banks or living collections and ensure that the said resources are conserved and maintained in such a way as to preserve their valuable characters;*
- (e) *monitor the status of maintenance, degree of variation within populations and collections and the effectiveness of conservation practices;*
- (f) *promote the characterization and evaluation of plant genetic resources for food and agriculture with a view to improving their utilization in scientific research and plant breeding;*
- (g) *promote and secure the full documentation of passport, characterization and evaluation data as well as the provision of information on these for conservation management, scientific and breeding purposes.*

*NOTE: A proposal was made to move Article 10.3 into Article 6.*

**PROPOSALS FOR NEW WORDING:**

*A proposal was made to add a new Article (Article 7?), referring to the utilization and sustainable use of plant genetic resources, along the following lines:*

*“The sustainable use of Plant Genetic Resources for Food and Agriculture, will be developed by, in particular:*

- a) *promoting plant breeding efforts, especially in developing countries, including the widening of plant breeding activities, with increased farmer participation;*
- b) *encouraging new approaches in plant breeding, especially for broadening the genetic base of the various crops;*
- c) *creating stronger links between plant breeding and agricultural development in order i) to develop varieties adapted to the various social economic and ecological conditions, particularly those of farmers in marginal areas and promote the multiplication and distribution of seeds of these varieties, ii) to reduce genetic erosion, and iii) to ensure increased world food production compatible with sustainable development;*
- d) *promoting the expanded use of local crop species, many of which are being abandoned;*
- e) *encouraging improved links between **ex situ** collections, plant breeders, associations and individuals active in the area of plant genetic resources and farmers, in developing as well as in developed countries, in order to attain a fuller utilization of plant genetic resources.”*

For a possible amalgam of Articles 5 and 6, see also the proposals made during the Third Extraordinary Session: Appendix, Attachment 3.

**CHAPTER III. INTERNATIONAL COOPERATION**

**Article 7 - General International Cooperation**<sup>28</sup>  
*[and Technology [Transfer] [Sharing]]*

**7.1. International cooperation will, 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 plant genetic resources activities, including plant survey and identification, plant breeding and [seed] multiplication[, conservation] and distribution [of seed and/or vegetative propagating material], with the aim of enabling all countries to make full use of plant genetic resources [, with due recognition of Plant Breeders' Rights,] for the benefit of their agricultural development;**
- (b) **intensifying international activities in [exploration,] preservation, [establishment of passport data, characterization,] evaluation, documentation, exchange of plant genetic resources, plant breeding, germplasm maintenance, and [seed] multiplication [of seeds and/or vegetative propagating material] [, with due recognition of Plant Breeders' Rights]. This would include activities carried out by FAO and other concerned [agencies in the UN system,] [organizations at the national, regional or international level,] [it would also include activities of other institutions,] including those supported by the CGIAR. The aim would be to progressively cover all plant species that are important for [food and] agriculture and other sectors of the economy, in the present and for the future;**
- (c) **supporting the arrangements outlined in Article 9, including the participation in such arrangements of governments and institutions, where appropriate and feasible;**
- (d) **considering measures, such as the strengthening or establishment of funding mechanisms, to finance activities relating to plant genetic resources.**

*PROPOSALS FOR NEW WORDING:*

- (e) *strengthening legal incentives, particularly in developing countries, that promote and reward innovation in plant breeding and technology creation and development.*
- (e)/(a) *providing and/or facilitating access to and transfer of technology, including biotechnology, to developing countries under fair and most favourable terms, including on concessional and preferential terms where mutually agreed. In the case of technology subject to patents and other intellectual property rights, such access and transfer shall be provided on terms which recognize and are consistent with the adequate and effective protection of intellectual property rights.*<sup>29</sup>

*Addition of a new paragraph (f) in Article 7 regarding access to and technology transfer, to ensure that the [Undertaking] will remain consistent with the relevant provisions of the Convention on Biological Diversity, particularly Article 16 of that Convention.*<sup>30</sup>

- “(f) Parties shall ensure that any technology transfer that occurs which involves plant varieties or technology subject to intellectual property rights in any Party occurs on terms that recognize and are consistent with the adequate and effective protection of the intellectual property rights in those*

<sup>28</sup> **CBD ARTICLE 5 - Cooperation:** “Each Contracting Party shall, as far as possible and as appropriate, cooperate with other Contracting Parties, directly or, where appropriate, through competent international organizations, in respect of areas beyond national jurisdiction and on other matters of mutual interest, for the conservation and sustainable use of biological diversity”

**SEE ALSO ARTICLE 17- Exchange of Information, and ARTICLE 18 -Technical and Scientific Cooperation.**

<sup>29</sup> **CBD ARTICLE 16 - Access to and Transfer of Technology:** “2. Access to and transfer of technology referred to in paragraph 1 above to developing countries shall be provided and/or facilitated under fair and most favourable terms, including on concessional and preferential terms where mutually agreed, and, where necessary, in accordance with the financial mechanism established by Articles 20 and 21. In the case of technology subject to patents and other intellectual property rights, such access and transfer shall be provided on terms which recognize and are consistent with the adequate and effective protection of intellectual property rights. The application of this paragraph shall be consistent with paragraphs 3, 4 and 5 below”.

<sup>30</sup> **CBD: SEE ARTICLE 16,** particularly the paragraph 2 quoted in the previous footnote.

*varieties or that technology.”*

*Article 7 could be divided into 2 paragraphs. Paragraph 7.1 would contain a general provision on international cooperation drawing upon Art. 5 of the Convention on Biological Diversity. Paragraph 7.2 would contain the text of present Art. 7. The new paragraphs would read as follows:*<sup>31</sup>

*“7.1 Each Party shall, as far as appropriate, cooperate with other Parties, directly or through 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.*

*“7.2 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, plant breeding and seed multiplication;*
- (c) supporting the arrangements outlined in Article 9, including the participation in such arrangements of national, regional and international institutes;*
- (d) considering measures, such as the strengthening or establishment of funding mechanisms, to finance activities relating to the conservation and sustainable use of plant genetic resources for food and agriculture.”*

For Article 7, see also the proposals made during the Third Extraordinary Session: Appendix, Attachment 3.

### **Article 8 - Role of [and cooperation with] International Organizations**

**8.1 The present international arrangements, being carried out [under the auspices of FAO and other organizations in the United Nations System, by national and regional institutions and institutions supported by the CGIAR, in particular the IPGRI,] for the exploration, collection, conservation, maintenance, [establishment of passport data,] [characterization,] evaluation, documentation, exchange and use of plant genetic resources will be further developed and, where necessary, complemented in order to develop a global system.**

**8.2 The activities of the centres that are related to the exploration, collection, conservation, maintenance, [rejuvenation,] [regeneration,] [establishment of passport data,] [characterization,] evaluation [, training] and exchange of plant genetic resources will be carried out with due account being taken of scientific standards.**

**[8.3 Sufficient support in funds and facilities will be provided, at the national, [regional] and**

**international levels, to enable the centres to carry out their tasks.]<sup>32</sup>**

<sup>31</sup> **CBD ARTICLE 5 - Cooperation:** “Each Contracting Party shall, as far as possible and as appropriate, cooperate with other Contracting Parties, directly or, where appropriate, through competent international organizations, in respect of areas beyond national jurisdiction and on other matters of mutual interest, for the conservation and sustainable use of biological diversity”.

<sup>32</sup> **CBD ARTICLE 9 - Ex-Situ Conservation:** “(e) Cooperate in providing financial and other support for *ex-situ* conservation outlined in subparagraphs (a) to (d) above and in the establishment and maintenance of *ex-situ* conservation facilities in developing countries”. See also **ARTICLE 20 - Financial Resources**.

**8.4 The IPGRI will pursue and develop its present activities, within its terms of reference, in liaison [in association] with [FAO].**

**8.5 The general expansion and improvement of related professional and institutional capability within developing countries, including training [of farmers, researchers and extension staff] within appropriate institutions [structures] in both developed and developing countries, [will] [shall] be [adequately funded] [expanded and improved] [promoted].<sup>33</sup>**

*NOTE: A suggestion was made that all references to funding be brought together in Article 14.*

**8.6 The overall activity within the [Undertaking] [will] [shall promote mechanisms which] ultimately ensure a significant improvement in the capacity [of] [within] developing countries for the production and distribution of improved crop varieties, as required to support major increases in agricultural production, especially in developing countries.**

**Article 9 - The International Network of Genebank Collections**<sup>34</sup>

*[not acquired in accordance with the Convention on Biological Diversity]*

**9.1 An internationally coordinated network of national, regional and international centres, [-] including an international network of base collections in gene banks, [under the auspices or the jurisdiction of FAO,][-] that have assumed the responsibility to hold, for the benefit of the international community [and on the principle of unrestricted exchange,] [in accordance with the Convention on Biological Diversity,] base or active collections of the plant genetic resources of particular plant species, will be developed [with possibly entire collections being duplicated for safety reasons].**

*NOTE: A suggestion was made to refer discussion on unrestricted exchange of materials held in genebanks in the international network to Stage II.*

**9.2 The [number] [and] [scope] of such centres will be progressively increased so as to achieve as complete a coverage as necessary, in terms of species [, genetic diversity] and geographical distribution, account also being taken of the need for [safety] duplication [and regeneration, preferably in the country of origin], of the resources to be safeguarded and preserved.**

**9.3 Within the context of the global system any [Governments or institutions][ Parties] that agree to participate in the [Undertaking], may [should], furthermore, [notify the Director-General of FAO] that they wish the base collection or collections for which they are responsible to be recognized as part of [or in association with] the international network of base collections in gene banks[, under the auspices or the jurisdiction of FAO]. The centre concerned will, whenever requested by FAO, make material in the base**

<sup>33</sup> **CBD ARTICLE 12 - Research and Training:** "The Contracting Parties, taking into account the special needs of developing countries, shall: (a) Establish and maintain programmes for scientific and technical education and training in measures for the identification, conservation and sustainable use of biological diversity and its components and provide support for such education and training for the specific needs of developing countries".

<sup>34</sup> **CBD ARTICLE 9 - Ex-Situ Conservation:** "Each Contracting Party shall, as far as possible and as appropriate, and predominantly for the purpose of complementing in-situ measures:

- (a) Adopt measures for the *ex-situ* conservation of components of biological diversity, preferably in the country of origin of such components;
- (b) Establish and maintain facilities for *ex-situ* conservation of and research on plants, animals and micro-organisms, preferably in the country of origin of genetic resources;
- (c) Adopt measures for the recovery and rehabilitation of threatened species and for their reintroduction into their natural habitats under appropriate conditions;
- (d) Regulate and manage collection of biological resources from natural habitats for *ex-situ* conservation purposes so as not to threaten ecosystems and *in-situ* populations of species, except where special temporary *ex-situ* measures are required under subparagraph (c) above; and
- (e) Cooperate in providing financial and other support for *ex-situ* conservation outlined in subparagraphs (a) to (d) above and in the establishment and maintenance of *ex-situ* conservation facilities in developing countries".

collection available [, *directly or through FAO,*] to participants in the [Undertaking], for purposes of scientific research, plant breeding or genetic resource conservation, [free of charge, on the basis of mutual exchange or on mutually agreed terms].

For Article 9, see also the proposals made during the Third Extraordinary Session: Appendix, Attachment 3.

### **Article 10 - The World Information and Early Warning System on Plant Genetic Resources**<sup>35</sup>

**10.1 A global information system, under the coordination of [FAO], relating to plant genetic resources maintained in the aforementioned collections, and linked to systems established at the national, sub-regional and regional levels, will be developed on the basis of relevant arrangements that already exist.**

*NOTE: A suggestion was made that this paragraph should refer in a more precise way to different types of information. The opinion was also expressed that it should apply to collections referred to in Article 9. Concern was expressed not to duplicate information services of other organizations.*

**10.2 Early warning will be given to [FAO], or to any institution designated by [FAO], of any hazards that threaten the efficient maintenance and operation of a centre, with a view to prompt international action to safeguard the material maintained by the centre.**

**10.3 Measures will be taken, if necessary through international cooperation, to ensure the scientific collection and safeguarding of material in areas where important plant genetic resources are in danger of becoming extinct on account of agricultural or other development.**

*NOTE: A proposal was made to move this paragraph to Art. 6. It was suggested to maintain a paragraph in this Article dealing with Plant Genetic Resources for Food and Agriculture which are in danger, subject to future examination of this issue, taking into account, inter alia, mechanisms that may be put in practice under the CBD.*

For Article 10, see also the proposals made during the Third Extraordinary Session: Appendix, Attachment 3.

<sup>35</sup> **CBD ARTICLE 7 - Identification and Monitoring:** "Each Contracting Party shall, as far as possible and as appropriate, in particular for the purposes of Articles 8 to 10:

...

- (b) Monitor, through sampling and other techniques, the components of biological diversity identified pursuant to subparagraph (a) above, paying particular attention to those requiring urgent conservation measures and those which offer the greatest potential for sustainable use;
- (c) Identify processes and categories of activities which have or are likely to have significant adverse impacts on the conservation and sustainable use of biological diversity, and monitor their effects through sampling and other techniques; and
- (d) Maintain and organize, by any mechanism data, derived from identification and monitoring activities pursuant to subparagraphs (a), (b) and (c) above".

## CHAPTER IV. ACCESS TO GENETIC RESOURCES AND FARMERS' RIGHTS

### Article 11 - Availability of Plant Genetic Resources<sup>36</sup>

#### NOTE ON ARTICLE 11 AS A WHOLE:

A suggestion was made to change the title of this Article, and of the Chapter, to the following: "Access to *Ex-situ* Collections Not Acquired in Accordance with the Convention". The following title was proposed: "Mutually Agreed Terms for Access to Plant Genetic Resources for Food and Agriculture".

It was suggested that this Article could follow one of the following models:

**Model A** would make a distinction between genetic material acquired *before* and *after* the entry into force of the CBD. It might have two parts:

1. Material acquired *before* the CBD: the content remains to be discussed but it would include elements of Article 11 of the Undertaking.
2. Material acquired *after* the CBD: it would have at least six sections, corresponding to paragraphs 1, 2, 4, 5, 6 and 7 of Article 15 of the CBD.<sup>37</sup>

The suggestion was made to retain only the second part of Model A, in which case the title of the Article would be changed to "Access to *Ex situ* Collections Not Acquired in Accordance with the Convention".

**Model B** would not make a distinction between genetic material acquired *before* and *after* the entry into force of the CBD. The content should be discussed; it would contain elements present in Article 11 of the [Undertaking].

A suggestion was made that, in this case, the title of the Article should be changed to "Mutually Agreed Terms of Access to Plant Genetic Resources for Food and Agriculture".

### 11.1 Governments and institutions adhering to this [Undertaking] recognize that States have sovereign rights over their plant genetic resources.

<sup>36</sup>

#### **CBD ARTICLE 15 - Access to Genetic Resources:**

- "1. Recognizing the sovereign rights of States over their natural resources, the authority to determine access to genetic resources rests with the national governments and is subject to national legislation.
2. Each Contracting Party shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and not to impose restrictions that run counter to the objectives of this Convention.
3. For the purpose of this Convention, the genetic resources being provided by a Contracting Party, as referred to in this Article and Articles 16 and 19, are only those that are provided by Contracting Parties that are countries of origin of such resources or by the Parties that have acquired the genetic resources in accordance with this Convention.
4. Access, where granted, shall be on mutually agreed terms and subject to the provisions of this Article.
5. Access to genetic resources shall be subject to prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party.
6. Each Contracting Party shall endeavour to develop and carry out scientific research based on genetic resources provided by other Contracting Parties with the full participation of, and where possible in, such Contracting Parties.
7. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, and in accordance with Articles 16 and 19 and, where necessary, through the financial mechanism established by Articles 20 and 21 with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources with the Contracting Party providing such resources. Such sharing shall be upon mutually agreed terms".

<sup>37</sup>

**SEE ARTICLE 15, paragraphs 1, 2, 4, 5, 6 and 7 in previous footnote.**

*NOTE: The suggestion was made that this paragraph be redrafted according to Art. 15.1 of the CBD and that a separate paragraph should reflect Art. 15.2 of the CBD.<sup>38</sup>*

*Another proposal was made to redraft this paragraph as follows:*

*“[The Parties adhering to this [Undertaking] recognize the sovereign rights of States over their natural resources, the authority to determine access to genetic resources rests with the national governments and is subject to national legislation.] [Such 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]”.*

**PROPOSALS FOR NEW WORDING:**

*[11.1 Access to plant genetic resources shall be in accordance with the Convention on Biological Diversity.]*

*[11.2 States shall have sovereign rights over their natural resources and the authority to determine access to plant genetic resources for food and agriculture rests with national governments and is subject to national legislation.]*

*NOTE: It was suggested that paragraphs 1 and 2 could be integrated into a revised Article 4.*

**11.2 It will be the policy of [adhering Governments] [Parties] having plant genetic resources under their control to allow access to samples of such resources, and to permit their export [transfer] [exchange on prior informed consent], where the resources have been requested for the purposes of scientific research, plant breeding [seed multiplication and distribution] [for non-commercial purposes] or genetic resource conservation [or replenishment]. The samples will be made available[: (i)] free of charge, [(ii)] on the basis of mutual exchange[,] or [(iii)] on mutually agreed terms.**

*NOTE: A proposal was made to add a new paragraph on conditions of access for Non-Parties to the [Undertaking].*

*The following text was proposed: “Access to samples of plant genetic resources for food and agriculture shall be non-restricted and non-paid for research, breeding and educational purposes”.*

**PROPOSALS FOR NEW WORDING:**

See proposal under Article 11.3 below

**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;**

*NOTE: It was noted that this text was similar to Article 15.2 of the CBD.<sup>39</sup>*

**PROPOSALS FOR NEW WORDING:**

*11.3 Parties with the authority to determine access to plant genetic resources for food and agriculture shall*

<sup>38</sup> **ARTICLE 15 - Access to Genetic Resources:**

“1. Recognizing the sovereign rights of States over their natural resources, the authority to determine access to genetic resources rests with the national governments and is subject to national legislation.

2. Each Contracting Party shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and not to impose restrictions that run counter to the objectives of this Convention”.

<sup>39</sup> **ARTICLE 15 - Access to Genetic Resources:** “2. Each Contracting Party shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and not to impose restrictions that run counter to the objectives of this Convention”.

*endeavour to [provide such] [create conditions to facilitate] access without imposing restrictions that run counter to the objectives of [this agreement] [the Convention].\**

\* Article 1 setting out Objectives for the Undertaking should reflect the intention that access to plant genetic resources for food and agriculture should be provided with minimum restriction.

#### **11.4 Breeders' lines and farmers' breeding material should only be available at the discretion of their developers during the period of development.**

##### *PROPOSALS FOR NEW WORDING:*

11.4 *“Proprietary breeders' lines and farmers' breeding material shall only be available at the discretion of the holder of rights to such lines or materials”.*

*NOTE: A proposal was also made to add a paragraph referring to the impact of intellectual property rights on this Article; another delegation disagreed with this proposal.*

##### *PROPOSALS FOR NEW WORDING:*

###### **ALTERNATIVE A**

11.4 *In promoting the sharing of benefits resulting from the use of plant genetic resources for food and agriculture, parties agree that access to samples of such resources for use in research, breeding and education will be non-paid and unrestricted.*

###### **ALTERNATIVE B**

11.4 *Parties agree to grant, at minimum restriction and cost, [for research] [and development], [breeding and education] [purposes], access to plant genetic resources for food and agriculture held as follows:<sup>40</sup>*

- [(i) in in situ conditions;]*
- [(ii) in ex situ collections [located in the country of origin; \* or]]*
- (iii) in ex situ collections [not] [acquired in accordance with the Convention on Biological Diversity;*

*subject to the following conditions:*

*(iv) prior to being granted access, applicants for access shall meet the information requirements set out in annex 1;\*\*\*<sup>41</sup>*

*(v) applicants shall cooperate with the country providing the plant genetic resources for food and agriculture to develop and carry out scientific research based on such resources, with the full participation of, and where possible in, the country of origin;]<sup>42</sup>*

*[(vi) applicants] [11.4 bis Parties will] undertake to negotiate with the country providing the plant genetic resource for food and agriculture to share the results of research and development, and any future benefits arising from commercial and other utilisation, in a fair and equitable way and on mutually agreed terms. Such sharing shall take into account technical guidelines on*

<sup>40</sup> **CBD ARTICLE 15 - Access to Genetic Resources:** “ 2. Each Contracting Party shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and not to impose restrictions that run counter to the objectives of this Convention”.

<sup>41</sup> **CBD ARTICLE 15 - Access to Genetic Resources:** “5. Access to genetic resources shall be subject to prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party”.

<sup>42</sup> **CBD ARTICLE 15 - Access to Genetic Resources:** “6. Each Contracting Party shall endeavour to develop and carry out scientific research based on genetic resources provided by other Contracting Parties with the full participation of, and where possible in, such Contracting Parties”.



*benefit-sharing to be adopted [by the Commission on Genetic Resources for Food and Agriculture] [at a time to be determined].\*\*\*<sup>43</sup>*

\* This provision covers *ex situ* collections not acquired in accordance with the Convention, but which are located in the country of origin and for which the country of origin may wish to claim an equitable share in benefits, in accordance with the Convention.

\*\* Annex 1 could be drafted at a future meeting of the Commission [or future Parties to an Agreement], setting out standard information requirements for prior informed consent.

\*\*\* Given the possible complexity of benefit sharing involving multiple plant genetic resource and intellectual inputs, a set of guidelines to facilitate negotiations could reduce transaction costs.

#### **ALTERNATIVE TO PARA (vi)**

(vi) *Parties shall take appropriate measures to share in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of plant genetic resources for food and agriculture.*

#### **ALTERNATIVE C**

11.4 *Access to plant genetic resources [, when granted,] shall be on mutually agreed terms and subject to prior informed consent of the party providing such resources. Parties may grant, on preferential terms and on a case-by-case basis for research and development purposes, access to plant genetic resources for food and agriculture, subject to the following conditions:<sup>44</sup>*

- (i) *prior to being granted access, applicants for access shall meet the information requirements set out in annex 1;*
- (ii) *applicants shall cooperate with the country providing the plant genetic resources for food and agriculture to develop and carry out scientific research based on such resources, with the full participation of, and where possible in, the country of origin;*
- (iii) *Applicants [shall] undertake to negotiate with the country providing the plant genetic resource for food and agriculture to share the results of research and development, and any future benefits arising from commercial and other utilisation, in a fair and equitable way and on mutually agreed terms. [Such sharing shall take into account technical guidelines on benefit-sharing to be adopted [by the Commission on Genetic Resources for Food and Agriculture] [at a time to be determined]].<sup>45</sup>*

#### **ALTERNATIVE D**

11.4 *Access to plant genetic resources for food and agriculture listed in Annex 1, by the Parties to this Agreement, for research, education, development and breeding for non-commercial purposes shall be provided on the following terms:*

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#### **CBD ARTICLE 15 - Access to Genetic Resources:**

“7. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, and in accordance with Articles 16 and 19 and, where necessary, through the financial mechanism established by Articles 20 and 21 with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources with the Contracting Party providing such resources. Such sharing shall be upon mutually agreed terms”.

44

#### **CBD ARTICLE 15 - Access to Genetic Resources:**

“4. Access, where granted, shall be on mutually agreed terms and subject to the provisions of this Article.  
5. Access to genetic resources shall be subject to prior informed consent of the Contracting Party providing such resources, unless otherwise determined by that Party”.

45

#### **CBD ARTICLE 15 - Access to Genetic Resources:**

“7. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, and in accordance with Articles 16 and 19 and, where necessary, through the financial mechanism established by Articles 20 and 21 with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources with the Contracting Party providing such resources. Such sharing shall be upon mutually agreed terms”.

...

**11.4 bis**

*Parties providing plant genetic resources not listed in Annex 1 may establish, in each case, particular preferential terms to allow access for research, breeding and educational non-commercial purposes.*

**11.5** *The contracting party that has had access to plant genetic resources for food and agriculture according to the provisions of this Undertaking, shall endeavour to develop and carry out scientific research based on the genetic resources provided by another contracting party with the full participation of, and where possible in, such contracting party.*

**11.6** *Contracting parties [must establish necessary] [shall take appropriate] measures to ensure the fair and equitable sharing of benefits arising from the use of plant genetic resources for food and agriculture according to the provisions of this Undertaking.<sup>46</sup>*

**11.7** *Breeders' lines and [farmers' breeding material] [land races and traditional cultivars possessed by farmers] should only be available at the discretion of their developers[/holders] during the period of development.*

**ALTERNATIVE A**

**11.8** *Parties shall ensure that plant genetic resources for food and agriculture held in ex situ collections acquired prior to the entry into force of the Convention on Biological Diversity, [other than those set out in paragraph 11.4], are available at minimum restriction and cost\* [for research and development purposes].*

\* The majority of *ex situ* holdings collected prior to the Convention coming into force were collected on the shared presumption of its common heritage and a major benefit flowing from their development has been shared food security. Prescribing prior informed consent and benefit sharing for these holdings would substantially increase transaction costs (due in part to the need to identify original sources) without generating commensurate benefits.

**ALTERNATIVE B**

**11.8** *Plant genetic resources for food and agriculture acquired by the [CGIAR system and other international agencies] [IARCs and other parties] before the entry into force of the Convention on Biological Diversity, shall not be subject to restrictions and payments for research and development purposes. Conditions and terms for any access to this material shall be governed by a material transfer agreement or any other appropriate agreement agreed upon by the international community. [Such agreements will be consistent with the provisions of this Agreement.] Further access to [plant genetic resources for food and agriculture and ex situ collections] [ex situ collections of plant genetic resources for food and agriculture] [will] [shall] be governed by the principles laid down in the Convention on Biological Diversity. The past utilization of the ex situ collections related to the pre-convention period would not be re-opened.*

**11.9** *Sovereign States will [be able to] take measures to further [control and even stop temporarily or permanently, genetic material exchange,] [regulate the access to plant genetic resources for food and agriculture] in response to [strong] national [security] [priorities] needs, including biosafety.*

<sup>46</sup>

**CBD ARTICLE 15 - Access to Genetic Resources:**

"7. Each Contracting Party shall take legislative, administrative or policy measures, as appropriate, and in accordance with Articles 16 and 19 and, where necessary, through the financial mechanism established by Articles 20 and 21 with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources with the Contracting Party providing such resources. Such sharing shall be upon mutually agreed terms".

**PROPOSALS FOR NEW WORDING (for the entire Article 11):**

- 11.1 *States have sovereign rights over their natural resources and the authority to determine access to plant genetic resources for food and agriculture rests with national governments and is subject to national legislation.*<sup>47</sup>
- 11.2 *Parties with the authority to determine access to plant genetic resources for food and agriculture endeavour to provide such access without imposing restrictions that run counter to the objectives of the Convention on Biological Diversity and the present [agreement].*<sup>48</sup>
- 11.3 *In the exercise of their sovereign rights, States encourage institutions or other organizations to place plant genetic resources for food and agriculture held in their collections into the International Network [referred to in article 9]. Regional and other international organizations are also encouraged to place plant genetic resources for food and agriculture held in their collections into the International Network. Access to plant genetic resources for food and agriculture in the International Network is submitted to no restrictions or payments for the participants to the Network.*
- 11.4 *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.*

For Article 3, see also the proposals made during the Third Extraordinary Session: Appendix, Attachments 1, 2, 3, 4, 4 Add.1, 5, 6 and 7.

**Article 12 - Farmers' Rights**<sup>49</sup>

**12.1 [States adhering] [Parties] to this [Undertaking] recognize the enormous contribution that farmers of all regions have made to the conservation and development of plant genetic resources, which constitute the basis of plant production throughout the world, and which form the basis for the concept of Farmers' Rights;**

**12.2 Farmers' Rights are vested in [the International Community], as trustee for present and future generations of farmers, for the purpose of ensuring full benefits to farmers, and supporting the continuation of their contributions, as well as the attainment of the overall purposes of this [Undertaking] in order to:**

- (a) **[ensure] that the need for conservation is globally recognized and that sufficient funds for these purposes will be [made] available;**
- (b) **assist farmers and farming communities, in all regions of the world, but especially in the areas of origin/diversity of plant genetic resources, in the [protection and] conservation [and**

<sup>47</sup> **CBD ARTICLE 15 - Access to Genetic Resources:**

"1. Recognizing the sovereign rights of States over their natural resources, the authority to determine access to genetic resources rests with the national governments and is subject to national legislation".

<sup>48</sup> **CBD ARTICLE 15 - Access to Genetic Resources:**

"2. Each Contracting Party shall endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses by other Contracting Parties and not to impose restrictions that run counter to the objectives of this Convention".

<sup>49</sup> **CBD ARTICLE 8 - In-situ conservation:** "Each Contracting Party shall, as far as possible and as appropriate:

.....

(j) Subject to its national legislation, respect, preserve and maintain knowledge, innovations and practices of indigenous and local communities embodying traditional lifestyles 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 encourage the equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices".

*sustainable use*] of their plant genetic resources, and [*the protection*] of the natural biosphere;

- (c) allow farmers, their communities, and countries in all regions, to participate fully in the benefits derived, at present and in the future, from the improved use of plant genetic resources, through plant breeding and other scientific methods.

*NOTE: During the Commission's Third Extraordinary Session, a suggestion was made to change the title to "Farmers' Rights and Rights of Farmers' Communities".*

**NEW ALTERNATIVE WORDING AGREED AT THE THIRD EXTRAORDINARY SESSION**

**ALTERNATIVE A**

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 [, 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.

**ALTERNATIVE B**

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.

**NEW ALTERNATIVE WORDING AGREED AT THE THIRD EXTRAORDINARY SESSION**

**ALTERNATIVE A**

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;
- 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.

**ALTERNATIVE B**

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.*
- k) Ensure that the prior informed consent of the concerned farmers and local communities is obtained before the collection of plant genetic 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.*

#### **NEW ALTERNATIVE WORDING AGREED AT THE THIRD EXTRAORDINARY SESSION**

##### **ALTERNATIVE FOR ARTICLES 12.1 AND 12.2**

- 1. States and Regional Economic Integration Organizations Party to the Undertaking shall take measures to promote the efforts of their farmers to conserve and use sustainably plant genetic resources for food and agriculture through the establishment or strengthening of mechanisms including:
 
  - 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.**
- 2. Establishment or strengthening of the mechanisms described in paragraph 1 may be facilitated through allocation by States and Regional Economic Integration Organizations Party to the Undertaking of any benefits they receive from contractual arrangements relating to access to plant genetic resources for food and agriculture.*
- 3. States and Regional Economic Integration Organizations Party to the Undertaking should continue to work with relevant international programs to further farmers' activities to conserve and use*

*sustainably 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. *States and Regional Economic Integration Organizations Party to the Undertaking 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 national, bilateral and multilateral funding sources and mechanisms and involvement of private sector sources and mechanisms, including those of non-governmental organizations.*

**12.3 The [adhering States] [Parties] consider that the [best way] [one of the ways] to implement the concept of Farmers' Rights is to ensure the conservation, management and [sustainable] use of plant genetic resources [and access to new technologies by the communities concerned], [and benefit from the products derived from them] [for the benefit of present and future generations of farmers]. This could be achieved through appropriate means, monitored by the Commission on Genetic Resources for Food and Agriculture.**

*NOTE: The suggestion was made that this was not an operative provision and should be transferred to the Preamble.*

*PROPOSALS FOR NEW WORDING:*

*A suggestion was made to include a new Article (Article 12 bis) as follows:*

*"The Parties to this Undertaking, in recognition of the contributions of plant breeders to world agriculture, shall make available adequate and effective protection for intellectual property in new plants, plant varieties and plant-related technology, through the provision of Plant Breeders' Rights."*

*NOTE: During the Commission's Third Extraordinary Session, it was suggested that elements of the text of Article 12.3 from the International Undertaking should be dealt with in the Preamble, except for the last sentence which could be dealt with in another article, on monitoring.*

For Article 12, see also the proposals made during the Third Extraordinary Session: Appendix, Attachments 1, 2, 3, 4, 4 Add.1 and 5.

## CHAPTER V. INSTITUTIONAL AND FINANCIAL ARRANGEMENT <sup>50</sup>

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

*NOTE: A proposal was made for a possible structure of the institutional and financial arrangements including a governing body, a scientific and technical advisory committee, a financial mechanism and a secretariat with clear mandates. A multilateral agreement on access to plant genetic resources for food and agriculture could be introduced in a time-limited annex to the agreement. The financial resources committed, and the genetic resources available for access to the Parties of the agreement, as well as the programme of action agreed upon to be financed from the financial resources, could be introduced in the annex.*

**13.1 [FAO] will keep under continuous review the international situation concerning the exploration,**

<sup>50</sup> CBD: SEE ARTICLES 23 (Conference of the Parties); 25 (Subsidiary Body on Scientific, Technical and Technological Advice); 21 (Financial Mechanisms); 24 (the Secretariat).

**collection, [establishment of passport data, characterization, evaluation,] conservation, documentation, exchange [access] [availability] and use of plant genetic resources.**

*NOTE: The following text was proposed:*

*“FAO will maintain an up-to-date picture of the international situation as regards the prospecting, collecting, characterization, conservation, evaluation, documentation, exchange and use of plant genetic resources”. It was pointed out that this Article may need to be redrafted in Stage III. A complete list of the types of activities to keep under review should also be established.*

**13.2 [FAO] will, in particular, establish an [intergovernmental body] to monitor the operation of the arrangements referred to in Article 8, and to take or recommend measures that are necessary or desirable in order to ensure the comprehensiveness of the global system and the efficiency of its operations in line with the [Undertaking].**

*NOTE: It was noted that this Article raised institutional questions which are to be dealt with in Stage III.*

**13.3 In the performance of its responsibilities outlined in Part II of this [Undertaking], [FAO] will act in consultation with those [Governments][Parties] that have indicated to [FAO] their intention to support the arrangements referred to in Articles 8, 9 and 10.**

#### **Article 14 - Financial Security**

*NOTE: It was pointed out that two types of funding were referred to in this Article, under 14.2 to 14.4 (activities mentioned in article 10) and under 14.5 to 14.8 (implementation of Farmers’ Rights). It also mentioned that more information was required on the needs for funds and on possible sources of funding. It was indicated that part of this information could be generated through the preparation of the Technical Conference.*

*It was also pointed out that funding was not the only means to realize Farmers’ Rights (this comment was also pertinent with respect to article 12, which was also to be reviewed in STAGE II). Mention was also made of national implementation of Farmers’ Rights.*

*It was noted that the fund referred to in Article 14.6 is not complemented by appropriate national resources. Funding needs to be engaged on a scientific basis, such as foreseen in the Global Plan of Action being prepared by the International Technical Conference on Plant Genetic Resources.*

**14.1 Adhering [Governments,][Parties] and financing agencies, will, individually and collectively, consider adopting measures that would place activities relevant to the objective of this [Undertaking] on a firmer financial basis, with special consideration for the need of developing countries to strengthen their capabilities in genetic resource activities, plant breeding and [seed] multiplication [of seeds and/or vegetative propagating material].<sup>51</sup>**

<sup>51</sup>

**CBD ARTICLE 20 - Financial Resources:**

- “1. Each Contracting Party undertakes to provide, in accordance with its capabilities, financial support and incentives in respect of those national activities which are intended to achieve the objectives of this Convention, in accordance with its national plans, priorities and programmes.
2. The developed country Parties shall provide new and additional financial resources to enable developing country Parties to meet the agreed full incremental costs to them of implementing measures which fulfil the obligations of this Convention and to benefit from its provisions and which costs are agreed between a developing country Party and the institutional structure referred to in Article 21, in accordance with policy, strategy, programme priorities and eligibility criteria and an indicative list of incremental costs established by the Conference of the Parties. Other



**14.2 [Adhering Governments,][Parties] and financing agencies, will, in particular, explore the possibility of establishing mechanisms which would guarantee the availability of funds that could be immediately mobilized to meet situations of the kind referred to in Article 10.2.<sup>52</sup>**

*NOTE: A proposal was made to draw upon Article 21.1 of the Convention on Biological Diversity and to replace paragraphs 14.2-6 as follows: “Financial arrangements for this [Undertaking] shall have recourse to the financial mechanism of the Convention on Biological Diversity.”*

*The following text was proposed, including also paragraph 14.3:*

*“14.2 The Parties, and financing agencies, will, in particular, explore the possibility of establishing mechanisms which would guarantee the availability of funds that could be immediately mobilized to meet situations and activities of the kind referred to in articles 9 and 10.*

*14.3 (merged with 14.2)”.*

Parties, including countries undergoing the process of transition to a market economy, may voluntarily assume the obligations of the developed country Parties. For the purpose of this Article, the Conference of the Parties, shall at its first meeting establish a list of developed country Parties and other Parties which voluntarily assume the obligations of the developed country Parties. The Conference of the Parties shall periodically review and if necessary amend the list. Contributions from other countries and sources on a voluntary basis would also be encouraged. The implementation of these commitments shall take into account the need for adequacy, predictability and timely flow of funds and the importance of burden-sharing among the contributing Parties included in the list.

3. The developed country Parties may also provide, and developing country Parties avail themselves of, financial resources related to the implementation of this Convention through bilateral, regional and other multilateral channels.
4. The extent to which developing country Parties will effectively implement their commitments under this Convention will depend on the effective implementation by developed country Parties of their commitments under this Convention related to financial resources and transfer of technology and will take fully into account the fact that economic and social development and eradication of poverty are the first and overriding priorities of the developing country Parties.
5. The Parties shall take full account of the specific needs and special situation of least developed countries in their actions with regard to funding and transfer of technology.
6. The Contracting Parties shall also take into consideration the special conditions resulting from the dependence on, distribution and location of, biological diversity within developing country Parties, in particular small island States.
7. Consideration shall also be given to the special situation of developing countries, including those that are most environmentally vulnerable, such as those with arid and semi-arid zones, coastal and mountainous areas”.

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**CBD ARTICLE 21 - Financial Mechanism:**

- “1. There shall be a mechanism for the provision of financial resources to developing country Parties for purposes of this Convention on a grant or concessional basis the essential elements of which are described in this Article. The mechanism shall function under the authority and guidance of, and be accountable to, the Conference of the Parties for purposes of this Convention. The operations of the mechanism shall be carried out by such institutional structure as may be decided upon by the Conference of the Parties at its first meeting. For purposes of this Convention, the Conference of the Parties shall determine the policy, strategy, programme priorities and eligibility criteria relating to the access to and utilization of such resources. The contributions shall be such as to take into account the need for predictability, adequacy and timely flow of funds referred to in Article 20 in accordance with the amount of resources needed to be decided periodically by the Conference of the Parties and the importance of burden-sharing among the contributing Parties included in the list referred to in Article 20, paragraph 2. Voluntary contributions may also be made by the developed country Parties and by other countries and sources. The mechanism shall operate within a democratic and transparent system of governance.
2. Pursuant to the objectives of this Convention, the Conference of the Parties shall at its first meeting determine the policy, strategy and programme priorities, as well as detailed criteria and guidelines for eligibility for access to and utilization of the financial resources including monitoring and evaluation on a regular basis of such utilization. The Conference of the Parties shall decide on the arrangements to give effect to paragraph 1 above after consultation with the institutional structure entrusted with the operation of the financial mechanism.
3. The Conference of the Parties shall review the effectiveness of the mechanism established under this Article, including the criteria and guidelines referred to in paragraph 2 above, not less than two years after the entry into force of this Convention and thereafter on a regular basis. Based on such review, it shall take appropriate action to improve the effectiveness of the mechanism if necessary.
4. The Contracting Parties shall consider strengthening existing financial institutions to provide financial resources for the conservation and sustainable use of biological diversity”.

**14.3 [Adhering Governments,][Parties] and financing agencies, will give special consideration to requests from [FAO] for extra-budgetary funds, equipment or services needed to meet situations of the kind referred to in Article 10.2.**

**14.4 The funding of the establishment and operation of the international network, in so far as it imposes additional costs on FAO, in the main will be funded from extra-budgetary resources.**

*NOTE: The need was mentioned to study in Stage II the possibility of obtaining funds from the GEF and also to consider the policy orientation and priority of this Fund.*

**14.5 To reflect the responsibility of those countries which have [already] benefitted most from the use of germplasm, the international fund referred to in article 14.6 of this [Undertaking] would benefit from contributions from [adhering governments][Parties], on a basis to be agreed upon, in order to ensure for the fund a sound and recurring basis. [The fund should [also] be used to support plant genetic conservation, management and utilization programmes, particularly within developing countries, and those which are important sources of plant genetic material. Special priority should be placed on intensified educational programmes for biotechnology specialists, and strengthening the capabilities of developing countries in genetic resource conservation and management, as well as the improvement of plant breeding and [seed] production [production of seeds and/or vegetative propagating material]].**

*NOTE: A proposal was made to invert the order of paragraphs 5 and 6, if retained.*

*A suggestion was also made to delete the second and third sentences of this paragraph and to add, as a new paragraph, the following:*

*“The Governing Body of this [Agreement] shall determine the policy, strategy, programme priorities and eligibility criteria relating to the access to and utilization of such fund”.*

*It was pointed out that the fund should facilitate the access by farmers to funding without creating additional conditionalities.*

**14.6 Farmers’ Rights will be implemented, in particular, through an international fund on plant genetic resources which will support plant genetic conservation and utilization programmes, particularly, but not exclusively, in the developing countries.**

*NOTE: The suggestion was made to replace this paragraph by the following: “Farmers’ Rights will be implemented, among other ways, through an international fund on plant genetic resources which will support the provisions of Article 12, including through appropriate utilization programmes, particularly in developing countries”. A further suggestion was made to replace, in the above text, the words “among other ways” with the words “in accordance with the priorities for fund allocation established in article 14.5”.*

*A proposal was made to delete in paragraph 14.5 the text “The Fund should be used ... seed production”, and to add a new paragraph after current para 14.6 which would read:*

*“[The Governing Body] of this [Undertaking] shall determine the policy, strategies, programmes priorities and eligibility criteria relating to the access to and the utilization of such funds”.*

**14.7 The effective conservation and sustainable utilization of plant genetic resources is a pressing and permanent need, and, therefore, the resources for the international fund as well as for other funding mechanisms should be substantial, sustainable and based on the principles of equity and transparency;**

**14.8 [Acting through the Commission on Genetic Resources for Food and Agriculture,] the donors of**

**genetic resources, funds and technology will determine and oversee the policies, programmes and priorities of the fund and other funding mechanisms, with the advice of the appropriate bodies.**

*NOTE: It was pointed out that specific modalities for the application of this para. needed to be developed.*

*A proposal was made that all references to funding made in Article 8 be brought together in Article 14.*

**EXAMPLE PROPOSED DURING THE SIXTH SESSION OF THE COMMISSION OF  
A LIST OF GENERA IMPORTANT FOR FOOD AND AGRICULTURE**

(List referred to in “Proposals for new wording” of Article 3: Scope)

**Major grain crops-grasses**

| <i>Genus</i> | <i>Common Name</i>    |
|--------------|-----------------------|
| Avena        | oats                  |
| Cicala       | rye                   |
| Eleusine     | finger millet         |
| Hordeum      | barley                |
| Oryza        | rice                  |
| Panicum      | common (proso) millet |
| Pennisetum   | pearl millet          |
| Setaria      | foxtail millet        |
| Sorghum      | sorghum               |
| Triticum     | wheat                 |
| Aegilops     | wheat                 |
| Zea          | maize                 |

**Minor grain crops**

| <i>Genus</i> | <i>Common Name</i>       |
|--------------|--------------------------|
| Croix        | Job’s tears              |
| Echinochloa  | Japanese barnyard millet |
| Eragrostis   | teff                     |
| Panicum      | little millet            |
| Paspalum     | kodo millet              |
| Zizania      | wild rice                |

**Major grain legumes**

| <i>Genus</i> | <i>Common Name</i> |
|--------------|--------------------|
| Arachis      | peanut             |
| Cajanus      | pigeon pea         |
| Cicer        | chick pea          |
| Glycine      | soy bean           |
| Lens         | lentil             |
| Phaseolus    | bean               |
| Pisum        | pea                |
| Vicia        | faba               |
| Vigna        | cowpea             |

**Minor grain legumes**

| <i>Genus</i> | <i>Common Name</i> |
|--------------|--------------------|
| Canavalia    | jack bean          |
| Cyamopsis    | cluster bean       |
| Derris       | derris             |
| Dipteryx     | tonka bean         |
| Dolichos     | horsegram          |
| Lablab       | hyacinth bean      |
| Lathyrus     | grass pea          |
| Lupinus      | lupines, tarohui   |
| Pachyrhizus  | yam bean           |

|              |                   |
|--------------|-------------------|
| Psophocarpus | winged bean       |
| Trigonella   | fenugreek         |
| Vigna        | bambara groundnut |

**Cereals from other families**

| <i>Genus</i> | <i>Common Name</i> |
|--------------|--------------------|
| Helianthus   | sunflower          |
| Sesamum      | sesame             |
| Amaranthus   | amaranth           |
| Chenopodium  | quinoa             |
| Fagopyrum    | buckwheat          |

**Major starch crops**

| <i>Genus</i> | <i>Common Name</i> |
|--------------|--------------------|
| Colocasia    | taro               |
| Xanthosoma   | tannia             |
| Dioscorea    | yams               |
| Musa         | plantain, banana   |
| Ipomoea      | sweet potato       |
| Solanum      | potato             |
| Manihot      | cassava            |

**Minor starch Crops**

| <i>Genus</i> | <i>Common Name</i> |
|--------------|--------------------|
| Arracacia    | peruvian parsnip   |
| Oxalis       | oca                |
| Pachyrhizus  | jicama             |

**Oil crops**

| <i>Genus</i> | <i>Common Name</i> |
|--------------|--------------------|
| Carthamus    | safflower          |
| Caryocar     | piqui              |
| Elaeis       | oil palm           |
| Jessenia     | seje               |
| Orbignya     | babassu            |

**Fruits**

| <i>Genus</i> | <i>Common Name</i> |
|--------------|--------------------|
| Ananas       | pineapple          |
| Fragaria     | strawberry         |
| Passiflora   | passion fruit      |

**Shrub fruits**

| <i>Genus</i> | <i>Common Name</i>       |
|--------------|--------------------------|
| Malpighia    | acerola                  |
| Punica       | pomegranate              |
| Ribes        | currents                 |
| Rubus        | brambles                 |
| Vaccinium    | blueberries, cranberries |
| Viburnum     | blueberries, cranberries |

**Tree fruits**

| <i>Genus</i>  | <i>Common Name</i>       |
|---------------|--------------------------|
| Actinidia     | kiwi                     |
| Anacardium    | cashew                   |
| Annona        | soursop, <i>etc.</i>     |
| Artocarpus    | breadfruit, jackfruit    |
| Blighia       | akee                     |
| Carica        | papaya                   |
| Chrysophyllum | star apple               |
| Citrus        | citrus                   |
| Cocos         | coconut                  |
| Phoenix       | dates                    |
| Diospyros     | black sapota             |
| Durio         | durian                   |
| Eugenia       | cloves, various fruits   |
| Ficus         | fig                      |
| Garcinia      | mangosteen               |
| Guilielma     | pejibaye                 |
| Litchi        | litchi                   |
| Malus         | apple, pear, <i>etc.</i> |
| Mangifera     | mango                    |
| Manilkara     | sapodilla                |
| Morus         | mulberry                 |
| Olea          | olive                    |
| Persea        | avocado                  |
| Pourouma      | uvilla                   |
| Pouteria      | mammea                   |
| Prunus        | apricot, cherry, plum    |
| Psidium       | guava                    |
| Pyrus         | pear                     |
| Syzygium      | jambolan                 |
| Tamarindus    | tamarind                 |

**Vegetable crops**

| <i>Genus</i> | <i>Common Name</i>      |
|--------------|-------------------------|
| Abelmoschus  | okra                    |
| Allium       | onions, garlics & leeks |
| Asparagus    | asparagus               |
| Apium        | celery                  |
| Bambusa      | bamboo shoots           |
| Basella      | tropical spinach        |
| Beta         | beets                   |
| Brassica     | broccoli, cauliflower   |
| Benincasa    | melon                   |
| Capsicum     | chillies, peppers       |
| Cnidosc ulus | chaya                   |
| Citrullus    | watermelon              |
| Cucumis      | melon, cucumber         |

|              |               |
|--------------|---------------|
| Cucurbita    | pumpkin       |
| Cynara       | artichoke     |
| Daucus       | carrots       |
| Lactuca      | lettuce       |
| Lepidium     | cress         |
| Lycopersicon | tomato        |
| Nasturtium   | watercress    |
| Pestivaca    | parsnip       |
| Petroselinum | parsley       |
| Physalis     | tomatilla     |
| Raphanus     | radish        |
| Rheum        | rhubarb       |
| Sechium      | choyote       |
| Solanum      | eggplant      |
| Spinacia     | spinach       |
| Taraxacum    | dandelion     |
| Tetragonia   | NZ spinach    |
| Tragopogon   | salsify       |
| Acrocomia    | heart of palm |
| Bactris      | “             |
| Euterpe      | “             |
| Guilielma    | “             |
| Prestoea     | “             |
| Roystonea    | “             |
| Sabal        | “             |

**Nuts**

| <i>Genus</i> | <i>Common Name</i> |
|--------------|--------------------|
| Bertholletia | Brazil             |
| Carya        | pecan              |
| Corylus      | filbert            |
| Pinus        | pinenut            |
| Pistacia     | pistachio          |
| Prunus       | almonds            |
| Juglans      | walnut             |

**Spices**

| <i>Genus</i> | <i>Common Name</i> |
|--------------|--------------------|
| Cinnamomum   | cinnamon           |
| Curcuma      | tumeric, arrowroot |
| Elettaria    | cardomom           |
| Myristica    | nutmeg             |
| Piper        | black pepper       |
| Vanilla      | vanilla            |
| Zingiber     | ginger             |

**Herbs**

| <i>Genus</i> | <i>Common Name</i> |
|--------------|--------------------|
| Anethum      | dill               |
| Armoracia    | horseradish        |
| Artemisia    | tarragon           |
| Borago       | borage             |
| Carum        | caraway            |
| Ceratonia    | carob              |
| Coriandrum   | coriander          |
| Cuminum      | cumin              |
| Foeniculum   | fennel             |

|             |                   |
|-------------|-------------------|
| Glycyrrhiza | licorice          |
| Laurus      | bay leaf          |
| Mentha      | mint              |
| Ocimum      | basel             |
| Origanum    | oregani, marjoram |
| Papaver     | poppy             |
| Pimpinella  | anise             |
| Rosmarinus  | rosemary          |
| Salvia      | sage              |
| Satureia    | savory            |
| Thymus      | thymus            |

**Beverages**

| <i>Genus</i> | <i>Common Name</i> |
|--------------|--------------------|
| Camellia     | tea                |
| Cinchona     | quinine            |
| Coffea       | coffee             |
| Cola         | kola               |
| Humulus      | hop                |
| Theobroma    | cocoa              |

**Fiber**

| <i>Genus</i> | <i>Common Name</i> |
|--------------|--------------------|
| Agave        | sissel             |
| Boehmeria    | ramie              |
| Corchorus    | jute               |
| Gossypium    | cotton             |
| Hibiscus     | kenaf              |
| Linum        | flax               |

**Sugar crops**

| <i>Genus</i> | <i>Common Name</i> |
|--------------|--------------------|
| Saccharum    | sugar cane         |
| Beta         | sugar beet         |

**Industrial crops**

| <i>Genus</i> | <i>Common Name</i> |
|--------------|--------------------|
| Cyamopsis    | guar               |
| Hevea        | rubber             |
| Indigofera   | indigo             |
| Nicotiana    | tobacco            |
| Parthenium   | guayule            |
| Simmondsia   | jojoba             |

**Forage-grasses**

| <i>Genus</i> | <i>Common Name</i> |
|--------------|--------------------|
| Agropyron    | wheatgrass         |
| Agrostis     | redtop             |
| Alopecurus   | meadow foxtail     |
| Andropogon   | gamba              |
| Anonopus     | carpet             |

|               |              |
|---------------|--------------|
| Arrhenatherum | oatgrass     |
| Bothriochloa  | sweet pitted |
| Brachiaria    | para         |
| Bromus        | rescue       |
| Cenchrus      | buffel       |
| Chloris       | rhodes       |
| Cynodon       | star         |
| Dactylis      | orchard      |
| Elymus        | wild rye     |
| Festuca       | fescue       |
| Hyparrhenia   | jaragua      |
| Ischaemum     | batiki-blue  |
| Melinis       | molasses     |
| Phalaris      | reed canary  |
| Phleum        | timothy      |
| Poa           | blue         |
| Themeda       | red oat      |

**Forage-legumes**

| <i>Genus</i> | <i>Common Name</i> |
|--------------|--------------------|
| Aeschynomene | joint vetch        |
| Alysicarpus  | alyce clover       |
| Centrosema   | butterfly pea      |
| Clitoria     | butterfly pea      |
| Desmodium    | beggars tick       |
| Galactia     |                    |
| Lablab       | lablab             |
| Lathyrus     | vetch              |
| Lespedeza    | lespedeza          |
| Leucaena     |                    |
| Medicago     | alfalfa            |
| Melilotus    | sweet clover       |
| Neonotonia   | perennial soyabean |
| Pueraria     | kudzu              |
| Stylohanus   | stylo              |
| Stizolobium  |                    |
| Teramnus     |                    |
| Tephrosia    |                    |
| Trifolium    | red clover         |

## ANNEX 2

**TWO EXAMPLES PROPOSED DURING THE SIXTH SESSION OF THE COMMISSION  
OF POSSIBLE SCENARIOS ADDRESSING QUESTIONS OF ACCESS AND SCOPE**  
(List referred to in "Proposals for new wording" of Article 3: Scope)

**SCENARIO I<sup>53</sup>**

|                       | <i>EX SITU</i> |                         | <i>IN SITU</i> |
|-----------------------|----------------|-------------------------|----------------|
| <i>BEFORE<br/>CBD</i> |                | <i>WILD<br/>SPECIES</i> |                |
| <i>AFTER<br/>CBD</i>  |                | <i>WILD<br/>SPECIES</i> |                |

*SCOPE* of Scenario I would refer only to plant genetic resources collected prior to the CBD, excluding wild genetic material. Rest of plant genetic resources for food and agriculture would not be covered by the Undertaking, but will be covered by the CBD.

*ACCESS* for Scenario I would not have restrictions, nor payment for research purposes. Any further benefit arising from the use of plant genetic resources for food and agriculture would have to be shared in a fair and equitable manner, according to the CBD.

**SCENARIO II**

*This scenario establishes a multilateral system or Undertaking for those harvested species most used for food and agriculture; it refers to those crops which currently present the highest rate of genetic material exchange.*

*SCOPE* of Scenario II would refer to a positive list of harvested species of most used crops for food and agriculture.

- *As a first stage, the list would refer only to ex situ material.*
- *The list would be built from a minimum of a very few species mutually agreed to be essential for the world's food and agriculture. It would be slowly widened, according to international needs and agreements.*

*ACCESS* of Scenario II would not have restrictions, nor payment for research purposes. Any further benefit arising from the use of plant genetic resources for food and agriculture would have to be shared in a fair and equitable manner, according to the CBD.

**GENERAL**

*For both scenarios, conditions should have to be established, so that developing countries can benefit from technology development and transfer.*

*A payment formula could be arranged for developed countries to maintain the system, and the international banks, and to promote the necessary capacity building and institutional strengthening in developing countries.*

<sup>53</sup> In this figure, the shaded zone would be given a multilateral treatment (for research purposes) with access without restriction. The unshaded zones would be given a bilateral treatment, with access under the Convention on Biological Diversity.

*Other kind of conditions, such as collection duplication, may be established as well.*

*Both scenarios will always refer to plant genetic resources for food and agriculture.*



## **APPENDIX TO THE FOURTH NEGOTIATING DRAFT**

This Appendix assembles the various texts submitted by Members during the Commission's Third Extraordinary Session, in the context of the *Ad Hoc* Working Group on Scope and Access. The Commission decided that these texts should be added to the Negotiating Draft.

These texts are those indicated in Part 4 of Appendix H of the Report of the Commission's Third Extraordinary Session.

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 APPENDIX, ATTACHMENT 1
 

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**AFRICAN PROPOSALS SUBMITTED TO THE FRIENDS OF CHAIR'S  
CONTACT GROUP**
**AFRICAN PROPOSAL FOR THE INTERNATIONAL UNDERTAKING  
REGARDING SCOPE**

This Protocol applies to plant genetic resources used for food and agriculture, namely crops, wild relatives, wild food plants, forage plants, honey bee plants, and plants for land management and the maintenance of soil fertility.

**AFRICAN PROPOSAL FOR THE INTERNATIONAL UNDERTAKING  
REGARDING ACCESS TO GENETIC RESOURCES FOR FOOD AND AGRICULTURE**

1. The Parties to this Protocol recognize the sovereign rights of States over their genetic resources for food and agriculture, including the authority to determine access to those resources.
2. Each Party shall ensure that appropriate policy, legal and institutional arrangements are created or strengthened for the regulation and administration of access to its genetic resources, and the access it receives to the genetic resources of other parties.
3. 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, *ex situ* collections made outside the Convention on Biological Diversity of which the country or countries of origin cannot be identified
4. Because of the importance of plant genetic resources in general for world food, and because of the existence of *ex situ* collections of crop samples that cannot be traced to specific countries of origin, Parties agree to the creation of a Multilateral System of Access, based on voluntary membership, to the following crop genetic resources:
  - (a) the *ex situ* collections whose countries of origin cannot be determined, and
  - (b) the crop species which the members may willingly decide to include in the system.
5. Access to the Multilateral System shall be granted on request to any member of the System. The United Nations Food and Agriculture Organization shall administer the Multilateral System.
6. Nothing in this Article shall prevent smallholder farmers from unconditional access to genetic resources.

**CONDITIONS OF ACCESS TO GENETIC RESOURCES**

1. Access to genetic resources for food and agriculture shall be subject to prior informed consent of the country of origin or the Food and Agriculture Organization of the United Nations as set out in Article 7.
2. The recipient shall have access to genetic resources subject to the fulfilment of its obligations under this Protocol and the Genetic Resources Transfer Agreement that it concludes with the Supplier upon the approval of the competent authority of the country of origin or the Food and Agricultural Organization as the case may be.
3. The recipient shall, in order to have access to genetic resources, enter into commitments to share benefits arising from the commercial and other kinds of utilization of those resources, including technology and

the results of research and development with the country of origin based upon the relevant provisions of this Protocol and on mutually agreed terms of the Genetic Resources Transfer Agreement.

4. Each party shall endeavour to carry out research and development based on genetic resources supplied by the country of origin with the full participation of, and where possible in, such country of origin.

#### PRIOR INFORMED CONSENT

1. Each Party shall ensure that the Recipient of genetic resources has obtained the informed consent of the country of origin or, in the case of genetic resources in the Multilateral System, of the Food and Agriculture Organization, before any access to those genetic resources is effected.
2. 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 Food and Agriculture Organization, as the case may be, for that specific genetic resource.
3. The Recipient shall request the competent authority of the country of origin, or the Food and Agriculture Organization, as the case may be, for access to genetic resources by application in writing that contains information on:
  - (a) The name of species, any other taxonomic specification and amounts of resource to be accessed or collected;
  - (b) The purpose of prospecting, accessing or collecting the genetic resource;
  - (c) The site of prospecting or collecting from or the *ex situ* collection to be accessed;
  - (d) Whether any collection of the genetic resource endangers any component of biological diversity;
  - (e) The type and extent of commercial use to be derived from the resource;
  - (f) Proposed mechanisms or arrangements for benefit-sharing in the form of technology or financial transfer to the national government of the country of origin and to its local farming communities, and in the case of the Multilateral System, to the Food and Agriculture Organization, in case commercial use is derived from the genetic resource collected or accessed;
  - (g) The manner and extent of intended involvement of the country of origin or, in the case of the Multilateral System, the country designated by the Food and Agriculture Organization, in the necessary research and development on the genetic resources concerned;
  - (h) Any other matter that may be relevant to and specified as required by the country of origin, or the Food and Agriculture Organization, as the case may be.
4. The country of origin, or the Food and Agriculture Organization, as the case may be, shall respond to the application of the Recipient in writing consenting to grant access to the genetic resources concerned with or without conditions, denying access, or requesting additional information. Copies of the prior informed consent, the Genetic Resources Transfer Agreement or any other written response by the country of origin, shall be transmitted to the Food and Agriculture Organization.
5. The Recipient shall not transfer the genetic resources to any third party without the prior informed consent or subsequent Genetic Resource Transfer Agreement of the country of origin, or the Food and Agriculture Organization, in the case of the Multilateral System.
6. Whenever the Recipient becomes aware of relevant new information or discovers new use about the genetic

resources it has collected, it shall immediately inform the country of origin or the Food and Agriculture Organization, as the case may be, and the terms of the prior informed consent or the Genetic Resources Transfer Agreement shall be changed accordingly.

7. The country of origin can unilaterally terminate the Genetic Resources Transfer Agreement and refuse access to the genetic resources concerned whenever the Recipient has violated any of its terms, or the public interest so demands.

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APPENDIX, ATTACHMENT 2

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**AUSTRALIAN PROPOSALS SUBMITTED TO THE FRIENDS OF CHAIR'S CONTACT GROUP**

**KEY PRINCIPLES OF SCOPE AND ACCESS  
AUSTRALIAN SUGGESTIONS**

11 December 1996

Tabled suggestions of the USA, Brazil, and the EU have a number of positive elements which are complementary and provide a potential basis for developing agreement on the issues of Scope and Access.

These elements are

1. differentiation of pre-CBD; post CBD pre-revised Undertaking and post revised Undertaking;
2. the interdependency of all countries for key food and forage crops;
3. the benefits of facilitating access for designated *ex situ* collections, both international and national of those key food and forage crops.

On the basis of these key principles, Australia suggests that the scope of the Undertaking could be key food and forage crops in designated international and national *ex situ* collections. The designated international collections would be those held under the trustee arrangements with FAO. National *ex situ* collections would be those designated by parties and REIOs Parties to the Undertaking as they determine.

Access to material in designated international and national *ex situ* collections would be facilitated on terms which have minimum restrictions and low transaction costs and are in accordance with the provisions of the CBD.

These terms should ensure that benefits flowing from the commercialization of this material should accrue in an appropriate and equitable way in accordance with the provisions of the CBD.

For material collected prior to the entry into force of the CBD and lodged in the collections of the IARCs the terms should continue to reflect the terms of the Undertaking of unrestricted access and that the material was collected for the benefit of all. Hence the material should continue to be available under the terms of the FAO agreement with the IARCs.

For material collected pre-CBD and held in nationally designated collections, parties to the Undertaking should endeavour to make this material available under the same conditions as the FAO agreement with the IARCs.

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APPENDIX, ATTACHMENT 3

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**AN INFORMAL PAPER SUBMITTED BY THE EUROPEAN COMMUNITY AND ITS MEMBER STATES TO THE THIRD EXTRAORDINARY SESSION OF THE COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE**

**9 December 1996**

**(This informal paper is offered as a contribution to the work of the FAO Commission on GRFA but it does not represent the final position of the European Community and its Member Countries)**

**Art. 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.

**Art. 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.

**Art. 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.

**Art. 5 (and Art. 6) National commitments towards the conservation and sustainable use of plant genetic resources for food and agriculture**

*Note: This chapter is an amalgam of Art. 5 Exploration and Collection of Plant Genetic Resources and Art. 6 Conservation ... Evaluation and Documentation of PGR in the Third Negotiating Draft.*

[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 4th 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.

**Art. 7 International Cooperation**

- 7.1 Each [Party] shall as far as possible and as appropriate, integrate in its programmes, activities referred to in Art. 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:
- (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 collections of PGRFA as described in Art. 9;
  - (c) Maintaining and strengthening of a World Information Network on PGRFA as described in Art. 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.

#### **Art. 9 The International Network of Collections of Plant Genetic Resources for Food and Agriculture**

- 9.1 There should be a general aim of developing and strengthening an international network of collections of PGRFA held at national, regional and international level. This International Network of Collections of Plant Genetic Resources for Food and Agriculture (INC/PGRFA) should be developed so as to improve the conservation, the exchange and utilization of PGRFA 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 PGRFA.
- 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 establish national collections which will be part of the INC/PGRFA. They will encourage all institutions, including private, non-governmental, research, breeding and other institutions, to participate in the INC/PGRFA.
- 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 Collections 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.

#### **Art. 10 The World Information Network on Plant Genetic Resources for Food and Agriculture**

- 10.1 There should be a general aim to develop a World Information Network on PGRFA (WIN/PGRFA) to improve the knowledge and overview about PGRFA, 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.

**Art. 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 Art. 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 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 and following principles agreed by the governing body, in accordance with the Convention on Biological Diversity.

**Art.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 PGRFA, 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 to by all [Parties] to the transaction. 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 PGRFA.
- 11a.3 Such technology transfer should be provided, among others, by the mechanism established under Art. 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.

**Art. 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 PGRFA 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 Art. 5 in accordance with their national capacities, so contributing to ensure benefits to farmers and traditional communities.

#### **Art. Statement**

Referring to Art. 8 and 13 of the Third Negotiating Draft, the EU will examine with much attention, during the third 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 INC/PGRFA and WIN/PGRFA; the continuing review of the international situation concerning the conservation and sustainable use of PGRFA.

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**APPENDIX, ATTACHMENT 4**

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**FIRST DOCUMENT SUBMITTED BY THE UNITED STATES OF AMERICA****I. Introduction**

The attached U.S. submission to the FAO Commission and Working Group outlines USG thinking as we focus on the three areas which have been identified as central to this stage of the Undertaking's re-negotiation: Article 3 (Scope), Article 11 (Availability of Plant Genetic Resources), and Article 12 (Farmers' Rights). The U.S. does not believe that the scope of the Undertaking can be understood in the abstract; instead we see it as determined by the coverage of its substantive provisions.

With respect to availability of genetic resources covered by the revised Undertaking, we propose that the provisions of the Undertaking relate to those genetic resources for which there is global interest in maintaining unrestricted access. (Over-regulation of access to plant germplasm has the potential to affect negatively everyone as all countries are dependent to a considerable degree on germplasm originating outside their borders. Countries which may lack adequate germplasm collections and strong research capacity may be particularly affected.) The Undertaking thus would not seek to establish procedures and obligations for all situations in which access is requested from a party to the agreement. Instead, it would secure open access to germplasm in the active collections of national genebanks and international agricultural research centers (IARCs) that was or is: 1) acquired prior to entry into force of the CBD; 2) acquired without qualifications as to distribution conditions after this date but prior to entry into force of the undertaking; or 3) acquired after entry into force of the CBD but is included on a core list of major food crops and forages essential to food security. (The question of who - *e.g.*, the country in whose territory the IARC is located, the IARC itself, or the FAO, under whose auspices it operates - has the authority to undertake binding international obligations on behalf of an IARC is a complex one and must be addressed if the Undertaking is to be drafted and function effectively.)

Access to other germplasm would be left to the bilateral or contractual realm, where mutually agreed terms, including benefit-sharing, could be negotiated. Countries could, however, declare their intent to provide unrestricted access to additional categories of genetic resources when they ratified the Undertaking. The U.S. would hope to do so and to encourage others to follow suit.

With respect to farmers' rights, the U.S. believes that, consistent with the emphasis on farmers' conservation and sustainable use activities in FAO Conference Resolution 5/89, these provisions of the Undertaking should be addressed as in Section D of our proposal. As specified in the proposal the U.S. believes that it is the responsibility of national governments to determine how best to encourage farmers' efforts to conserve and use sustainably plant genetic resources.

**II. Outline of relevant Undertaking provisions**

- A. The access provisions of the Undertaking should apply to:
1. Active collections of the International Agricultural Research Centers (IARCS) which hold plant germplasm collections, and
  2. Active collections of national genebanks.

- B. The Undertaking would impose an obligation to provide open access to:
1. Germplasm acquired by IARCs and national genebanks prior to entry into force of the Convention on Biological Diversity (CBD; December 29, 1993);
  2. Germplasm acquired by IARCs and national genebanks after entry into force of the CBD but prior to entry into force of the revised International Undertaking, except where the acquisition was/is subject to terms which impose specific conditions, *e.g.*, terms which relate to the transfer of acquired germplasm to the CBD, in which case such transfer shall be consistent with those terms and conditions; and
  3. Germplasm (genus level) of listed, staple food crops and forages (see Table 1), acquired by IARCs and national genebanks after entry into force of the revised International Undertaking.

C. The Undertaking would stipulate that, upon ratification, countries could make a declaration stating that they would provide unrestricted access to additional categories of plant genetic resources.

D. Given the central importance of farmers' conservation efforts to global food security, national governments could support farmers' conservation and sustainable use activities through the establishment or strengthening of, *inter alia*, national germplasm systems; programs which preserve and improve native germplasm; initiatives which promote the use of, and research into, crops which currently are not widely used; and activities which help to control erosion of arable land. These objectives could be addressed in part through allocation by national governments of benefits they have received from contractual arrangements relating to genetic resources.

Promotion of farmers' conservation and sustainable use activities should also continue to be encouraged through existing international programs in partnership with national governments. Support for new conservation and development initiatives that directly benefit farmers should also be considered, *e.g.*, *in situ* conservation and development initiatives developed under the Global Plan of Action which recommend on-farm management activities as well as access to germplasm for the purpose of restoring plant genetic resources, where possible and appropriate, to areas from where they have been lost.

Each party to the International Undertaking should where appropriate make efforts to provide adequate financial resources to support farmers' conservation efforts without restricting or distorting trade. In mobilizing sufficient financial resources to support such conservation initiatives, each party should seek full use and qualitative improvement of all national, bilateral, and multilateral funding sources and mechanisms, using consortia, joint programs and parallel financing, and shall seek to involve private sector funding sources and mechanisms, including those of non-governmental organizations.

**TABLE 1****LISTED CROPS ESSENTIAL TO GLOBAL FOOD SECURITY**

We suggest that the list of those crops be as follows:

**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 |                     |

**B. Forages**

## APPENDIX , ATTACHMENT 4, ADD. 1

**ANNEX TO THE FIRST DOCUMENT SUBMITTED  
BY THE UNITED STATES OF AMERICA***Article 3*

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

*Article 11*

1. States Party to the Undertaking shall take measures to provide unrestricted access to the following germplasm when it is held in the active collections of their national genebanks:

- a. germplasm acquired prior to entry into force of the Convention on Biological Diversity (CBD);
- b. germplasm acquired after entry into force of the CBD but prior to entry into force of the Undertaking, except where the acquisition was subject to terms which impose specific conditions, in which case access to the germplasm shall be provided consistent with those terms; and
- c. germplasm (genus level) of the staple food crops and forages listed below acquired after entry into force of the Undertaking.

2. States Party to the Undertaking shall further facilitate unrestricted access to the germplasm identified in sub-paragraphs a, b and c of paragraph 1 when it is held in the active collection of any International Agricultural Research Center located in their territory.

*Article 12*

1. States and Regional Economic Integration Organizations (REIOs) Party to the Undertaking shall take measures to promote the efforts of their farmers to conserve and use sustainably plant genetic resources for food and agriculture through the establishment or strengthening of mechanisms including:

- 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.

2. Establishment or strengthening of the mechanisms described in paragraph 1 may be facilitated through allocation by States and REIOs Party to the Undertaking of any benefits they receive from contractual arrangements relating to access to plant genetic resources for food and agriculture.

3. States and REIOs Party to the Undertaking should continue to work with relevant international programs

to further farmers' activities to conserve and use sustainably 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. States and REIOs Party to the Undertaking 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 those of non-governmental organizations.

#### LISTED CROPS ESSENTIAL TO GLOBAL FOOD SECURITY

##### 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 |                     |

##### B. Forages

## APPENDIX, ATTACHMENT 5

**SECOND DOCUMENT SUBMITTED BY  
THE UNITED STATES OF AMERICA**

## PROPOSAL FOR A FRAMEWORK TO FOCUS THE DISCUSSION OF THE COMMISSION

**Addressing the following questions is, we believe, the best way to help the Commission make progress on the drafting of articles 3, 11, and 12 of the Undertaking.**

**The first question that should be asked and discussed is:**

Should the Undertaking set forth comprehensive or different types of rules to address all circumstances in which access is sought to PGRFA, or focus only on resources for which there is agreed global interest in maintaining unrestricted access?

**The following questions are then relevant whether a broad or narrow Undertaking is chosen.**

- 1) Should the rules of the Undertaking apply only to collections in certain locations, *e.g.* national or international collections, and /or to certain sub-collections in these locations?
- 2) Should they be further tailored to the date of their acquisition by the provider of the resources?
- 3) Should they apply to only certain sorts of genetic resources in the specified locations?
- 4) Should they apply to only resources being collected for one purpose rather than another?
- 5) Should the Undertaking also promote national and/or multilateral efforts to facilitate farmers' conservation and sustainable use activities?
- 6) Should the Undertaking promote innovation in plant breeding and otherwise protect plant breeders' interests?
- 7) Should the Undertaking set up a distinct multilateral regime for protection of traditional and indigenous, including farmer, knowledge related to biodiversity or to PGRFA in particular?
- 8) If the Undertaking's obligations relate to international collections such as the CGIAR centers, who would have to become Party to the agreement in order to ensure they were carried out?
- 9) If the Undertaking were to provide for ratification or accession or some other form of participation by international organizations, NGOs, farming or indigenous communities, or other non-state entities that may or may not be subjects of international law, how would the Undertaking define the relationship between these entities and the States Party?

**The following questions are relevant only if a broad Undertaking is chosen.**

- 1) If the Undertaking applies to PGRFA other than those where there is agreement on unrestricted access, what specific benefits-sharing requirements could be imposed as a condition for access?

- a) Should there be an obligation on the person or entity seeking access to a particular resource to share any of the benefits derived from any later acquisition of rights to the exclusive use of a product generated using the resources?
- b) If so, with whom should the benefits be shared?  
  
-- If with the country or countries constituting the native habitat of the resource, how is this to be determined?
- c) If more than one country is involved (provided parental lines and or characterization or improvement), how are allocation and valuation to be determined?
- d) Should there be a requirement on the person or entity to whom/which access is granted to oblige anyone to whom he or she gives the genetic resource to undertake similar benefits-sharing obligations?
- e) How could the Undertaking ensure that benefits that are shared are used to encourage farmers' conservation and sustainable use activities?
- f) What would the likely transaction costs be of setting up such multilateral benefit-sharing rules and administering their determination and valuation aspects?
- g) By whom would the administration be accomplished?



## APPENDIX, ATTACHMENT 6

## DOCUMENT SUBMITTED BY FRANCE

**Scope of the International Undertaking on Plant Genetic Resources: From “species of interest for food and agriculture” to “genetic resources of interest for food and agriculture”**

It has been proposed that the scope of the revised International Undertaking should be based on plant genera listed in an annex of the Undertaking. At first sight, this proposal appears clear and simple, but it would probably result in endless debates between experts on its content. The utility for food and agriculture may not be identified most adequately at the species and genera level, and limiting the future scope of the Undertaking to a list established at the date of its signature seems very restrictive considering potential evolutions: diversification of the uses of species to answer new needs and requests, utilization of new species.

The revised International Undertaking has to make possible the use of plant genetic resources to answer food and agricultural needs, as they are currently identified, but also as they will appear in the future.

Current uses of plant genetic resources for food and agriculture are broadly well identified at the global scale, but they do not always correspond to the specific priorities of local agrosystems or communities, especially in enclosed or fragile ecosystems, that are sometimes heavily dependent on “marginal” (at the global scale) species.

Furthermore, future uses of plant genetic resources for food and agriculture are currently unpredictable. They are the result of evolutions in food needs (changes, that may be drastic, in food habits due to demographic, economic or cultural factors, such as urbanization), of ecological constraints (soil and water quality degradation), and of scientific advances, both in traditional agronomy (better management of crop associations and crop production systems to reduce negative impacts of inputs) and in biotechnology (especially through a better control of transgenic methods). It seems impossible to determine exclusively the uses of a crop, and to identify *a priori* the potential contribution of a plant to the improvement of food and agriculture.

Restricting the scope of the International Undertaking to the species currently considered as priorities may lead the international scientific community to ignore other potentially interesting genetic resources. In this context, it seems more relevant to consider “genetic resources useful for the improvement of food and agriculture” than “priority species for food and agriculture”.

Article 3 could be drafted that way: “This Undertaking relates to plant genetic resources for food and agriculture as a basis for meeting present and future needs for the growing world population.”

**Access to / availability of genetic resources for food and agriculture under the International Undertaking**

Considering that the “genetic resources” level is more relevant than the “species” or “genera” level for food and agriculture, we propose to settle the issue of access/availability by identifying, within each species, different classes of genetic material.

**First class : designated material - unrestricted access through an international network of collections.**

This material, whatever the species considered, ought to be genetically diversified and free of any intellectual property rights.

*It would be the responsibility of each party to the Undertaking to designate, within the following categories, and species by species, the material (genetically diversified and free of intellectual property rights), it places in this class :*

- cultivars
- populations and land races located on the national territory
- progenitors known in the international scientific community for their interesting contribution to selection
- original material obtained by prospections on the national territory, including wild relatives
- material known for the presence of identified genes
- material, poorly characterized but considered as a genetic resource, hardly collectable or available.

Parties of the International Undertaking might also decide to include in its scope original material obtained through prospections in another country, should its conservation in its center of origin not be provided adequately.

Each party would put in place a procedure for the designation of this material, that would best correspond to its national system of plant genetic resources conservation (functions of, and relations between the partners involved, including the state), and to the legal system governing the conservation and utilization of genetic resources on its territory.

Some countries have already collections or genebanks that could be included in this class. The designated material of International Agricultural Research Centers placed under the auspices of the FAO would also be part of this class.

It would be necessary to begin the designation of genetic material to place in this international network within the species of major interest for food security, that could be listed in an indicative annex to the Undertaking.

**Second class : Non-designated material - negotiated access.**

The genetic material under intellectual property rights, or not designated, would be dealt with on a bilateral basis, or otherwise negotiated, between the parties involved.

This way of defining access may appear at first sight more complicated than on the basis of a list of species or genera. However, it will probably be easier to achieve an international consensus on such an approach than on a restricted list, that could hardly take into account the priorities and specificities of agriculture all over the world.

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APPENDIX, ATTACHMENT 7

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**DOCUMENT SUBMITTED BY BRAZIL**

Brazil understands that in this exercise our main concern is to guarantee continued world food security. In that sense, it is our position that the scope of the revised International Undertaking should be limited to those genera that constitute the basis of human world food consumption. All the other genera fall under the dispositions of the Convention on Biological Diversity.

Furthermore, in order to justify a multilateral agreement, the genera covered by the Undertaking should include only those that are object of great interdependence worldwide.

These were the two criteria which guided the elaboration of the list below.

We hope that this will be understood as an important contribution towards achieving consensus in our discussion concerning the scope and access of the revised International Undertaking.

The conditions of access to the genera included in this list would be facilitated, according to national legislation, and would apply to genetic materials found both *in situ* and *ex situ*, irrespective of their date of collection, before or after the entry into force of the Convention.

The benefits arising out of the utilization of the genera included in this list would be shared, on a multilateral basis, according to a mechanism to be established by the Commission.

## CROPS/GENERA OF BASIC IMPORTANCE FOR HUMAN WORLD FOOD CONSUMPTION

### CROPS

Rice<sup>1</sup>  
 Oat<sup>3/5</sup>  
 Rye<sup>3/5</sup>  
 Barley<sup>3/5</sup>  
 Millets<sup>2</sup>  
 Maize<sup>1/5</sup>  
 Sorghum<sup>2</sup>  
 Wheat<sup>1/5</sup>  
 Groundnut<sup>3/5</sup>  
 Cowpea<sup>4</sup>  
 Pea<sup>3/5</sup>  
 Beans<sup>2</sup>  
 Lentil<sup>3</sup>  
 Soybean<sup>1/5</sup>  
 Potato<sup>1/5</sup>  
 Sweet potato<sup>2</sup>  
 Yams<sup>4</sup>  
 Cassava<sup>2</sup>  
 Banana and plantain<sup>1/5</sup>  
 Orange<sup>1/5</sup>  
 Sugar cane<sup>1/5</sup>  
 Sugar beet<sup>2/5</sup>  
 Pumpkin<sup>4</sup>  
 Tomato<sup>3/5</sup>  
 Coconut<sup>3/5</sup>

### GENERA

*Oryza*  
*Avena*  
*Secale*  
*Hordeum*  
*Panicum/Pennisetum/Setaria*  
*Zea*  
*Sorghum*  
*Triticum*  
*Arachis*  
*Vigna*  
*Pisum*  
*Phaseolus*  
*Lens*  
*Glycine*  
*Solanum*  
*Ipomoea*  
*Dioscorea*  
*Manihot*  
*Musa*  
*Citrus*  
*Saccharum*  
*Beta*  
*Cucurbita*  
*Lycopersicon*  
*Cocus*

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<sup>1</sup> Primary importance at world level.  
<sup>2</sup> Primary importance at regional level.  
<sup>3</sup> Secondary importance at world level.  
<sup>4</sup> Secondary importance at regional level.  
<sup>5</sup> *Commodities* of great importance.