

**REPORT OF THE COMMISSION ON GENETIC RESOURCES
FOR FOOD AND AGRICULTURE**

**Third Extraordinary Session
Rome, 9-13 December 1996**

**FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS
Rome, 1996**

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I. INTRODUCTION AND ADOPTION OF THE AGENDA AND TIMETABLE FOR THE SESSION

1. The Third Extraordinary Session of the Commission on Genetic Resources for Food and Agriculture met in Rome from 9 to 13 December 1996. A list of delegates and observers is attached as *Appendix K*.
2. The Chairman, Mr. José Miguel Bolívar (Spain), opened the Session and welcomed delegates and observers. Mr. Abdoulaye Sawadogo, Assistant Director-General, Agriculture Department, delivered an opening statement on behalf of the Director-General, which is attached as *Appendix C*.
3. The Meeting observed a minute's silence in memory of Mr. John Suich, who had led the United Kingdom delegation in previous meetings of the Commission.
4. The Meeting adopted the Agenda, as given in *Appendix A*.

II. CONTINUATION OF NEGOTIATIONS FOR THE REVISION OF THE INTERNATIONAL UNDERTAKING ON PLANT GENETIC RESOURCES

II.1 REPORT OF THE ELEVENTH SESSION OF THE WORKING GROUP

5. The Chairman of the Working Group, Mr. R.S. Paroda (India), presented his report on the deliberations of the Eleventh Session of the Working Group (5 to 6 December 1996), which is contained in *Appendix D*. He thanked delegates for the very constructive inputs they had made to the discussion of the Group, which had resulted in the analysis of the various options open in dealing, during the revision of the International Undertaking, with the questions of Scope, Access and Farmers' Rights, which were reflected in his Report. A number of countries wished their comments on the report to be reflected in the record. Brazil believed that there had been no general agreement concerning Scope, and no wide agreement on Access. Ethiopia stated that Farmers' Rights should not be regarded just as a concept, as they were a reality, being implemented in a number of countries. This was supported by Zimbabwe and Egypt.
6. The Commission thanked the Chairman for the very useful report that had been presented.

II.2 CONTINUATION OF THE NEGOTIATIONS FOR THE REVISION OF THE INTERNATIONAL UNDERTAKING

7. The Secretariat of the Convention on Biological Diversity presented the decisions of the Third Meeting of the Conference of the Parties, noting particular paragraphs of relevant decisions, including paragraphs 18, 19, 21 and 22 of Decision III/11. These paragraphs are attached as *Appendix E* to this report. The statement of the Secretariat of the Convention on Biological Diversity is included as *Appendix F* to this report.
8. The Meeting heard a number of general statements by countries regarding their positions on the matters under negotiation, and possible modes of proceeding. Canada submitted a paper entitled *Benefits of the use of genetic resources in agriculture*.¹ The Meeting then decided to constitute two open-ended working groups. One Working Group on Scope and Access was to be chaired by the Chair of the Commission, Mr. José Miguel Bolívar (Spain). Another Working Group on Farmers' Rights was to be chaired by the Chair of the Commission's Working Group, Mr. R.S. Paroda (India).

¹ Which was distributed to the Commission as document CGRFA/Ex3/96/LIM/3.

9. Following two days of discussions, these Working Groups reported to Plenary.
10. The Chair of the Working Group on Farmers' Rights stated that it had identified issues that needed further elaboration. The Working Group then received proposals of issues to be addressed in Article 12 of the Third Negotiating Draft of the International Undertaking, and, following discussion, retained three consolidated proposals, submitted by the European Community—and amended by some countries—the United States of America, and the developing countries (*Appendix G*). The Chair noted the constructive attitude of participants and the useful inputs of a number of observers, including the World Trade Organization (WTO), the International Union for the Protection of New Varieties of Plants (UPOV), Genetic Resources Action International (GRAIN) and Via Campesina. He reported a Group proposal that the Plenary should decide whether the three consolidated proposals mentioned above for Article 12 should replace, or be in addition to, the proposals included in the text of Article 12.1 and 12.2 in the Third Negotiating Draft. The Commission agreed that they would replace the corresponding texts in the Third Negotiating Draft.
11. The Chair of the Working Group on Scope and Access informed the Meeting that the Group had decided to establish a Friends of the Chair's Contact Group.² The Chair of this Contact Group (Mr. Bryan Harvey, Canada) reported that its discussions had been of value in coming to a better understanding of countries' positions. The Contact Group had analyzed possible options within a framework covering (i) the objectives of / justifications for facilitating access through a multilateral agreement; (ii) to which plant genetic resources, in which locations, such facilitated access would apply; and (iii) how such access would be facilitated. The report of the Friends of the Chair's Contact Group, as well as the various texts submitted by countries to be added to the Third Negotiating Draft, elaborating particular options, are in *Appendix H*.
12. Dr. Scarascia-Mugnozza, President of the Italian Academy of Sciences, on his behalf, and on behalf of Dr. M.S. Swaminathan, President of the National Academy of Sciences of India, informed the meeting that some one thousand scientists from seventy-six countries had signed an *Appeal for the safe conservation and optimal utilization of biodiversity and genetic resources for food and agriculture, and the fair and equitable sharing of the benefits*, which *inter alia* called for the rapid and effective completion of the revision of the International Undertaking .
13. The Commission invited the representative of the International Plant Genetic Resources Institute (IPGRI) and the International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL) to address the meeting.
14. Mr. Geoff Hawtin, Director-General of IPGRI, recalled that the Commission had, in 1995, called for IPGRI to prepare a study on the feasibility of possible systems for the exchange of plant genetic resources for food and agriculture and the equitable sharing of benefits, with particular attention to their efficiency, practicality and effectiveness. This study had been made available to the Commission's Second Extraordinary Session.³ IPGRI had subsequently decided to prepare a further study which took into account comments received, as well as new information brought to light during the preparatory process of the Fourth International Technical Conference on Plant Genetic Resources. The new study, made available to the present session,⁴ also includes information on transaction costs under a variety of options.

² Angola, Australia, Bolivia, Brazil, Canada, Colombia, the European Community, Ethiopia, Japan, Malaysia, Poland, Tanzania, and the United States of America.

³ Under the title, *Access to plant genetic resources and the equitable sharing of benefits: a contribution to the debate on systems of exchange of germplasm*.

⁴ *Options for access to plant genetic resources and the equitable sharing of benefits arising from their use* (document CGRFA-Ex3/96/LIM/2).

15. The Commission requested that the Friends of the Chair's Contact Group established by the Working Group on Scope and Access reconvene. The Chair of the Contact Group's report on the second round of discussions is presented in *Appendix I*.
16. Following this presentation, the Commission recommended that IPGRI, in conjunction with the FAO Secretariat, carry out a study in two steps, as outlined in the second report of the Chair of the Contact Group: (i) a characterization of options on Scope and Access, (ii) and a notional assessment of the pros and cons of each option, as well as of their viability. This should involve inputs from all Commission Members, in order to facilitate the consideration of possible options. It was agreed that all the options listed in parts 1, 2 and 3 of *Appendix H*, as well as those contained in the submissions mentioned in part 4, should be covered in the study. A further suggestion was that the possible transaction costs of prior informed consent arrangements documented in relevant text in that appendix, related to access to germplasm, should also be studied. The first step should be completed by 31 January 1997, and the document circulated to members of the Commission for comment. The Secretariat should ensure the distribution of the final study, including the second step, reflecting these comments, well in advance of the next session.

III. ARRANGEMENTS FOR THE COMMISSION'S SEVENTH REGULAR SESSION

17. The Commission discussed arrangements for its Seventh Regular Session, planned for May 1997, taking into account, in particular, the need to expedite and focus negotiations for the revision of the Undertaking, and consider follow-up to the *Global Plan of Action*. The Commission also discussed broadening its Bureau, in order to provide for a complete regional representation, and agreed to do so. The first expanded Bureau would be elected at the Seventh Regular Session. The Commission also recalled that, in accordance with its mandate, that session would elect officers and members to the Working Group.
18. A number of countries considered it of great importance that, prior to the Commission's next session, countries and regions should clarify and define their positions, particularly with respect to Scope, Access and Farmers' Rights, possibly through national and regional consultations, involving all relevant stake-holders. It would be helpful to distinguish, as appropriate, provisions relevant to the national and international levels. The financial implications of such consultations were noted, and an invitation was extended to donors to provide extra-budgetary funds, either through FAO or directly. Appreciation for the assistance that Switzerland had provided to facilitate the participation of developing countries in this session was expressed, and the prior contributions of Canada and Italy were recalled. It was suggested that representatives of farmers, local communities, women's groups, and non-governmental organizations be involved in the process of consultation for the revision of the International Undertaking, at all levels, but especially at national and regional levels.
19. The Commission recommended that, for the negotiations for the revision of the International Undertaking, the time allocated to the Commission's Seventh Regular Session and the proposed preceding Session of its Working Group,⁵ should be utilized as follows: after the opening session of the Commission to elect Bureau members and formalize other organizational matters, regional groups would meet on the remainder of the Thursday and on the Friday preceding the Commission to discuss and agree, as appropriate, on regional proposals. During the weekend, the Bureau of the Commission would compile, and the Secretariat would translate, the various texts proposed, with the Bureau consolidating them where possible.

⁵ *Note by the Secretariat:* the period referred to is from Thursday, 15 May 1996, to Friday, 23 May 1996, inclusive.

20. Countries were invited to make additional submissions for the revision of the Undertaking, for circulation before the next meeting. The Secretariat was asked to invite the World Trade Organization (WTO), the World Intellectual Property Organization (WIPO), the International Union for the Protection of New Varieties of Plants (UPOV) and the Convention on Biological Diversity (CBD) to present or transmit relevant background documentation in their areas of competence in good time before the next Session, especially documentation related to access and benefit-sharing, with regard to plant genetic resources and agricultural biodiversity, that may inform the Commission in its important negotiations, recognizing that some of these organizations have specific international mandates relating to intellectual property rights. These organizations should also be invited to attend the Commission's forthcoming Session.
21. It was noted that the Commission's Seventh Session would be its first regular session since the FAO Conference decision to broaden its mandate, and that its provisional agenda—adopted by its last Session—did not contain a specific item on animal genetic resources. It was also noted that this subject could be dealt with under items 4, "Other business", or 5, "Future work of the Commission". The Commission was informed that FAO was convening an *ad hoc* expert working group on animal genetic resources in January 1997. As recommended by the last FAO Conference, this *ad hoc* expert working group would advise the Director-General, and, through him, the next sessions of COAG and the Commission itself. In view of the heavy agenda for its Seventh Session, the Commission recommended that the outcome of the *ad hoc* expert working group be considered in detail by COAG, so as to facilitate the work of the Commission. The Commission would need to allow adequate time to deliberate this subject. The timetable for this exercise should be set in advance, so as to make it possible for the experts concerned to plan for travel to Rome.
22. It was decided that discussion on the question of *Follow-up to the International Technical Conference on Plant Genetic Resources* (document CGRFA/Ex3/96/Inf.1), and on the *Revision of the cost estimates of the Global Plan of Action* (document CGRFA/Ex3/96/Inf.1 Annex), should be taken up at the Seventh Regular Session in May 1997.
23. The interpretation services finished at 01:30 hours on the morning of Saturday, 14 December 1996, before it was possible to adopt all the paragraphs of the *Report*. In accepting to continue in one language only, GRULAC and France requested that the final *Report* record that they considered that the interruption of interpretation was unacceptable, as all delegations should be able to participate equally in the discussions and decisions of the Meeting. They requested that the necessary steps be taken to ensure that a similar situation did not occur again.

APPENDIX A

COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE

Third Extraordinary Session

Rome, 9-13 December 1996

AGENDA

1. Adoption of the Agenda and Timetable for the session
2. Continuation of negotiations for the revision of the International Undertaking on Plant Genetic Resources
 - 2.1 Report of the Eleventh Session of the Working Group (5-6 December 1996)
 - 2.2 Continuation of Negotiations
3. Other business

 APPENDIX B

LIST OF DOCUMENTS

1. Working Documents

CGRFA-EX3/96/1	Provisional Annotated Agenda
CGRFA-EX3/96/2	Provisional Time-table
CGRFA-EX3/96/3	Report by the Chairman of the Eleventh Session of the Working Group
(without number)	Revision of the International Undertaking on Plant Genetic Resources: Third Negotiating Draft

2. In-Session Documents, and Documents Submitted at the Request of Commission Members

CGRFA-EX3/96/WGFR/1/ Rev. 1	Working Group on Farmers' Rights. Alternate texts and comments, 10-11 December 1996
CGRFA-EX3/96/WGFR/1/ Rev. 2	Working Group on Farmers' Rights. Proposals from Developing Countries, 12 December 1996
CGRFA-EX3/96/WGSA/1	Working Group on Scope and Access. Report of the Friends of the Chair's Contact Group established by the Chair of the Working Group on Scope and Access, 11 December 1996
CGRFA-EX3/96/WGSA/1/ Add. 1	Working Group on Scope and Access. Report of the Friends of the Chair's Contact Group established by the Chair of the Working Group on Scope and Access, 13 December 1996
CGRFA-EX3/96/WGSA/2	Working Group on Scope and Access. African proposal submitted to the Friends of the Chair's Contact Group
CGRFA-EX3/96/WGSA/3	Working Group on Scope and Access. Key principles of scope and access; Australian suggestions
(without number)	Revision of the International Undertaking: Non-paper for informal discussion purposes only; prepared by the Secretariat
CGRFA-EX3/96/Lim/1	Document circulated by the United States of America (<i>English only</i>)
CGRFA-EX3/96/Lim/2	Options for access to plant genetic resources and the equitable sharing of benefits arising from their use. Document submitted by IPGRI
CGRFA-EX3/96/Lim/3	Benefits of the use of genetic resources in agriculture. Document submitted by Canada (<i>English only</i>)

CGRFA-EX3/96/Lim/4	Scope of the International Undertaking on Plant Genetic Resources of interest for food and agriculture: from “species of interest for food and agriculture” to “genetic resources for food and agriculture”. Document submitted by France (<i>English and French only</i>)
CGRFA-EX3/96/Lim/5	The Revision of the International Undertaking for Food and Agriculture. An informal paper submitted by the European Community and its Member States
(without number)	La gestion des ressources phylogénétiques: vers une intégration des processus de conservation, de caractérisation et d'utilisation. Préparé par le Bureau des ressources génétiques (France) (<i>French only</i>)

3. Information Documents

CGRFA-EX3/96/Inf. 1	Follow-up to the International Technical Conference on Plant Genetic Resources
CGRFA/EX3/96/Inf. 1 Annex	Revision of cost estimates for the Global Plan of Action
CGRFA-EX3/96/Inf. 2	List of documents
CGRFA-EX3/96/Inf. 3	Statement of competence and voting rights submitted by the European Community (EC) and its Member Countries
CGRFA-EX3/96/Inf. 4	Provisional list of delegates and observers
ITCPGR/96/REP	Report of the Fourth International Technical Conference, Leipzig, Germany, 17 -23 June 1996
(without number)	Global Plan of Action for the Conservation and Sustainable Utilization of Plant Genetic Resources for Food and Agriculture
(without number)	State of the World's Plant Genetic Resources
UNEP/CBD/COP/3/15	Report by the Food and Agriculture Organization of the United Nations to the Third Meeting of the Conference of the Parties to the Convention on Biological Diversity
UNEP/CPB/COP/3/L.7	Access to Genetic Resources. Draft Decision submitted by the Chairman of the Committee of the Whole.
UNEP/CPB/COP/3/L.12	Draft Decision of the Third Conference of the Parties to the Convention on Biological Diversity regarding Conservation and Sustainable Use of Agricultural Biological Diversity
UNEP/CPB/COP/3/L.18	Intellectual Property Rights. Draft Decision submitted by the Chairman of the Committee of the Whole (<i>English only</i>)
Extract from CL 111/REP:	Reports of the Second Extraordinary Session of the Commission on Genetic Resources for Food and Agriculture (CGRFA) (Rome, 22-27 April 1996) and of the Fourth International Technical Conference on Plant Genetic Resources (ITCPGR) (Leipzig, 17-23 June 1996)

4. Documents from other sessions that had been prepared to facilitate the revision of the International Undertaking, including those that had not yet been discussed by the Commission, due to lack of time

CPGR-EX1/94/3	Revision of the International Undertaking. Mandate, context, background and proposed process
CPGR-6/95/8 (CPGR-EX1/94/5)	Revision of the International Undertaking on Plant Genetic Resources. Issues for consideration in Stage II: Access to plant genetic resources, and Farmers' Rights
CPGR-6/95/8 Supp. (CPGR-EX1/94/5 Supp.)	Revision of the International Undertaking on Plant Genetic Resources. Analysis of some technical, economic and legal aspects for consideration in Stage II: Access to plant genetic resources and Farmers' Rights
CPGR-6/95/9	Revision of the International Undertaking on Plant Genetic Resources. Stage III - Legal and institutional matters
(without number)	Access to plant genetic resources and the equitable sharing of benefits: a contribution to the debate on systems for the exchange of germplasm (prepared by the International Plant Genetic Resources Institute (IPGRI))

5. Background Documents at the disposal of the Commission

- Background Study Paper No. 1 The appropriation of the benefits of plant genetic resources for agriculture: an economic analysis of the alternative mechanisms for biodiversity conservation (*English only*)
- Background Study Paper No. 2 Sovereign and property rights over plant genetic resources (*English only*)
- Background Study Paper No. 3 Providing Farmers' Rights through *in situ* conservation of crop genetic resources (*English only*)
- Background Study Paper No. 4 Identifying genetic resources and their origin: The capabilities and limitations of modern biochemical and legal systems (*English only*)
- Background Study Paper No. 5 Información sobre las colecciones *ex situ* conservadas en jardines botánicos (*new paper, in Spanish only*)

APPENDIX C

**OPENING STATEMENT BY PROFESSOR A. SAWADOGO,
ASSISTANT DIRECTOR-GENERAL, AGRICULTURE DEPARTMENT**

Mr. Chairman, Distinguished Delegates and Observers,

On behalf of the Director-General, it is my pleasure to welcome you to the Third Extraordinary Session of the Commission on Genetic Resources for Food and Agriculture. I would especially like to welcome the new members to the Commission: Azerbaijan, Côte d'Ivoire, Eritrea, Papua New Guinea, the Solomon Islands and Tonga. May I also extend a warm welcome to observers from member and non-member nations of FAO, from sister organizations of the United Nations and from other governmental and non-governmental organizations.

The Second Extraordinary Session of the Commission last April acted as the intergovernmental preparatory committee for the Fourth International Technical Conference that took place in Leipzig in June 1996. I am pleased to be able to say that the Conference was very successful. The first *Global Plan of Action*, which you requested in 1991, was adopted by the Conference, which also welcomed the first *Report on the State of the World's Plant Genetic Resources*. This is now being published by FAO. These two documents are integral components of the FAO Global System for the Conservation and Utilization of Plant Genetic Resources. A major task of the next regular session of the Commission, in 1997, will be to follow up on the Leipzig Conference, including on matters related to the financing, implementation and monitoring of the *Global Plan of Action*.

The recent World Food Summit underlined the importance of the effective conservation and sustainable utilization of genetic resources for food and agriculture for world food security. By adopting the World Food Summit *Plan of Action* countries again committed themselves (and I quote objective 3.2(i)) to "implement the Leipzig Global Plan of Action".

As agreed in your last session, and as requested by the Hundred and Eleventh Session of the FAO Council, this Extraordinary Session of the Commission will concentrate on the revision of the International Undertaking in harmony with the Convention on Biological Diversity, in accordance with Conference Resolution 7/93. I should like to note that the *Leipzig Declaration*, which countries adopted at the International Technical Conference, emphasized the importance of completing the revision of the Undertaking. I am pleased to say that we now also have further support from the recent Third Meeting of the Conference of the Parties to the Convention on Biological Diversity in Buenos Aires last month, which called for the effective and speedy completion of the revision of the International Undertaking and the strengthening of the FAO Global System.

I should like finally to take this opportunity to thank Switzerland, who has generously provided funds to ensure the participation of developing countries in this session, as well as Italy and Canada, who, with Switzerland, provided funds for previous negotiating sessions. I should like to encourage donor countries to maintain and increase this support throughout the whole negotiating process.

I wish you full success in your important negotiations in this session.

APPENDIX D

**REPORT BY THE CHAIRMAN OF THE ELEVENTH SESSION OF
THE WORKING GROUP OF THE COMMISSION ON
GENETIC RESOURCES FOR FOOD AND AGRICULTURE*****Introduction***

1. The Eleventh Session of the Working Group was held on 5 and 6 December 1996, with the participation of the following members: Australia, Brazil, Canada, Chile, China, Egypt, Ethiopia, France; Germany; India; Japan; Lesotho; Libya; Madagascar; Malaysia; Mexico; Peru; Sweden and Venezuela; the European Community also attended. As decided by the Commission at its Second Extraordinary Session, a number of countries participated as observers: Argentina; Bolivia; Chile; China; Finland; Haiti; Honduras; Iraq; Ireland; Kenya; the Republic of Korea; Malta; Myanmar; New Zealand; Norway; Paraguay; Spain; Tanzania; the United Kingdom; Uruguay; and the United States of America. The Secretariat of the Convention on Biological Diversity (CBD) and the International Plant Genetic Resources Institute (IPGRI) also attended as observers. The Session was chaired by Dr. R.S. Paroda (India).
2. The Working Group noted that the Third Meeting of the Conference of the Parties to the Convention on Biological Diversity had called for the effective and speedy completion of the revision of the International Undertaking by countries, through the FAO Commission on Genetic Resources for Food and Agriculture.¹ The Working Group also noted the successful outcome of the Leipzig Conference and the momentum that had been developed there.
3. The Working Group took note of a number of written submissions by Brazil, France and the United States of America, as well as of a secretariat non-paper, which was endorsed by a number of countries for use as a basis for discussions. As requested by the Working Group, these documents are appended to the present report. Canada and IPGRI also made papers available for information (CGRFA-Ex3/96/Lim. 3 and CGRFA-Ex3/96/Lim. 2 respectively).
4. The Working Group recalled that it did not have a negotiating mandate and that any proposals it made would be in addition to, and not in anyway replace, the Third Negotiating Draft. As requested by the Commission, the Working Group discussed the issues of Scope, Access and Farmers' Rights. The Working Group identified options, and noted various positions.
5. The Working Group requested its Chairman briefly to summarize the discussions, while recognising the difficulty of adequately covering the many complex points that had been raised. It was agreed that the report should address each of the three issues in turn, stressing however that they were inter-related.

Scope

6. With regard to the scope of the Undertaking (Article 3), there was general agreement that the Undertaking should apply to plant genetic resources for food and agriculture, with specific reference to food security. It was noted that the scope of any mechanism or mechanisms for access and benefit-sharing within the Undertaking might be narrower than the scope of the overall Undertaking, and that different approaches might apply to different categories of genetic resources. There was also some discussion as to whether forest genetic resources, or

¹ The relevant decisions of the Third Meeting of the Conference of the Parties of the Convention on Biological Diversity were available.

genetic resources for forestry, should or should not be included. A suggestion was to postpone the consideration of the possible inclusion of such genetic resources to later date, following conclusion of discussions in other fora.

7. The issue was raised as to whether the Undertaking should cover access to all plant genetic resources for food and agriculture, or whether it should focus only on access to those plant genetic resources for which there is global interest in maintaining unrestricted access.
8. It was noted that the scope of any agreement on access and benefit-sharing would involve resolving a number of issues:
 - whether the same arrangements should be made for various classes of genetic resources (such as material collected before and after the entry into force of the CBD; genera or species of differing importance for food security and/or for which there are different degrees of countries' interdependency; and material maintained under *in situ* and *ex situ* conditions) or whether separate arrangements were needed in each case;
 - whether or not such arrangement should apply to specific classes of genetic resources indicated in one or more lists, and if so what the criteria should be for the development of such a list or lists. (Should such lists be inclusive or exclusive? Would such lists be periodically modified, with the experience of their application over time? If a series of lists were developed, would all be closed, or should one remain open-ended, to cover otherwise undefined plant genetic resources for food and agriculture?); and
 - the arrangements that might be required for material not in the public domain.

Access

9. A number of options were considered with respect to access (Article 11).
10. One option provided for access in accordance with national legislation, and sharing out the benefits derived, on a multilateral basis, according to a mechanism to be established by the Commission. This would apply to a list of genera, covering both *in situ* and *ex situ* material, as well as material collected before and after the entry into force of the CBD. The list could be based on importance for world food security and great world-wide interdependence. There was wide agreement that this proposal might provide a useful starting point, although the disadvantages of limited inclusive lists were also stressed.²
11. Another option was to bring an indicative list of genetic resources which directly or indirectly contribute to food security within the scope of the agreement, while allowing countries to include or exclude material according to agreed criteria.
12. Various ways of developing lists were considered: (i) starting from a comprehensive list (such as that in Annex 1 of the Third Negotiating Draft), and excluding those taxa on which agreement could not be reached, or (ii) beginning from a short agreed list [such as those given in the attachments to this Appendix D] and agreeing on further genera to be included.

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These included:

- that lengthy negotiations as to what should be included in a list may be needed,
- that the genetic resources needed for future food security needs could not be predicted,
- that a limited list would exclude plants of importance for local food security. In this context the need for a diverse diet for food security was noted,
- that it might mitigate against the promotion of the use of under-utilized crops, as per the *Global Plan of Action*, and more generally against the need to promote the use of a wider range of crops in agriculture in order to contribute to agrobiodiversity.

13. There was wide agreement that should a list be developed, provision should be made for countries voluntarily to designate additional materials under the agreement. Some countries in fact noted that they would be willing to designate all their plant genetic resources that are in the public domain. There was also agreement that any multilateral agreement should not preclude regional agreements with a more comprehensive scope.
14. It was noted that *ex situ* collections of genetic resources may be held by institutions which are autonomous of governments, including in the private sector. The question of authority to enter into binding international obligations on behalf of such institutions was raised. In this context, it was suggested that the objectives of the agreement could be promoted through a network of participating institutions. Access within such a network would be on mutually agreed terms, whether unrestricted or not, and participants could share the costs and benefits: specific arrangements might need to be made with respect to institutions outside the network. The question was raised as to whether such institutions could be brought within the legal framework of the Undertaking. This would in part depend on the form in which the revised Undertaking was cast. The risks posed by over-regulation, in any arrangements, were noted.
15. The relationship between access, benefit-sharing and intellectual property rights (IPRs) was also discussed, and it was noted that the expansion of IPRs had both advantages and disadvantages. It was considered that any agreement would need to respect property, including IPRs. The need was noted to promote equity by developing a mechanism that would ensure that providers of genetic resources share in the benefits derived from products based upon them, especially in cases where these are protected under IPRs. The concept of Farmers' Rights was considered relevant in this context.
16. Access and related benefit-sharing, it was noted, might be provided on (i) a multilateral basis; (ii) a bilateral basis; and (iii) on a mixed multilateral and bilateral basis. It was pointed out that any such agreements would constitute an agreement on mutually agreed terms, in accordance with the CBD. It was noted that benefits would not be limited to financial transfers, but would also include access to, and the exchange of, genetic resources, technologies and information.

Farmers' Rights

17. In considering the issue of Farmers' Rights (Article 12), it was noted that, according to the present Undertaking, the concept of Farmers' Rights was based on the recognition of the past, present and future contribution of farmers in conserving, improving and making available plant genetic resources for food and agriculture, and that these rights were intended to ensure full benefits to farmers, and the support of the continuation of their contributions, as well as the attainment of the overall purpose of the International Undertaking. It was noted that the existing agreements for the implementation of Farmers' Rights made provision for establishing an international fund on plant genetic resources to support plant genetic conservation and utilization programmes, particularly in developing countries.
18. It was also noted that, more recently, a broader concept of farmers' rights, which included a number of new elements, appeared to be emerging. It was suggested that farmers' rights, in fact, constituted a set of separate rights, the elements of which needed to be unfolded and further defined, which may lead to an overall legal definition. Some such elements, it was felt, would more appropriately be developed at national level, and it was noted that several countries were in fact developing national mechanisms to promote Farmers' Rights. In this context, the relevance of the so-called "farmers' privilege" to use farm-saved seed was stressed.
19. It was suggested that precise mechanisms should be developed to allow farmers and farmers' communities to participate fully in the benefits derived from the improved use of Plant Genetic Resources for Food and Agriculture.

Closing

20. In conclusion, the Working Group expressed the hope that the deliberations that had been held would facilitate the process of negotiations by the Commission on these critical and very important issues. The urgency of resolving all relevant concerns through constructive discussions, consultations and negotiations was also highlighted, in order to have the revised Undertaking in place at the earliest opportunity. The Chairman stressed that it had been a matter of great privilege for him to have worked with such an enlightened Working Group, and he wished to place on record his appreciation for the excellent cooperation extended by all its members, the observers and the secretariat, in facilitating its work.

APPENDIX D, ATTACHMENT 1

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 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

Maize

Sorghum

Millet

Rye

Oat

Barley

Yam

Potato

Taniar

Taro

Cassava

Coconut

Rice

Chickpea

Bean (Phaseolus)

Cowpea (Vigna)

Faba Bean

Soybean

Pigeon Pea

Peanut

Lentil

Pea

Sweet Potato

Banana and Plantain

B. Forages

APPENDIX D, ATTACHMENT 1, 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 D, ATTACHMENT 2

**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 D, ATTACHMENT 3

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
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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.

APPENDIX D, ATTACHMENT 4

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

Rice¹
 Oat^{3/5}
 Rye^{3/5}
 Barley^{3/5}
 Millets²
 Maize^{1/5}
 Sorghum²
 Wheat^{1/5}
 Groundnut^{3/5}
 Cowpea⁴
 Pea^{3/5}
 Beans²
 Lentil³
 Soybean^{1/5}
 Potato^{1/5}
 Sweet potato²
 Yams⁴
 Cassava²
 Banana and plantain^{1/5}
 Orange^{1/5}
 Sugar cane^{1/5}
 Sugar beet^{2/5}
 Pumpkin⁴
 Tomato^{3/5}
 Coconut^{3/5}

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
Cocos

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

APPENDIX D, ATTACHMENT 5

**REVISION OF THE INTERNATIONAL UNDERTAKING.
NON-PAPER FOR INFORMAL DISCUSSION PURPOSES ONLY
PREPARED BY THE SECRETARIAT**

Introduction

The Commission on Genetic Resources for Food and Agriculture, at its Second Extraordinary Session in April 1996, requested its Working Group to prepare a simplified draft text which could serve to provide a focus for future negotiations in the Commission on the revision of the International Undertaking, and in particular on the three issues of scope, access to genetic resources, and sharing of benefits (realization of Farmers' Rights).

The present non-paper has been prepared by the Secretariat, in consultation, *inter alia*, with the International Plant Genetic Resources Institute (IPGRI), as a possible source of ideas on which FAO members may wish to draw when considering the matter of formulating a simplified text in the Working Group. For this purpose, it seeks to provide possible elements for a simplified text that is neutral as to substance and approach, but which could provide a framework which could encompass the positions of stake-holders.

Scope

Comment

At present, there are a number of viewpoints on the issue of the scope of the proposed revision of the International Undertaking. Some countries wish to see the International Undertaking covering all plant genetic resources for food and agriculture. Others wish to see the International Undertaking confined more narrowly to collections acquired after the entry into force of the Convention on Biological Diversity, or to certain designated species.

The possible elements for a Simplified Negotiating Text would try to draw together these viewpoints and provide a framework for future negotiations by -

- (a) providing a broad scope for the general provisions of the International Undertaking; while
- (b) allowing for different categories of plant genetic resources to be treated in different ways for the purposes of access and benefit sharing.

The concept of differentiated categories could be achieved through the device of a number of annexes. Which plant genetic resources should be in one category or another would, of course be a matter for negotiation, at the time of negotiation of the revision of the International Undertaking. Flexibility could also be left for periodic revision of the annexes.

Possible elements for a Simplified Text

Article 3 - Scope

3.1 Except as otherwise specified, this [Undertaking] applies to plant genetic resources for food and agriculture. [It does not apply to forest genetic resources]], with the exception of wild relatives of cultivated plants and fruit or seeds used as food.]

3.2 *Conditions of access and benefit sharing shall be specific to the categories of plant genetic resource described in the respective annexes to this [Undertaking].*

3.3 *The benefits to be derived under this [Undertaking] are part of a reciprocal system, and are limited to the Parties to this [Undertaking].*

3.4 *This [Undertaking] is to be implemented in harmony with the Convention on Biological Diversity and other relevant international agreements.*

ACCESS TO PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

Comment

In the negotiations so far, some countries have taken the position that access to plant genetic resources for food and agriculture should be governed on a multilateral basis. Others have taken the view that access, at least to those resources covered by the Convention on Biological Diversity should be essentially on a bilateral basis. Others foresee the possibility of an international agreement on mutually agreed terms of access that would allow for benefit sharing between the countries of origin and countries using the genetic resources.

The possible elements for a Simplified Negotiating Text would try to draw together these viewpoints and provide a framework for future negotiations by providing for separate regimes of access and benefit sharing for different categories of plant genetic resources, as identified in annexes to the Undertaking. The text could, in particular, provide for the following:

- (i) A first category to which access and benefit sharing would be on a **multilateral** basis only. This could include, for example, plant genetic resources designated by juridical status, *e.g.* plant genetic resources acquired before the entry into force of the Convention on Biological Diversity, particularly where the countries of origin cannot be clearly identified. It could also include species with larger interdependency among countries that are essential for food and agriculture (*e.g.* wheat, rice, maize, *etc.*). Plant genetic resources in this category could, for example, be made freely available for research and plant breeding to those countries that are parties to the Undertaking. The sharing of benefits could be achieved through a periodical contribution/fee/royalty to an international funding mechanism for the implementation of Farmers' Rights. This could represent a common denominator or "core" of plant genetic resources that all parties agree to place under a multilateral regime
- (ii) A second category to which access and benefit sharing would be on a purely **bilateral** basis on mutually agreed terms. This would be essentially a list of species which parties wish to exclude from the principle of non-restricted availability both for research and for commercialization purposes, essentially for national interests. This could include, for example, industrial/cash crops that are not essential for food security, whose genetic resources are mainly concentrated in one or a limited number of neighbouring countries, such as rubber, coffee and black pepper. The extent to which the International Undertaking should provide a framework for this access, *e.g.* in order to reduce transaction costs, would be for the countries negotiating the revision of the International Undertaking to determine.
- (iii) A third category to which access and benefit sharing would be on a combined **multilateral/bilateral** basis. In principle, the plant genetic resources could be made available for research and plant breeding to parties that voluntarily accept the provision of the revised Undertaking for this category of germplasm, with provisions for the sharing of benefits resulting from any commercialization.

This could include, for example, a guaranteed system of access under which access to the plant genetic resources listed in the annex could be obtained on a multilateral basis, subject to an agreed mechanism for the sharing of benefits derived from any commercial development with the country or region of origin on a bilateral basis. In this context, the concept of “commercial development” could be limited to plant genetic resource products or processes protected by patents or other intellectual property rights. Material transfer agreements or other mechanisms to trace the original material may be necessary for enforceability. This would, in essence, presumably cover all plant genetic resources for food and agriculture not covered by the first two categories. However, countries could always decide on a different default category.

The revised Undertaking could provide a flexible framework where countries would be able to review periodically the efficiency of the three regimes and to move species/taxa from one category to another, as appropriate.

The text could also allow for countries in a particular region to enter into regional arrangements within the framework of the Undertaking.

Possible elements for a Simplified Text

Article 11 - Availability of Plant Genetic Resources for Food and Agriculture

- 11.1** *The Parties to this [Undertaking] recognize the sovereign rights of States over their plant genetic resources, including the authority to determine access to those resources], in accordance with the Convention on Biological Diversity].*
- 11.2** *The Parties agree to grant other Parties to this [Undertaking], access to the plant genetic resources listed in Annexes I, II and III to this International Undertaking for research and plant breeding purposes in accordance with the following provisions:*
- (a)** *access to plant genetic resources listed in Annex I to this [Undertaking] shall be subject to the fulfilment by the applicant Party of its obligations under Article ** of this [Undertaking] with respect to the International Fund established under that Article [and its obligations with respect to the transfer of technology and the results of research and development under Article **];*
 - (b)** *access to plant genetic resources listed in Annex II to this Undertaking shall be on bilateral basis on terms to be mutually agreed upon between the applicant Party and the Party providing the plant genetic resources;*
 - (c)** *access to plant genetic resources listed in Annex III to this Undertaking shall be -*
 - (i)** *subject to the fulfilment by the applicant Party of its obligations under Article ** of this [Undertaking], with respect to the International Fund established under that Article [and its obligations with respect to the transfer of technology and the results of research and development under Article **];*
 - (ii)** *subject to an undertaking by the applicant Party that it will share equitably, with the country or countries of origin of the plant genetic resources, or, where the country or countries of origin cannot be readily identified, with the International Fund established under Article **, the benefits arising from any commercial development of the plant genetic resources in accordance with the provisions of Article **;*

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

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

Farmers' Rights

Comment

The original concept of Farmers' Rights, as adopted by the FAO Conference in its Resolutions Nos. 5/89 and 3/91, envisaged that those rights would be realized multilaterally through an international fund, the proceeds of which could be used to support plant genetic conservation and utilization programmes.

Further concepts proposed during the discussions of the Commission would encompass also the establishment of *sui generis* systems for the protection and compensation of informal innovations in the area of plant genetic resources and the protection of the so-called "farmers' privilege" under the UPOV Convention.

The possible elements for a Simplified Negotiating Text would try to draw together these concepts in a single Article.

The text could provide first for the establishment and implementation of an international fund (in accordance with FAO International Resolution 3/91) or a distinct window of existing funds 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.

Provisions and obligations relating to the financing of the international fund or window for the implementation of Farmers' Rights would need to be negotiated and agreed upon. So also will be the provisions related to the purposes and priorities of the funding, which should presumably follow the rolling Global Plan of Action as adopted at Leipzig.

The Text could also provide for the taking of measures to assist farmers and farming communities, and to support research and training and the transfer of technology, for measures to protect the rights of farmers and farming communities to share equitably in benefits derived from the utilization of plant genetic resources they provide, including the necessary measures to make such measures practicable, and for the development of systems that would establish and protect their rights in the area of traditional knowledge, informal innovations and traditional practices. It could also provide for the protection by countries, primarily through the enactment of national legislation, of the rights of farmers and their communities to keep, use, exchange, share and market their seeds and plant reproductive material, including the right to re-use farm-saved seed known as the "farmer's privilege." The possibility of furthering some of these objectives through the development of so-called "*sui generis*" systems could be referred to.

The simplified text could encourage the Parties, in taking the measures referred to above, to ensure that both diversity among plant varieties (*e.g.* Regulations on denomination of origin for marketing local varieties/landraces), and diversity within each variety (*e.g.* by requiring a minimum percentage of polymorphism in commercial varieties) are promoted. For varieties with

less commercial interest, Regulations on farmers as curators of the environment may be a useful example.

Possible elements for a Simplified Text

Article ** - Farmers' Rights

12.1 The Parties to this [Undertaking], recognizing the enormous contribution that farmers of all regions of the world, and particularly in the centres of origin and crop plant diversity, have made to the conservation and development of plant genetic resources, which constitute the basis of food and agricultural production throughout the world, recognize Farmers' Rights and undertake to promote their implementation in accordance with the provisions of this Article, for the purpose of ensuring full benefits to farmers, supporting the continuation of their contributions and promoting the attainment of the overall purposes of this [Undertaking].

12.2 As a means for the implementation of Farmers' Rights through multilateral action, the Parties to this [Undertaking] agree to establish an international fund for plant genetic resources or a distinct window of existing funding mechanisms in accordance with the following provisions, and to ensure that appropriate arrangements are made for the farmers and farming communities providing plant genetic resources to share equitably in the benefits derived from the Fund:

- (a) [purposes of the Fund];***
- (b) [contributions to / resourcing of / the Fund (registration fees)];***
- (c) [expenditures from the Fund].***

12.3 The Parties shall oversee the policies, programmes and priorities of the Fund established under the preceding paragraph and of other funding mechanisms in order to achieve the purposes of this [Undertaking].

12.4 The Parties to this [Undertaking] shall take the necessary measures, including, as appropriate, legislative measures, to assist farmers and traditional communities, especially in the areas of origin/diversity of plant genetic resources, in the conservation and sustainable utilization of their plant genetic resources and to support research and training activities and the transfer of technologies for this purpose, with the full participation of the farmers and farming communities concerned.

12.5 In order to ensure that farmers and farming communities share equitably in the benefits derived from the utilization of plant genetic resources provided by them, the Parties to this [Undertaking] shall take the necessary measures, including, as appropriate, legislative measures, to -

- a) 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 protected varieties;***
- b) ensure that appropriate arrangements are made in accordance with the provisions of Article 11 [Access] that provide for the farmers and farming communities providing plant genetic resources to share equitably in the benefits arising from the use of those resources; and***
- c) recognize and protect traditional rights of farmers and their communities to keep, use, exchange, share and market their seeds and plant reproductive***

material, including the right to re-use farm-saved seed under the International Convention on the Protection of New Varieties of Plants¹

12.6 *In order to ensure that farmers and farming communities share equitably in the benefits derived from the utilization of their traditional knowledge, innovations and practices developed by them, the Parties shall -*

- a) develop and adopt [“sui generis”] systems for the protection of knowledge, innovations and practices of farmers and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of plant genetic resources;*
- b) facilitate as appropriate the adaptation of traditional farmers’ knowledge, know how and practices, to wide use and, as appropriate, support with modern technologies as appropriate and promote their wider application, with the prior informed consent of the farmers and farming communities concerned;*
- c) ensure that farmers and farming communities share equitably in the benefits arising from the utilization of such knowledge, innovations and practices.*

12.7 *In taking the measures referred to in this Article, the Parties shall seek, where possible, to promote the conservation and further development of both intervarietal and intravarietal diversity of plant genetic resources.*

¹ The so-called “farmer’s privilege”.

APPENDIX D, ANNEX 1

**LIST OF PARTICIPANTS
LISTE DES PARTICIPANTS
LISTA DE PARTICIPANTES**

Chairman :
Président : R.S. Paroda (India)
Presidente :

**MEMBERS OF THE WORKING GROUP
MEMBRES DU GROUPE DE TRAVAIL
MIEMBROS DEL GRUPO DE TRABAJO**

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APPENDIX E

**EXTRACTS FROM THE REPORT OF THE THIRD MEETING OF THE CONFERENCE
OF THE PARTIES TO THE CONVENTION ON BIOLOGICAL DIVERSITY**

Decision III/11: Conservation and Sustainable Utilization of Agricultural Biological Diversity

- Para 18: *notes* that the various options for the legal status of a revised International Undertaking on Plant Genetic Resources, which include a voluntary agreement, binding instrument, or protocol to the Convention on Biological Diversity, have not been decided upon by the Food and Agriculture Organization of the United Nations, requests the Food and Agriculture Organization of the United Nations to inform the Conference of the Parties of its deliberations, affirms its willingness to consider a decision by the Conference of the Food and Agriculture Organization of the United Nations that the International Undertaking should take the form of a protocol to this Convention once revised in harmony with this Convention and further requests the Executive Secretary to inform the Commission on Genetic Resources for Food and Agriculture accordingly.
- Para 19: *welcomes* the contribution that the Global Plan of Action for the Conservation and Sustainable Utilization of Plant Genetic Resources, as adopted by the fourth International Technical Conference on Plant Genetic Resources, provides to the implementation of the Convention on Biological Diversity in the field of plant genetic resources for food and agriculture and encourages Parties actively to implement the Global Plan of Action, in accordance with their national capacities, and endorses its priorities and policy recommendations; recognizes that several issues require further work in the context of the FAO Global System for the Conservation and Utilization of Plant Genetic Resources for Food and Agriculture, in particular: financing; the realization of Farmers' Rights as discussed in the Global Plan of Action; as well as terms of technology transfer to developing countries and access and benefit-sharing arrangements, in accordance with relevant provisions of the Convention. In this regard, calls for effective and speedy completion of the revision of the International Undertaking and strengthening of the FAO Global System.
- Para 21: *draws the attention* of Parties to Article 20.1 of the Convention, in the context of providing, in accordance with their capabilities, financial support and incentives for the conservation and sustainable use of biological diversity important to agriculture in accordance with national plans, priorities and programmes.
- Para 22: *draws the attention* of international funding agencies to the urgent need to support the conservation and sustainable use of biological diversity important to agriculture and invites these agencies to provide information and feedback in this respect to the Conference of the Parties and in this context, requests the interim financial mechanism to give priority to supporting efforts for the conservation and sustainable use of biological diversity important to agriculture in accordance with this decision.

APPENDIX F

**STATEMENT BY THE SECRETARIAT OF THE
CONVENTION ON BIOLOGICAL DIVERSITY****9 December 1996**

On behalf of Dr. Calestous Juma, Executive Secretary of the Convention on Biological Diversity, I would like to thank you for the invitation to participate as an Observer in this important meeting, and for the opportunity to present to you the results of the Third Meeting of the Conference of the Parties of the Convention on Biological Diversity, held in Buenos Aires between 4 and 15 November.

Mr. Chairman, a number of items discussed at COP3 are of direct relevance to the issues before this meeting. Among these are general measures for conservation and sustainable use of biological diversity and its components; identification, monitoring and assessment; the knowledge, innovations and practices of indigenous and local communities; access to and transfer and development of technology; intellectual property rights; incentives for the conservation and sustainable use of biodiversity and biosafety.

But, Mr. Chairman, of all the issues discussed at the COP, perhaps none are more relevant to this meeting than the consideration of agricultural biological diversity and access to genetic resources. The deliberations on these issues were long and sometimes hard, but they were nonetheless successful, and I hope that this progress will encourage you and the distinguished delegates here as you start your work this week. The decisions of the COP are available to this meeting, and many of the delegates here played an important part in developing them in Buenos Aires. In order to save time, and since so many distinguished delegates are familiar with the decisions, I will introduce them only very briefly.

UNEP/CBD/COP/3/L.12¹ and its corrigendum concerns the conservation and sustainable use of agricultural biological diversity.

The decision welcomes the outcome of the fourth International Technical Conference on the Conservation and Sustainable Utilization of Plant Genetic Resources for Food and Agriculture. At the heart of many of its preambular and operative paragraphs lies a recognition of the importance of agricultural biological diversity.

Mr. Chairman I would like, in particular, to draw your attention to two paragraphs. Paragraph 18 notes that the various options for the legal status of a revised International Undertaking on Plant Genetic Resources, which include a voluntary agreement, binding instrument or protocol to the Convention on Biological Diversity, have not been decided upon by the Food and Agriculture Organization, and requests the FAO to inform the Conference of the Parties of its deliberations. Furthermore, the Conference of the Parties affirms its willingness to consider a decision by the Conference of the FAO that the International Undertaking should take the form of a protocol to the Convention once revised in harmony with the CBD. It further requests the Executive Secretary to inform the Commission on Genetic Resources for Food and Agriculture accordingly. I am availing myself of the opportunity to do just this on behalf of Dr. Juma.

¹ Note by the Secretariat: In the final Report of the Third Meeting of the Conference of the Parties, this is Decision III/11.

Paragraph 19 of the same Decision, Mr. Chairman, welcomes the contribution that the Global Plan of Action for the Conservation and Sustainable Utilization of Plant Genetic Resources, as adopted at Leipzig, provides to implement the CBD in the field of plant genetic resources for food and agriculture, and encourages Parties actively to implement the Global Plan. The Decision recognises that several issues require further work in the context of the FAO Global System. It mentions, in particular, financing; the realization of Farmers' Rights as discussed in the Global Plan of Action; terms of technology transfer to developing countries and access and benefit-sharing arrangements, in accordance with relevant provisions of the Convention. In this regard, the Decision calls for the effective and speedy completion of the revision of the International Undertaking and strengthening of the FAO Global System.

The other Decision to which I would like to draw your attention, Mr. Chairman, is that on access to genetic resources: UNEP/CBD/COP/3/L.7.² That Decision notes, *inter alia*, the linkages of Article 15 of the Convention on Biological Diversity with the further development and implementation of the work by the Food and Agriculture Organization on the Global System. It urges governments and regional economic integration organizations to bring to a rapid conclusion the negotiation for the adaptation of the International Undertaking on Plant Genetic Resources for Food and Agriculture, in harmony with the Convention on Biological Diversity, in particular, providing solutions to access to *ex situ* collections not acquired in accordance with the Convention.

Finally, the Decision urges the Executive Secretary to coordinate closely with the FAO, UNCTAD and other relevant organizations working on access to genetic resources to ensure complementary efforts.

In that light, Mr. Chairman, I hope that you and the distinguished delegates will find this brief report useful. It only remains for me to assure you of our very best wishes for the success of this meeting, and to say that we are ready to assist you in any way that we can.

Thank you, Mr. Chairman.

² Note by the Secretariat: In the final Report of the Third Meeting of the Conference of the Parties, this is Decision III/15.

APPENDIX G

WORKING GROUP ON FARMERS' RIGHTS
10-11 December 1996

ALTERNATE TEXTS AND COMMENTS

Article 12 - Farmers' Rights

A suggestion was made to change the title to "Farmers' Rights
[**INDIA proposal: and Rights of Farmers' Communities"]].

Article 12.1

EC text with China, Japan, Australia modifications:

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 [**CHINA: [**JAPAN: the concept of] Farmers' Rights and] appropriate measures [**AUSTRALIA: , 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.

Text from developing countries

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.

US text 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 national, bilateral and multilateral funding sources and mechanisms and involvement of private sector sources and mechanisms, including those of non-governmental organizations.

(** US text applies to both 12.1 and 12.2)

Article 12.2

EC text:

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 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.

Text from developing countries¹

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,

¹ Note: The developing countries' text of Article 12.2 was revised, as reproduced here, on 12 December 1996.

integrate, enhance and develop traditional farmers' knowledge, know-how and practices;

- h) Facilitate as appropriate the adaptation of traditional farmers' knowledge, know-how and practices, to wide use and integrate them with modern technologies as appropriate.
- i) Promote scientific and technological agricultural research that support and enhance farmer based knowledge systems with adequate assessment and reorientation of current national and international research efforts as appropriate.
- j) Establish and implement an international fund (referred to in Article 14.6) and develop its operational mechanism to ensure conservation and sustainable use of plant genetic resources, traditional farmers' knowledge, access to new technologies and equitable sharing of benefits derived from the products obtained through the use of plant genetic resources for the benefit of present and future generations of farmers.
- k) Ensure that the prior informed consent of the concerned farmers and local communities is obtained before the collection of plant resources is undertaken; adapt current variety registration systems so as to identify and record, as appropriate, varieties of plant genetic resources provided by farmers and farming communities; and require disclosure of the origin of plant genetic resources utilized in the development of commercial varieties.
- l) Recognize and protect traditional rights of farmers and their communities to keep, use, exchange, share and market their seeds and any other plant reproductive material, including the right to re-use farm-saved seed.
- m) Take the necessary measures to ensure that farmers and local communities fully participate in the definition and implementation of the measures and legislation on Farmers' Rights at national and international levels, and through their active participation in the development, implementation and review of this (Undertaking) and the International Fund referred to in Article 14.6. A permanent and flexible consultative process would be initiated to meet this aim.
- n) Review, assess and, if appropriate, modify intellectual property rights systems, land tenure, and seed laws in order to ensure their harmony with the provisions of this Article.
- o) Ensure that the collective knowledge and resources held and developed by farmers and local communities are protected and promoted by adopting and implementing appropriate legislation in the form of a collective rights regime that provides for the protection of traditional or indigenous knowledge, innovations, materials and practices of and by farmers and local communities.

Article 12.3

It was suggested that elements of the text of Article 12.3 from the International Undertaking (Third Negotiating Draft, p. 64) should be dealt in the preamble, except for the last sentence which could be dealt with in another article on monitoring.

APPENDIX H

**Report of the First Round of Discussions of the Friends of the Chair's Contact Group
Established by the Chair of the Working Group on Scope and Access
11 December 1996**

The Friends of the Chair's Contact Group established by the Working Group on Scope and Access drew up the following list of options to be discussed in order to make progress in developing consensus text:

Part 1. What would be the objectives of / justifications for facilitating access through a multilateral agreement?

- food security
- ensuring world food supply of key food crops
- sustainable agriculture
- interdependence
- facilitating the availability of material from, and preserving international collections which are held in trust for the international community
- ensuring direct and indirect benefit-sharing, which is fair and equitable
- ensuring the availability of plant genetic resources for sustainable use, including for education, research and breeding
- contributions to realizing environmental objectives, especially concerning biodiversity
- promoting environmental benefits derived from sustainable advances in agricultural productivity
- promoting an integrated approach to environmentally sound agriculture

Part 2. To what plant genetic resources, in which locations, would such facilitated access apply?

- all or selected *ex situ* plant genetic resources held in one or more of the following:
 - national banks
 - private collections
 - IARCs and other international collections
 - collections designated by national governments
- all or selected plant genetic resources held in one or more of the above locations, differentiated or not by date of acquisition
 - pre-CBD
 - post-CBD and pre-Undertaking
 - post-Undertaking
- selected *in situ* plant genetic resources

Part 3. How would access be facilitated?

- minimal administrative and bureaucratic procedures
- new and additional financing
- subject to national sovereignty and national legislation
- linkage to Farmers' Rights, transfer of technology and equitable sharing of benefits from such plant genetic resources
- measures to provide incentives for innovation and conservation
- measures to provide incentives for innovation and conservation which are non-discriminatory and non-trade distorting
- respect for private property (real and intellectual)
- contributions by the private sector, in cash or kind
- provision under the Undertaking of access to participants in an international network
- provision by countries of the same conditions of access to its citizens and other participants in the Undertaking
- prior informed consent
- elements for benefit-sharing
- rationalization of collections
- characterization of genetic resources
- providing wide access to information
- national legislative, administrative or policy measures, as appropriate, aiming at facilitating access to and the transfer of technology and legally protected resources
- providing access for research, breeding and educational purposes

Part 4. A number of countries provided new texts, to add to the Third Negotiating Draft, elaborating options in these areas, which are as follows:

- the African proposals submitted to the Friends of the Chair's Contact Group (Attachment 1 to this Appendix)
- the Australian key principles paper submitted to the Friends of the Chair's Contact Group (Attachment 2 to this Appendix)
- the document submitted, by the European Community and its Member States to the Third Extraordinary Meeting of the FAO Commission on GRFA (Attachment 3 to this Appendix)
- the documents submitted by the United States (See Attachments 1 and 2 to Appendix D)
- the document submitted by France (See Attachment 3 to Appendix D)
- the document submitted by Brazil (See Attachment 4 to Appendix D)

APPENDIX H, ATTACHMENT 1

**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.

APPENDIX H, ATTACHMENT 2

**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.

APPENDIX H, ATTACHMENT 3

**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)**

FAO Third Negotiating Draft, page 18

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.

FAO Third Negotiating Draft, page 24

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.

FAO Third Negotiating Draft, page 26

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.

FAO Third Negotiating Draft, page 30

**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.

FAO Third Negotiating Draft, page 34

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.

FAO Third Negotiating Draft, page 38

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.

FAO Third Negotiating Draft, page 40

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.

FAO Third Negotiating Draft, page 42

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.

FAO Third Negotiating Draft, page 52

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.

FAO Third Negotiating Draft, pages 54, 56, 58, 60, 62

- 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;

FAO Third Negotiating Draft, page 64

- (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.

APPENDIX I

**REPORT OF THE SECOND ROUND OF DISCUSSIONS OF THE FRIENDS OF THE
CHAIR'S CONTACT GROUP ESTABLISHED BY THE CHAIR OF THE WORKING
GROUP ON SCOPE AND ACCESS**

13 December 1996

The Group met over two days in four sessions.

On December 13 it agreed to use the Ethiopian proposal of developing a matrix based on the scope of access and on the level of facilitation to access, as a basis for discussion. A useful discussion ensued and it became evident that these subjects are very complex and in fact even a multi-dimensional matrix would probably not cover all of the important aspects.

It was agreed that it would be useful to develop a study for the Commission to facilitate its preparations for the next meeting. The study would present a table of options and a notional assessment of the pros and cons of each. It was recognized that the pros and cons would not be the same from country to country. It was noted that the practicality of distinguishing between categories of germplasm would also have to be taken into account.

CGRFA-EX3/96/WGSA/1¹ should be utilized in the study, including the documents listed in part 4.

The process would involve two steps: (1) The characterization of the options, and (2) Notional assessment of benefits.

It was felt to be important to have the full involvement of the Commission in both steps. This input for each step should be provided through electronic facsimile and mail means (with no expectation of inperson meetings) using means of communication appropriate for each region. This involvement could be facilitated by the regional representatives involved in the Friends of the Chair Group although several members indicated that they would need to confirm this with their regional groups.

The timing of the study is very important. It must be completed and available to all delegations in time to be useful in their preparations for the next meeting. Step 1 should be completed by January 31, 1997. There must also be time for adequate broad input into both steps. IPGRI was suggested as a possible agency to develop the study. Poland proposed that the European Cooperative Programme on Genetic Resources (ECP/GR), based on its own experience, should develop a document similar to that requested from IPGRI².

The results of the study should be submitted to the Seventh Regular Session of CGRFA in May 1997.

¹ *Working Group on Scope and Access. Report of the Friends of the Chair's Contact Group established by the Chair of the Working Group on Scope and Access, 11 December 1996.*

² Now Appendix H to this report

APPENDIX J

December 1996

**MEMBERS OF FAO COMMISSION ON GENETIC RESOURCES FOR
FOOD AND AGRICULTURE AND/OR COUNTRIES WHICH HAVE ADHERED
TO THE INTERNATIONAL UNDERTAKING ON PLANT GENETIC RESOURCES**

AFRICA	ASIA AND THE SOUTH WEST PACIFIC	EUROPE	LATIN AMERICA AND THE CARIBBEAN
Algeria 1/2	Australia 1/2	Albania 1/	Antigua and Barbuda 1/2
Angola 1/2	Bangladesh 1/2	Austria 1/2	Argentina 1/2
Benin 1/2	China 1/	Belgium 1/2	Bahamas 1/2
Botswana 1/	Democrat. People's Rep. of Korea 1/2	Bosnia and Herzegovina 1/	Barbados 1/2
Burkina Faso 1/2	Fiji 2	Bulgaria 1/2	Belize 1/2
Burundi 1/	India 1/2	Croatia 1/	Bolivia 1/2
Cameroon 1/2	Indonesia 1/	Cyprus 1/2	Brazil 1/
Cape Verde 1/2	Japan 1/	Czech Republic 1/2	Chile 1/2
Central African Republic 1/2	Korea, Rep. of 1/2	Denmark 1/2	Colombia 1/2
Chad 1/2	Malaysia 1/	Estonia 1/	Costa Rica 1/2
Congo 1/2	Maldives 1/	European Community 1/	Cuba 1/2
Côte d'Ivoire 1/2	Mongolia 1/	Finland 1/2	Dominica 1/2
Equatorial Guinea 1/2	Myanmar 1/	France 1/2	Dominican Rep. 1/2
Eritrea 1/	Nepal 1/2	Georgia 1/	Ecuador 1/2
Ethiopia 1/2	New Zealand 1/2	Germany 1/2	El Salvador 1/2
Gabon 1/2	Pakistan 1/	Greece 1/2	Grenada 1/2
Gambia 1/	Papua New Guinea 1/2	Hungary 1/2	Guatemala 1/
Ghana 1/2	Philippines 1/2	Iceland 1/2	Guyana 1/
Guinea 1/2	Samoa 1/2	Ireland 1/2	Haiti 1/2
Guinea-Bissau 1/	Solomon Islands 1/2	Israel 1/2	Honduras 1/2
Kenya 1/2	Sri Lanka 1/2	Italy 1/2	Jamaica 1/2
Lesotho 1/	Thailand 1/	Latvia 1/	Mexico 1/2
Liberia 1/2	Tonga 1/2	Liechtenstein 2	Nicaragua 1/2
Madagascar 1/2	Vanuatu 1/	Lithuania 1/	Panama 1/2
Malawi 1/2	Vietnam 1/	Malta 1/	Paraguay 1/2
Mali 1/2		Netherlands 1/2	Peru 1/2
Mauritania 1/2	NEAR EAST	Norway 1/2	Saint Christopher and Nevis 1/
Mauritius 1/2	Afghanistan 1/	Poland 1/2	Saint Lucia 1/
Morocco 1/2	Azerbaijan 1/	Portugal 1/2	Saint Vincent and the Grenadines 1/
Mozambique 1/2	Bahrain 2	Romania 1/2	Suriname 1/
Niger 1/2	Egypt 1/2	Russia 2	Trinidad and Tobago 1/2
Rwanda 1/2	Iran 1/2	Slovakia 1/	Uruguay 1/
Senegal 1/2	Iraq 1/2	Slovenia 1/	Venezuela 1/
Sierra Leone 1/2	Jordan 1/	Spain 1/2	
South Africa 1/2	Kuwait 2	Sweden 1/2	NORTH AMERICA
Sudan 1/2	Lebanon 1/2	Switzerland 1/2	Canada 1/
Tanzania 1/2	Libya 1/2	Turkey 1/2	United States of America 1/
Togo 1/2	Oman 2	United Kingdom 1/2	
Uganda 1/	Syria 1/2	Yugoslavia 1/2	
Zaire 1/	Tunisia 1/2		
Zambia 1/2	Yemen 1/2		
Zimbabwe 1/2			

1/ Members of the Commission.

2/ Countries which have adhered to the International Undertaking.

The above totals 154 countries and the European Community which have become members of the Commission on Genetic Resources for Food and Agriculture (149) and/or which have adhered to the International Undertaking (111).

APPENDIX K
ANNEXE K
APENDICE K

لههأفأخكفأه لههأهملكفأ نكفأف
LIST OF DELEGATES AND OBSERVERS
LISTE DES DELEGUES ET OBSERVATEURS
LISTA DE DELEGADOS Y OBSERVADORES

	Chair	:	
BOLIVAR (Spain)	Président	:	José M.
	Presidente	:	
	First Vice-Chair	:	
	Premier Vice-Président	:	
Moorosi RADITAPOLE (Lesotho)	Primer Vicepresidente	:	
	Second Vice-Chair	:	
Kristiane HERRMANN (Australia)	Deuxième Vice-Président	:	Ms
	Segundo Vicepresidente	:	

نى همقا ي شطيد

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MEMBRES DE LA COMMISSION
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