

The following message and document were sent by the Chairman, Ambassador Gerbasi, to Heads of Delegations to the Contact Group, on Friday, 6 April 2001.

TO ALL MEMBERS OF THE CONTACT GROUP

Immediately following the Fifth Meeting of the Contact Group, I discussed with the members of the Bureau how the negotiated process might be expedited, in order that we might meet the mandate of the Thirtieth Session of the FAO Conference and the Hundred and Nineteenth Session of the FAO Council, that the text of the revised International Undertaking on Plant genetic Resources be submitted to the Thirty-first Session of the Conference in November 2001. I expressed my conviction that, while substantial consensus existed in many areas, there remained a number of central questions on which we needed to focus, and that a simplified text would make this easier.

I therefore prepared such a simplified text, which:

- was consistent with the agreed framework of the Montreux Chairman's Elements;
- suggested a revised structure of the articles;
- used correct legal forms, such as "Contracting Party", rather than Party, etc.; and
- removed brackets and provided a single text where it appeared to me that consensus might be possible, seeking always a balance between the expressed opinions of the regions, and to put no one region or country into an impossible position.
- For internal consistency in the text, I have assumed that the Undertaking will be an Agreement for the Implementation of the Convention on Biological Diversity in the Area of Plant Genetic Resources for Food and Agriculture under Article 14 of the FAO Constitution.

I circulated this text to all members of the Bureau, for their comments. I should like to thank them, some of whom consulted extensively in their regions, for having made most useful suggestions for improvements on my original draft, many of which coincided. I then reviewed their comments as a block, and revised the text, guided again by the need balance. Having benefited from their collective wisdom, I believe that the text, which I am here provided to the members of the Contact Group, offers a comprehensive solution.

My intention was not to propose a single package for negotiation, but to put at the disposal of the negotiators, to use as they wished, a simplified text that could facilitate the negotiation at this critical stage.

It remains my conviction that, to achieve the deadline set us, the negotiations in the forthcoming meeting of the Contact Group must deal expeditiously and in a spirit of practical compromise with the lesser questions, so that the main political questions may be addressed and resolved.

Rome, 6 of April of 2001

CHAIRMAN'S PROPOSAL FOR A SIMPLIFIED TEXT

THE INTERNATIONAL UNDERTAKING ON PLANT GENETIC RESOURCES

PREAMBLE

The Contracting Parties to this Undertaking,

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Old no. New no.

I I PART I – INTRODUCTION

1 1 Article 1 – Objectives

1.1 1.1 The objectives of this Undertaking are the conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of the benefits arising out of their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security.

1.2 1.2 These objectives will be attained by closely linking this Undertaking to the Food and Agriculture Organization of the United Nations and to the Convention on Biological Diversity.

2 2 Article 2 – Definitions

For the purpose of this Undertaking, the following terms shall have the meanings hereunder assigned to them:

3 3 Article 3 – Scope

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

4 4 Article 4 – Relationship of this Undertaking with Other International Agreements

4.1 4.1 The provisions of this Undertaking will be implemented in harmony with the provisions of other existing international agreements relevant to the objectives of this Undertaking, in such a way that they are mutually supportive, with a view to achieving sustainable development.

- 4.2 This Undertaking shall not be interpreted as implying a change in the rights and obligations of a Contracting Party under any existing international agreements, nor as being subordinate to them.

II PART II - GENERAL PROVISIONS

5 Article 5 – Conservation, Exploration, Collection, Characterization, Evaluation and Documentation of Plant Genetic Resources for Food and Agriculture

- 5.1 5.1 Each Contracting Party shall, subject to national legislation, and in cooperation with other Contracting Parties where appropriate, promote an integrated approach to the exploration, conservation and sustainable use of plant genetic resources for food and agriculture and shall in particular, as appropriate:
- (a) (a) Survey and inventory plant genetic resources for food and agriculture, taking into account the status and degree of variation in existing populations, including those that are of potential use and, as feasible, assess any threats to them;
 - (b) (b) Promote the collection of plant genetic resources for food and agriculture and relevant associated information on those plant genetic resources that are under threat or are of potential use;
 - (c) (c) Support, as appropriate, farmers and local communities' efforts to manage on-farm their plant genetic resources for food and agriculture;
 - (d) (d) Promote *in situ* conservation of wild crop relatives and wild plants for food production, including in protected areas, by supporting, *inter alia*, the efforts of indigenous and local communities;
 - (e) (e) Cooperate to promote the development of an efficient and sustainable system of *ex situ* conservation, giving due attention to the need for adequate documentation, characterization, regeneration and evaluation, and promote the development and transfer of appropriate technologies for this purpose with a view to improving the sustainable use of plant genetic resources for food and agriculture;
 - (f) (f) Monitor the maintenance of the viability, degree of variation, and the genetic integrity of collections of plant genetic resources for food and agriculture.
- 5.2 5.2 The Contracting Parties shall, as appropriate, take steps to minimize or, if possible, eliminate threats to plant genetic resources for food and agriculture.

6 Article 6 – Sustainable Use of Plant Genetic Resources

- 6.1 6.1 The Contracting Parties shall develop and maintain appropriate policy and legal arrangements that promote the sustainable use of plant genetic resources for food and agriculture.
- 6.2 6.2 The sustainable use of plant genetic resources for food and agriculture includes such measures as:

- (a) (a) pursuing agricultural policies that promote, as appropriate, the development and maintenance of diverse farming systems that enhance the sustainable use of agricultural biological diversity and other natural resources;
- (b) (b) strengthening research which enhances biological diversity by maximizing intra- and inter-specific variation for the benefit of farmers, especially smallholder farmers, who generate and use their own crops and apply ecological principles in maintaining soil fertility and in combating diseases, weeds and other pests;
- (c) (c) promoting, as appropriate, plant breeding efforts which, with the participation of farmers, particularly in developing countries, strengthen the capacity to develop varieties specifically adapted to the various social, economic and ecological conditions, including in marginal areas;
- (d) (d) broadening the genetic base of crops and increasing the range of genetic diversity available to farmers;
- (e) (e) promoting, as appropriate, the expanded use of local and locally adapted crops, varieties and underutilized species; and
- (f) (f) supporting, as appropriate, the wider use of diversity of varieties and species in on-farm management, conservation and sustainable use of crops and creating strong links to plant breeding and agricultural development in order to reduce crop vulnerability and genetic erosion, and promote increased world food production compatible with sustainable development.
- (g) reviewing, and, as appropriate, adjusting breeding strategies and regulations concerning variety release and seed distribution.

7 Article 7 – National Commitments and International Cooperation

- 7.1 7.1 Each Contracting Party shall, as appropriate, integrate into its agriculture and rural development policies and programmes, activities referred to in Articles 5 and 6, and cooperate with other Contracting Parties, directly or through FAO and other relevant international organizations, in the conservation and sustainable use of plant genetic resources for food and agriculture.
- 7.2 7.2 International cooperation shall, in particular, be directed to:
- (a) (a) establishing or strengthening the capabilities of developing countries and countries with economies in transition with respect to conservation and sustainable use of plant genetic resources for food and agriculture;
 - (b) (b) enhancing international activities to promote conservation, evaluation, documentation, genetic enhancement, plant breeding, seed multiplication, and sharing, providing access to, and exchanging, in conformity with Part IV, plant genetic resources for food and agriculture and appropriate information and technology;
 - (c) (c) maintaining and strengthening the institutional arrangements provided for in Part V.
 - (d) (d) strengthening or establishing of funding mechanisms to finance activities related to the conservation and sustainable use of plant genetic resources for food and agriculture, in accordance with Article 18.

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Article 8– Technical Assistance

The Contracting Parties agree to promote the provision of technical assistance to Contracting Parties, especially those that are developing countries, either bilaterally or through the appropriate international organizations, with the objective of facilitating the implementation of this Undertaking.

PART III - FARMERS' RIGHTS

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Article 9 – Farmers' Rights

15.1 9.1 The Contracting Parties recognize the enormous contribution that the local and indigenous communities and farmers of all regions of the world, particularly those in the centres of origin and crop 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.

15.2 9.2 The Contracting Parties agree that the responsibility for realizing Farmers' Rights, as they relate to Plant Genetic Resources for Food and Agriculture, rests with national governments. In accordance with their needs and priorities, each Contracting Party should, as appropriate, and subject to its national legislation, take measures to protect and promote Farmers' Rights, including:

- (a) (a) protection of traditional knowledge relevant to plant genetic resources for food and agriculture;
- (b) (b) the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture;
- (c) (c) the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture.

15.3 9.3 Nothing in this Article shall be interpreted to limit any rights that farmers have to save, use, exchange and sell farm-saved seed/propagating material, subject to national law and as appropriate.

IV PART IV - THE MULTILATERAL SYSTEM OF ACCESS AND BENEFIT-SHARING

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Article 10 – Multilateral System of Access and Benefit-sharing

11.1 10.1 In their relationships with other States, the Contracting Parties recognize the sovereign rights of States over their own plant genetic resources for food and agriculture, including that the authority to determine access to those resources rests with national governments and is subject to national legislation.

11.2 10.2 In the exercise of their sovereign rights, the Contracting Parties agree to establish a multilateral system, which is efficient, effective, and transparent, both to facilitate access to plant genetic resources for food and agriculture, and to share, in a fair and equitable way, the benefits arising from the utilization of these resources, on a complementary and mutually reinforcing basis.

12 **Article 11 – Coverage of the Multilateral System**

- 12.1 In furtherance of the objectives of conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of benefits arising out of their use, as stated in Article 1, the multilateral system shall cover the plant genetic resources for food and agriculture listed in Annex I, established according to criteria of food security and interdependence, including the material in the *ex situ* collections of the International Agricultural Research Centres referred to in Article 15.1a.

13 **Article 12 – Facilitated access to plant genetic resources for food and agriculture within the Multilateral System**

- 13.1 12.1 The Contracting Parties agree that facilitated access to plant genetic resources for food and agriculture under the Multilateral System shall be in accordance with the provisions of this Undertaking.
- 13.2 12.2 The Contracting Parties agree to provide such access to other Contracting Parties, in accordance with the conditions below:
- (a) (a) Access shall be provided solely for the purpose of conservation and utilization in research, breeding and training for food and agriculture, provided that such purpose does not include chemical, pharmaceutical and/or other non-food/feed industrial uses. In the case of multiple-use crops (food and non-food), their importance for food security should be the determinant for their inclusion in the Multilateral System and availability for facilitated access.
 - (b) (b) Access shall be accorded expeditiously, without the need to track individual accessions and free of charge, or, when a fee is charged, it shall not exceed the minimal cost involved;
 - (c) (c) All available passport data and, subject to applicable law, any other associated available non-confidential descriptive information, shall be made available with the plant genetic resources for food and agriculture provided;
 - (d) (d) Recipients shall not claim any intellectual property or other rights that limit the facilitated access to the plant genetic resources for food and agriculture, or their genetic parts or components, in the form received from the Multilateral System;
 - (e) (e) Access to plant genetic resources for food and agriculture under development, including material being developed by farmers, shall be at the discretion of its developer, during the period of its development;
 - (f) (f) Access to plant genetic resources for food and agriculture protected by intellectual and other property rights shall be consistent with relevant international agreements, and subject to national legislation.
 - (g) (g) Plant genetic resources for food and agriculture accessed under the Multilateral System and conserved shall continue to be available to the Multilateral System by the recipients of those plant genetic resources for food and agriculture, under the terms of this Undertaking;
 - (h) (h) Without prejudice to the other provisions under this Article, the Contracting Parties agree that access to plant genetic resources for food and agriculture found in *in situ* conditions

will be provided according to national legislation or, in the absence of such legislation, in accordance with such standards as may be set by the Governing Body.

- 13.3 12.3 In emergency disaster situations, the Contracting Parties agree to provide facilitated access to appropriate plant genetic resources for food and agriculture in the Multilateral System for the purpose of contributing to the re-establishment of agricultural systems, in cooperation with disaster relief co-ordinators.
- 13.5 12.4 The Contracting Parties agree that access to plant genetic resources for food and agriculture under the Multilateral System shall only be provided to non-Parties that agree to be bound by the obligations and conditions set out in the present Article 12 and in Article 13 of this Undertaking. In addition, where access is granted, non-Parties shall be subject, *inter alia*, to a standardized MTA, agreed by the Governing Body.

14 Article 13 - Benefit-sharing in the Multilateral System

- 14.1 13.1 The Contracting Parties recognize that facilitated access to plant genetic resources for food and agriculture within the Multilateral System constitutes itself a major benefit of the Multilateral System and agree that benefits accruing therefrom shall be shared fairly and equitably in accordance with the provisions of this Article.
- 14.2 13.2 The Contracting Parties agree that benefits arising from the use, including commercial, of plant genetic resources for food and agriculture under the Multilateral System shall be shared fairly and equitably through the following mechanisms: the exchange of information, access to and transfer of technology, capacity-building, and the sharing of the benefits arising from commercialization, taking into account the priority activity areas in the rolling Global Plan of Action, under the guidance of the Governing Body:
- (a) (a) Exchange of information:
- The Contracting Parties agree to make available information which shall, *inter alia*, encompass catalogues and inventories, information on technologies, results of technical, scientific and socio-economic research, including characterization, evaluation and utilization, regarding those plant genetic resources for food and agriculture under the Multilateral System. Such information shall be made available, where non-confidential, subject to applicable law and in accordance with national capabilities. Such information shall be made available to all Contracting Parties to this Undertaking through the information system of the Multilateral System.
- (b) (b) Access to and transfer of technology
- (i) (i) The Contracting Parties undertake to provide and/or facilitate access to technologies for the conservation, characterization, evaluation and use of plant genetic resources for food and agriculture which are under the Multilateral System. Recognizing that some technologies can only be transferred through genetic material, the Contracting Parties shall provide and/or facilitate access to such technologies and genetic material which is under the Multilateral System and to improved varieties and genetic material developed through the use of plant genetic resources for food and agriculture under the Multilateral System, in conformity with the provisions of Article 12. Access to these technologies, improved varieties and genetic material shall be provided and/or facilitated, while respecting applicable property rights and access laws, and in accordance with national capabilities.
- (ii) (ii) Access to and transfer of technology to countries, especially to developing countries and countries with economies in transition, shall be carried out through a set of measures,

such as the establishment and maintenance of, and participation in, crop-based thematic groups on utilization of plant genetic resources for food and agriculture, all types of partnership in research and development and in commercial joint ventures on the material received, human resource development, and effective access to research facilities.

- (iii) (iii) Access to and transfer of technology as referred to in (i) and (ii) above, including that protected by intellectual property rights, to developing countries that are Contracting Parties, in particular least developed countries, and countries with economies in transition, shall be provided and/or facilitated under fair and most favourable terms, in particular in the case of technologies for use in conservation as well as technologies for the benefit of farmers in developing countries, especially in least developed countries, and countries with economies in transition, including on concessional and preferential terms where mutually agreed, *inter alia*, through partnerships in research and development under the Multilateral System. Such access and transfer shall be provided on terms which recognize and are consistent with the adequate and effective protection of intellectual property rights.

(c) (c) Capacity-building

Taking into account the needs of developing countries and countries with economies in transition, as expressed through the priority they accord to building capacity in plant genetic resources for food and agriculture in their plans and programmes, when in place, in respect of those plant genetic resources for food and agriculture covered by the Multilateral System, the Contracting Parties agree to give priority to (i) establishing and/or strengthening programmes for scientific and technical education and training in conservation and sustainable use of plant genetic resources for food and agriculture, (ii) developing and strengthening facilities for conservation and sustainable use of plant genetic resources for food and agriculture, in particular in developing countries, and countries with economies in transition, and (iii) carrying out scientific research preferably, and where possible, in developing countries and countries with economies in transition, in cooperation with institutions of such countries, and developing capacity for such research in fields where they are needed.

(d) (d) Sharing of monetary benefits on commercialisation

- (iii) (i) The Contracting Parties agree, under the Multilateral System, to take measures in order to achieve commercial benefit-sharing, through the involvement of the private and public sectors in activities identified under this Article, through partnerships and collaboration, including with the private sector in developing countries and countries with economies in transition, in research and technology development;

- (iv)¹ (ii)¹ Whenever the use of plant genetic resources for food and agriculture accessed under the Multilateral System results in a product that is a plant genetic resource covered by any form of intellectual property right that restricts utilization of the product for research and plant breeding, the rights-holder shall pay an equitable royalty in line with commercial practice on the commercial exploitation of the product into a mechanism referred to in Article 19.2g, as a contribution to the implementation of agreed plans and programmes as established under this Undertaking.

- (iii) Whenever the use of plant genetic resources for food and agriculture accessed under the Multilateral System results in a product that is a plant genetic resource covered by any form of intellectual property right that does not restrict utilization of that product for research and plant breeding, the Contracting Parties shall take measures, as appropriate, to encourage the rights-holder to pay into the above mechanism a royalty on the

¹ Four countries stated that they do not agree to the text of Article 13.2d(ii, iii and iv).

commercial exploitation of that product, taking into account the need to exempt farmers in developing countries, especially in least developed countries, and countries with economies in transition, from this provision.

- (iv) The Governing Body shall review the provisions of Article 13.2d(ii) and Article 13.2d(iii) within a period of five years of the entry into force of this Undertaking, with a view to optimizing benefits accruing from these provisions, and shall in particular assess the possibility of establishing a mandatory scheme in regard to the above paragraph. Following this review, any proposed amendment shall be addressed in accordance with Article 22.
- 14.3 13.3 The Contracting Parties agree that benefits arising from the use of plant genetic resources for food and agriculture that are shared under the Multilateral System should flow primarily, directly and indirectly, to farmers in all countries, especially in developing countries, and countries with economies in transition, who conserve and sustainably utilize plant genetic resources for food and agriculture.
- 14.4 13.4 The Governing Body will, at its first meeting, consider relevant policy and criteria for specific assistance under the agreed funding strategy established under Article 18 for the conservation of plant genetic resources for food and agriculture in developing countries, and countries with economies in transition whose contribution to the diversity of plant genetic resources for food and agriculture in the Multilateral System is significant and/or which have special needs.
- 14.5 13.5 The Contracting Parties recognize that the ability to fully implement the Global Plan of Action, in particular of developing countries and countries with economies in transition, will depend largely upon the effective implementation of this Article and of the funding strategy as provided in Article 18.
- 14.6 13.6 The Contracting Parties shall consider modalities of a strategy of voluntary benefit-sharing contributions whereby Food Processing Industries that benefit from plant genetic resources for food and agriculture shall contribute to the Multilateral System.

III

PART V - SUPPORTING COMPONENTS

8

Article 14 – Global Plan of Action

- 8.1 The Contracting Parties recognize that the rolling Global Plan of Action for the Conservation and Sustainable Use of Plant Genetic Resources for Food and Agriculture is an important element of this Undertaking, and accordingly commit themselves to take the necessary steps to promote its effective implementation, in particular in the context of Articles 5 and 6 of this Undertaking, including through national actions and, as appropriate, international cooperation to provide a coherent framework, *inter alia*, for capacity-building, technology transfer and exchange of information, taking into account the provisions of Article 13. The Contracting Parties will monitor and guide implementation of the Global Plan of Action through the Commission on Genetic Resources for Food and Agriculture.

8 bis **15 - Ex Situ Collections of Plant Genetic Resources for Food and Agriculture held by the International Agricultural Research Centres of the Consultative Group on International Agricultural Research and other International Institutions**

- 8 bis.1 15.1 The Contracting Parties recognize that the *ex situ* collections of plant genetic resources for food and agriculture held by the International Agricultural Research Centres (IARCS) of the Consultative Group on International Agricultural Research are an important element of this Undertaking. The Contracting Parties invite the IARCs to sign agreements with the Governing Body, in accordance with the following terms and conditions:
- (a) (a) Material listed in Annex I to this Undertaking, and held by IARCs, shall be provided according to the provisions set out in Part IV of this Undertaking;
 - (b) (b) Material other than that listed in Annex I to this Undertaking and collected before its entry into force, which is held by IARCS, shall be provided in accordance with a standardized Material Transfer Agreement. At its first meeting, the Governing Body will determine the conditions to be contained in the Material Transfer Agreement, in accordance with the relevant provisions of Articles 12 and 13, and taking into account any sovereign rights of the country of origin over those materials;
 - (i) (i) IARCs shall periodically inform the country in whose jurisdiction the material was collected, of Material Transfer Agreements entered into, according to a schedule to be established by the Governing Body;
 - (ii) (ii) The Contracting Parties in whose jurisdiction materials were collected shall be provided with samples of such materials on simple demand;
 - (iii) (iii) Any monetary benefits stipulated in the standard MTA, deriving from the commercial use of such material shall accrue to the mechanism mentioned in Article 19.2g and be applied in particular to the conservation and sustainable use of the crops in question, particularly in national and regional programmes in developing countries, especially the least developed countries;
 - (iv) (iv) IARCs shall take appropriate measures, in accordance with their capacity, in cases of violation of the MTA.
 - (c) (c) IARCs recognize the authority of the Governing Body to provide policy guidance relating to *ex situ* collections held by them, in accordance with this Undertaking.
 - (d) (d) The scientific and technical facilities in which the *ex situ* collections are conserved shall remain in charge of the IARCs, which undertake to manage and administer the *ex situ* collections in accordance with internationally accepted standards, including, with respect to storage, exchange and distribution of seeds, International Genebank Standards, and ensuring that all the material is duplicated in order to guarantee its safety.
 - (e) (e) Whenever appropriate, the Secretariat of this Undertaking shall provide technical support, on request by the IARC.
 - (f) (f) The Secretariat of this Undertaking shall have, at any time, right of access to the facilities, as well as right to inspect all activities performed therein directly related to the conservation and exchange of the material.
 - (g) (g) If the orderly maintenance of the *ex situ* collections held by IARCs is impeded or threatened by whatever event, including *force majeure*, the Secretariat of this

Undertaking, with the approval of the host country, shall assist in its evacuation or transfer, to the extent possible.

- 13.4 15.2 The Contracting Parties agree to provide facilitated access to plant genetic resources for food and agriculture in Annex I under the Multilateral System to IARCS of the Consultative Group on International Agricultural Research that have signed agreements with the Governing Body in accordance with this Undertaking. Such Centres shall be included in a list held by the Secretary of the Governing Body to be made available to the Contracting Parties on request.
- 8bis.2 15.3 Access to material other than that listed in Annex I, received by International Institutions after the coming into force of this Undertaking, shall be on mutually agreed terms to be decided by the country where the material is collected and the International Institutions that receive the material, and in harmony with the terms of the Convention on Biological Diversity.
- 8bis.3 15.4 The Governing Body will also seek to establish agreements for the purposes stated in this Article with other relevant International Institutions.
- 15.5 The Contracting Parties are encouraged to provide access, as appropriate, to plant genetic resources for food and agriculture of crops not listed in Annex I that are important to the programmes and activities of the IARCs of the Consultative Group on International Agricultural Research. Such access should be consistent with the provisions of this Article, and to the extent possible, on terms consistent with the in-trust nature of these *ex situ* collections.

9 Article 16 – International Plant Genetic Resources Networks

- 9.1 16.1 International networks to maintain collections of plant genetic resources for food and agriculture will be encouraged or developed, on the basis of existing arrangements, so as to achieve as complete coverage as possible of plant genetic resources for food and agriculture. These international networks will contribute to realizing the aims of Articles 12 and 13.
- 9.2 16.2 The Contracting Parties will encourage, as appropriate, all institutions, including governmental, private, non-governmental, research, breeding and other institutions, to participate in the international networks.

10 Article 17 – The Global Information Network on Plant Genetic Resources for Food and Agriculture

- 10.1 17.1 The Contracting Parties shall cooperate to set up a Global Information Network on scientific, technical and environmental matters relating to plant genetic resources for food and agriculture. The Global Information Network, by making information on materials within the Multilateral System available to all Contracting Parties, will contribute to the sharing of benefits.
- 10.2 17.2 Based on notification by the Contracting Parties, early warning should be provided about hazards that threaten the efficient maintenance of plant genetic resources for food and agriculture, with a view to safeguarding the material.
- 10.3 17.3 The Contracting Parties shall cooperate, through the Commission on Genetic Resources for Food and Agriculture, to undertake a periodic reassessment of the state of the world's plant genetic resources for food and agriculture in order to facilitate the updating of the rolling Global Plan of Action provided for in Article 14.

VI

PART VI - FINANCIAL PROVISIONS

16

Article 18 – Financial Resources

- 16.1 18.1 The Contracting Parties undertake, through the Governing Body, to develop and keep under review a funding strategy for the implementation of this Undertaking in accordance with the provisions of this Article.
- 16.2 18.2 The objectives of the funding strategy shall be to enhance the availability, transparency, efficiency and effectiveness of the provision of financial resources to implement activities under this Undertaking.
- 16.3 18.3 In order to mobilize funding for priority activities, plans and programmes, in particular in developing countries and countries with economies in transition, and taking the Global Plan of Action into account, the Governing Body shall periodically establish a target for such funding.
- 16.4 18.4 Pursuant to this funding strategy:
- (a) (a) The Contracting Parties shall take the necessary and appropriate measures within the Governing Bodies of relevant international mechanisms, funds and bodies to ensure due priority and attention to the effective allocation of predictable and agreed resources for the implementation of plans and programmes under this Undertaking.
 - (b) (b) The extent to which Contracting Parties that are developing countries and Contracting Parties with economies in transition will effectively implement their commitments under this Undertaking will depend on the effective allocation, particularly by the developed country Parties, of the resources referred to in this Article. Contracting Parties that are developing countries and Contracting Parties with economies in transition will accord due priority in their own plans and programmes to building capacity in plant genetic resources for food and agriculture.
 - (c) (c) Each Contracting Party agrees to undertake, and provide financial resources for national activities for the conservation and sustainable use of plant genetic resources for food and agriculture in accordance with its national capabilities and financial resources.
 - (d) (d) The Contracting Parties that are developed countries also provide, and Contracting Parties that are developing countries and Contracting Parties with economies in transition avail themselves of, financial resources for the implementation of this Undertaking through bilateral and regional and multilateral channels. Such channels shall include the mechanism referred to in Article 19.2g.
 - (e) (e) The Contracting Parties agree that the financial benefits arising from Article 13.2d are part of the funding strategy;
 - (f) (f) Voluntary contributions may also be provided by Contracting Parties, the private sector, taking into account the provisions of Article 13, non-governmental organisations and other sources. The Contracting Parties agree that the Governing Body shall consider modalities of a strategy to promote such contributions;

- 16.5 18.5 The Contracting Parties agree that priority will be given to the implementation of agreed plans and programmes in support of farmers in developing countries, especially in least developed countries, and in countries with economies in transition, embodying lifestyles relevant for the conservation and sustainable utilization of plant genetic resources for food and agriculture;

VII

PART VII - INSTITUTIONAL PROVISIONS

17

Article 19 – Governing Body

- 17.3 19.1 The Governing Body shall be composed of all Contracting Parties to this Undertaking.
- 17.2 19.2 The functions of the Governing Body shall be to promote the full implementation of this Undertaking, keeping in view its objectives, and, in particular, to:
- (a) (a) provide policy direction and guidance for, monitor, and adopt such recommendations as necessary for the implementation of this Undertaking and, in particular, for the operation of the Multilateral System of Access and Benefit-Sharing;
 - (b) (b) take into account the state of plant genetic resources for food and agriculture and its implications for world food security;
 - (d) (c) adopt plans and programmes for the implementation of this Undertaking;
 - (e) (d) adopt and periodically review the funding strategy for the implementation of this Undertaking;
 - (f) (e) adopt the budget of this Undertaking to manage the operations of the Secretariat and the Governing Body;
 - (g) (f) consider and establish such subsidiary bodies as may be necessary, and their respective mandates and composition;
 - (h) (g) establish, as needed, an appropriate mechanism, such as a Trust Account, for receiving and utilizing financial resources that will accrue to it for purposes of implementing this Undertaking;
 - (i) (h) establish cooperation with other relevant international organizations on matters covered by this Undertaking, including their participation in the funding strategy;
 - (j) (i) consider and adopt, as required, amendments to this Undertaking, in accordance with the provisions of Article 22;
 - (k) (j) consider and adopt, as required, amendments to annexes to this Undertaking, in accordance with the provisions of Article 23;
 - (l) (k) consider modalities of a strategy to encourage voluntary contributions, in particular, with reference to Articles 13 and 18;
 - (m) (m) perform such other functions as may be necessary to the fulfilment of the objectives of this Undertaking.

- 17.4 19.3 Each Contracting Party shall have one vote and may be represented at sessions of the Governing Body by a single delegate who may be accompanied by an alternate, and by experts and advisers. Alternates, experts and advisers may take part in the proceedings of the Governing Body but may not vote, except in the case of their being duly authorized to substitute for the delegate.
- 17.5 19.4 The United Nations, its specialized agencies and the International Atomic Energy Agency, as well as any State not Contracting Party to this Undertaking, may be represented as observers at meetings of the Governing Body. Any other body or agency, whether governmental or non-governmental, qualified in fields relating to conservation and sustainable use of plant genetic resources for food and agriculture, which has informed the Secretariat of its wish to be represented as an observer at a meeting of the Governing Body, may be admitted unless at least one third of the Contracting Parties present object. The admission and participation of observers shall be subject to the rules of procedure adopted by the Governing Body.
- 17.6 19.5 The Contracting Parties shall make every effort to reach agreement on all matters by consensus. If all efforts to reach consensus have been exhausted and no agreement is reached, the decision shall, as a last resort, be taken by a two-thirds majority of the Contracting Parties present and voting unless, where specifically stated, that consensus is required.
- 17.7 19.6 For the purpose of this Article, “Contracting Parties present and voting” shall mean Contracting Parties present and casting an affirmative or negative vote.
- 17.8 19.7 A Member Organization of FAO that is a Contracting Party and the member states of that Member Organization that are Contracting Parties shall exercise their membership rights and fulfil their membership obligations in accordance, *mutatis mutandis*, with the Constitution and General Rules of FAO.
- 17.9 19.8 The Governing Body may adopt and amend, as required, its own Rules of Procedure, which shall not be inconsistent with this Undertaking.
- 17.10 19.9 The presence of delegates representing a majority of the Contracting Parties shall be necessary to constitute a quorum at any session of the Governing Body.
- 17.11 19.10 The Governing Body shall hold regular sessions at least once every two years. These meetings shall, as far as possible, be held back-to-back with the regular sessions of the Commission on Genetic Resources for Food and Agriculture.
- 17.12 19.11 Special sessions of the Governing Body shall be convened at the request in writing of at least one-third of the Contracting Parties to this Undertaking.
- 17.13 19.12 The Governing Body shall elect its Chairperson and Vice-Chairpersons (collectively referred to as “the Bureau”), in conformity with its rules of procedure.

Article 20 - Secretariat

- 18.1 20.1 The Secretariat of the Commission on Genetic Resources for Food and Agriculture shall act as the Secretariat of the Governing Body, assisted by such staff as the Governing Body shall decide.
- 18.3 20.2 Some activities may be delegated or shared by the Secretariat, under conditions to be approved by the Governing Body.
- 18.4 20.3 The Secretariat shall perform the following functions:
- (a) (a) arrange for and service meetings of the Governing Body;

- (b) (b) assist the Governing Body in carrying out its functions and responsibilities, including performing specific tasks that the Governing Body shall decide to assign to it;
- (c) (c) report on its activities to the Governing Body.
- 18.5 20.4 The Secretariat shall disseminate to all Contracting Parties:
 - (a) (a) decisions of the Governing Body within sixty days of adoption;
 - (b) (b) information received from Contracting Parties in accordance with the provisions of this Undertaking.
- 18.6 20.5 The Secretariat shall provide translations in the official languages of FAO, of documentation for meetings of the Governing Body.
- 18.7 20.6 The Secretariat shall cooperate with other organizations and treaty bodies, including in particular the Secretariat and Conference of the Parties to the Convention on Biological Diversity, in achieving the aims of this Undertaking.

19 Article 21 - Interpretation and Settlement of Disputes

Any dispute regarding the interpretation or application of this Undertaking, if not settled between the parties to the dispute, shall be referred for settlement to a conciliation procedure to be adopted by the Governing Body. The results of such conciliation procedure, while not binding in character, shall become the basis for renewed consideration by the parties concerned of the matter out of which the disagreement arose. If as the result of this procedure the dispute is not settled, it may be referred to the International Court of Justice in accordance with the Statute of the International Court of Justice, unless the parties to the dispute agree to another method of settlement.

20 Article 22 – Amendments of this Undertaking

22.1 Any proposal by a Contracting Party for the amendment of this Undertaking shall be communicated to the Director-General of FAO.

22.2 Any proposed amendment of this Undertaking received by the Director-General of FAO from a Contracting Party shall be presented to a regular or special session of the Governing Body for approval and, if the amendment involves important technical changes or imposes additional obligations on the Contracting Parties, it shall be considered by an advisory committee of specialists convened by FAO prior to the Governing body.

22.3 Notice of any proposed amendment of this Undertaking, shall be transmitted to the Contracting Parties by the Director-General of FAO not later than the time when the agenda of the session of the Governing Body at which the matter is to be considered is dispatched.

22.4 Any such proposed amendment of this Undertaking shall require the approval of the Governing Body and shall come into force as from the thirtieth day after acceptance by two-thirds of the Contracting Parties. For the purpose of this Article, an instrument deposited by a member organization of FAO shall not be counted as additional to those deposited by member states of such an organization.

22.5 Amendments involving new obligations for Contracting Parties, however, shall come into force in respect of each Contracting Party only on acceptance by it and as from the thirtieth day after such acceptance.

22.6 The rights and obligations of any Contracting Party that has not accepted an amendment involving additional obligations shall continue to be governed by the provisions of this Undertaking as they stood prior to the amendment.

22.7 Amendments to this Undertaking shall be reported to the Conference which shall have the power to disallow any amendment which it finds to be inconsistent with the objectives and purposes of the Organization or the provisions of the Constitution of the Organization.

21

Article 23 – Amendments of Annexes

21.1 23.1 The annexes to this Undertaking shall form an integral part of this Undertaking and, unless expressly provided otherwise, a reference to this Undertaking shall constitute at the same time a reference to any annexes thereto.

- 23.2 Except as provided for in Article 23.3, the provisions of Article 22 regarding amendments to this Undertaking shall apply to the amendment of annexes.

21.2 23.3 Amendments to Annex I to this Undertaking shall be adopted only with the consensus of all the Parties.

Article 24 – Acceptance

24.1 This Undertaking shall be open to acceptance by Members or Associate Members of the Organization.

24.2 The Governing Body may, by a two-thirds majority of its membership, admit to membership such other States that are Members of the United Nations, any of its Specialized Agencies or the International Atomic Energy Agency as have submitted an application for membership and a declaration made in a formal instrument that they accept this Undertaking as in force at the time of admission.

24.3 Participation in the activities of the Governing Body by non-Members of the Organization shall be contingent upon the assumption of such proportionate share in the expenses of the Secretariat as may be determined in the light of the relevant provisions of the Financial Regulations of the Organization.

24.4 Acceptance of this Undertaking by any Member or Associate Member of the Organization shall be effected by the deposit of an instrument of acceptance with the Director-General of the Organization and shall take effect on receipt of such instrument by the Director-General.

24.5 Acceptance of this Undertaking by non-members of the Organization shall be effected by the deposit of an instrument of acceptance with the Director-General of the Organization. Membership shall become effective on the date on which the Governing Body approves the application to become a Contracting Party, in conformity with the provisions of paragraph 2 of this Article.

24.6 The Director-General of the Organization shall inform all Contracting Parties, all Members of the Organization and the Secretary-General of the United Nations of all acceptances that have become effective.

25

Article 25 – Member Organizations of FAO

- 25.1 25.1 When a Member Organization of FAO deposits an instrument of acceptance of this Undertaking, the Member Organization shall, in accordance with the provisions of Article II. 7 of the FAO Constitution, as appropriate, notify such modifications or clarifications to its declaration of competence submitted under Article II. 5 of the FAO Constitution as may be necessary in light of its acceptance of this Undertaking. Any Contracting Party to this Undertaking may, at any time, request a Member Organization of FAO that is a Contracting Party to this Undertaking to provide information as to which, as between the Member Organization and its member states, is responsible for the implementation of any particular matter covered by this Undertaking. The Member Organization shall provide this information within a reasonable time.
- 25.2 25.2 Instruments of acceptance deposited by a Member Organization of FAO shall not be counted as additional to those deposited by its member states.

26

Article 26 – Entry into Force

- 26.1 26.1 This Undertaking shall enter into force on the ninetieth day after the deposit of the thirtieth instrument of acceptance,.
- 26.2 26.2 For each Contracting Party that accepts this Undertaking after the deposit of the thirtieth instrument of acceptance, , this Undertaking shall enter into force on the ninetieth day after the deposit by such Contracting Party of its instrument of acceptance.

27

Article 27 – Reservations

No reservations may be made to this Undertaking.

28

Article 28 – Non- Parties

The Contracting Parties shall encourage any Member of FAO or other State, not a party to this Undertaking to accept this Undertaking, and shall encourage any non-party to act consistently with the provisions of this Undertaking.

29

Article 29 – Languages

The authentic languages of this Undertaking shall be all official languages of FAO.

31

Article 30 – Withdrawals

- 31.1 30.1 Any Contracting Party may at any time after two years from the date on which this Undertaking has entered into force for it, withdraw from this Undertaking by notification addressed to the Director-General of FAO. The Director-General shall at once inform all Contracting Parties.

- 31.2 30.1 Withdrawal shall take effect one year from the date of receipt of the notification by the Director-General of FAO.

- **Article 31 - Termination**

This Undertaking shall be automatically terminated if and when, as the result of withdrawals, the number of Contracting Parties Members drops below ***, unless the remaining Contracting Parties unanimously decide otherwise.

32

Article 32 – Depositary

The Director-General shall be the Depositary of this Undertaking. The Depositary shall:

- (a) (a) send certified copies of this Undertaking to each Member of FAO and to such non-Member States as may become Contracting Party to this Undertaking;
- (b) (b) arrange for the registration of this Undertaking, upon its entry into force, with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations;
- (c) (c) inform each Contracting Party and each Member of FAO that is not a Party of:
 - (i) (i) the deposit of instruments of acceptance in accordance with Article 24;
 - (ii) (ii) the date of entry into force of this Undertaking in accordance with Article 26;
 - (iii) (iii) proposals for the amendment of this Undertaking or of Annexes thereto;
 - (iv) (iv) the adoption of amendments to this Undertaking in accordance with Article 22 and their entry into force;
 - (v) (v) the adoption of amendments to the Annexes to this Undertaking in accordance with Article 23, and the entry into force of amendments to annexes; and
 - (vi) (vi) withdrawals from this Undertaking pursuant to Article 30.

ANNEX I

LIST OF CROPS COVERED BY THE MULTILATERAL SYSTEM