

FAO Commission on Genetic Resources for Food and Agriculture
Chairman's Contact Group
Tehran, Iran. 26-31 August 2000

NEW TEXT AGREED AT TEHRAN MEETING (unofficial final text)

Article 11 – Multilateral System of Access and Benefit-sharing

11.1 In their relationships with other States, 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 In the exercise of their sovereign rights, 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 re-inforcing basis.

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

13.1 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 Parties agree to provide such access to other Parties, in accordance with the conditions below:

- (a) Access shall be provided solely for the purpose of [conservation and/or] 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) 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) 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) [Recipients shall not claim any intellectual property or other rights that limit the facilitated access to the plant genetic resources[, or their genetic parts or components], for food and agriculture[, in the form] received[from the Multilateral System]]/[No plant varietal or patent protection will be sought by recipient Parties on the plant genetic resources for food and agriculture received under this Multilateral System];
- (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) [Access to plant genetic resources for food and agriculture protected by intellectual and other property rights shall be consistent with national law, and with relevant international law.]
- (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) Without prejudice to the other provisions under this Article, 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. [Pursuant to the above, access will be provided to plant genetic resources for food and agriculture in areas designated, or programs established, for the purpose of this agreement by Governments for the *in situ* conservation of plant genetic resources for food and agriculture]

13.3 In emergency disaster situations, 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.

13.4¹ [Parties agree to provide facilitated access to plant genetic resources for food and agriculture under the Multilateral System to International Agricultural Research Centres of the Consultative Group on International Agricultural Research that accept the provisions of Annex [***] to this Undertaking. Such Centres shall be included in a list held by the Secretary of the Governing Body to be made available to Parties on request.]

13.5 [Parties agree that access to plant genetic resources for food and agriculture under the Multilateral System shall not be provided to other non-Parties unless they agree to be bound by the obligations and conditions set out in this International Undertaking. In addition, where access is granted, non-Parties shall be subject, *inter alia*, to a standardized MTA, agree by the Parties.

Article 14 - Benefit-sharing in the Multilateral System

14.1 The 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 The 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 GPA, under the guidance of the Governing Body:

(a) Exchange of information:

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 Parties to the International Undertaking through the information system of the Multilateral System.

(b) Access to and transfer of technology:

(i) 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, Parties shall provide and/or facilitate access to such technologies and genetic

¹ All issues relating to the CGIAR and other international organizations involved in plant genetic resources for food and agriculture will be discussed together.

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 13. 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) 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 R & D and in commercial joint ventures on the material received, human resource development, and effective access to research facilities.
- (iii) Access to and transfer of technology as referred to in (i) and (ii) above, including that protected by intellectual property rights, to developing country Parties,² in particular least developed countries, 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,² especially in least developed countries, 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) 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 programs, when in place, in respect of those plant genetic resources for food and agriculture covered by the Multilateral System, Parties agree to give priority to (i) establishing and/or strengthening programs 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) Sharing of [monetary] benefits on commercialization

- [(i) Each Party to this Undertaking undertakes to pay, in accordance to the agreed Funding Strategy to be established under Article 16, an annual contribution representing percent of the value of the crops produced in its territory through the use of plant genetic resources for food and agriculture listed in Article 12 to this Undertaking where such crops are produced from or

² One country requested the inclusion of “and countries with economies in transition”.

through plant genetic materials or related processes in respect of which IPR protection has been sought under its national legislation. For this purpose, the value of the crops shall be calculated on the basis of the acreage of the crops harvested multiplied by the average national yield per hectare for those crops and the average ex-farm price for the current year.

- (ii) Developed countries, party to this Undertaking, undertake to make annual contributions to the Agreed Funding Strategy established under Article 16 in the proportions of their national contributions according to the United Nations Scale of Assessment.]
- (iii) 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 Article 14 of the International Undertaking, through partnerships and collaborations, including with the private sector in developing countries and countries with economies in transition, in research and technology development;
- (iv) 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 or commercial protection, as identified by the Governing Body, that restricts utilization of the product for research and plant breeding, Parties agree that the rights-holder shall pay an equitable royalty in line with commercial practice on the commercial exploitation of the product into a mechanism to be decided by the Governing Body, as a contribution to the implementation of agreed plans and programs as established in accordance with Article 16.

Parties shall also take measures as appropriate to encourage the rights-holders of any other kind of intellectual property right or commercial protection to pay into the above mechanism a royalty on the commercial exploitation of the product, taking into account the need to exempt farmers in developing countries, especially in least developed countries, from this obligation.

The Governing Body shall review the provisions of the last paragraph above within a period of five years of the entry into force of the International Undertaking, and shall in particular assess the possibility of establishing a mandatory scheme.

Chairman's note: *Some countries would consult their capitals in relation to Articles 14.2(b)(iii) and 14.2(d)(iv). If an agreement is reached in relation to Articles 14.2(b)(iii) and 14.2(d)(iv), Article 14.2(d)(i) and (ii) will be deleted.*

- 14.3 [The Parties agree that benefits arising from the use of plant genetic resources for food and agriculture under the Multilateral System should flow [, *inter alia*,] 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 The Governing Body will, at its first meeting, consider relevant policy and criteria for specific assistance under the agreed funding strategy established under Article 16 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 Parties recognize that the ability to fully implement the GPA, 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 16.

(**) ³ Parties agree that the Governing Body 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.

[New Article on Supporting components of the Multilateral System to be inserted in Part IV of the International Undertaking]

1 The Parties agree that information systems, Networks of Plant Genetic Resources for Food and Agriculture, and partnerships in research and technology described in Articles 9, 10 and *** in respect of those plant genetic resources for food and agriculture described in Article 12, are supporting components of the Multilateral System.

2 The aim of these supporting components is to improve the knowledge, the understanding of importance of, the conservation, the exchange and utilization of the plant genetic resources for food and agriculture covered by the Multilateral System, facilitate the use of collections and strengthen regional and international cooperation, for the benefit of sustainable agricultural development and of food security, and contributing to the fair and equitable sharing of benefits arising from the utilization of these plant genetic resources for food and agriculture.

3 The Parties agree that there is a strong relationship between these supporting components, the coverage of the Multilateral System, and the priorities of Parties as defined in national and regional plans and programs and in the priority activity areas of the Global Plan of Action.

4 The Parties agree that the International Agricultural Research Centres of the Consultative Group on International Agricultural Research play an important role to support activities within the multilateral system, providing benefits *inter alia* through

³ The principle was adopted; the position of the sub-article is still to be decided.

improved breeding material, capacity building, training, technology transfer and providing information on plant genetic resources for food and agriculture.]

[Article 16 – Financial Resources

16.1 The Parties undertake, through the Governing Body, to develop, keep under review [and implement] a funding strategy for the implementation of the International Undertaking in accordance with the provisions of this Article.

16.2 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 the International Undertaking, on a continuing basis.

- (a) [[facilitating] the enhanced provision of necessary funding at the national, sub-regional, regional and global levels; [promoting] multiple source funding approaches and improved co-ordination between funding agencies;
- (b) providing information on available sources of funding;
- (c) identifying priority activities, plans and programs in need of funding, in particular, in developing country Parties and Parties with economies in transition.]

16.3 To achieve this objective, the Governing Body shall periodically establish a target for the funding strategy, initially taking into account estimated financial requirements of the priority activity areas of the Global Plan of Action.

16.4 Pursuant to this funding strategy:

- (a) Parties [shall take appropriate measures to ensure] [shall seek to ensure] [undertake to facilitate] the allocation of predictable and agreed resources by relevant international mechanisms, funds and bodies for the implementation of agreed plans and programs, taking into account the priority activity areas of the rolling Global Plan of Action for Plant Genetic Resources for Food and Agriculture. [In this regard, Parties reaffirm the commitments for the new and additional resources that they made under the Convention on Biological Diversity;]^a

- (b) The extent to which developing country Parties and Parties with economies in transition will effectively implement their commitments under this Undertaking will depend on the effective allocation of predictable and agreed resources referred to above;
- (c) The developed country Parties also provide, and developing countries and countries with economies in transition avail themselves of, agreed and predictable financial resources related to the implementation of the Global Plan of Action through bilateral and regional channels. The contribution from developed country Parties shall, where possible, be used to facilitate the leveraging of funding sources and mechanisms in bilateral and regional cooperative arrangements and networks;
- [(d) Parties undertake to provide the agreed and predictable financial benefits arising from Article 14.2(d);]
- (e)] Parties undertake to provide, in accordance with their national capabilities, financial support and incentives in support of their national activities for the conservation and sustainable use of plant genetic resources for food and agriculture;
- (f) Voluntary contributions may also be provided by Parties, the private sector, non-governmental organisations and other sources.

16.5 The Governing Body, through the Secretariat, shall pursue appropriate arrangements, as mutually agreed, with the responsible bodies of relevant financial and other institutions and organisations to secure their participation in the funding strategy.]^b

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- a. Reaffirmation of the commitment, and the funding amount, would be stated in a parallel resolution, to be adopted at time that the International Undertaking is adopted.
 - b. Basic text for the negotiations.