

# THE NEUCHÂTEL DECLARATION

We, the members of the Contact Group of the Commission on Genetic Resources for Food and Agriculture of the Food and Agriculture Organisation of the United Nations representing all regions of the world, have met in Neuchâtel from 12 to 17 November 2000, at the generous invitation of the Government of the Swiss Confederation, and with the funding support from the Government of Japan.

During our meeting we have had in-depth discussions and comprehensive negotiations on key articles of the International Undertaking on Plant Genetic Resources for Food and Agriculture which we are seeking to revise in harmony with the Convention on Biological Diversity.

A revision of the International Undertaking will be a cornerstone for international cooperation on food security and the conservation and sustainable use of Plant Genetic Resources for Food and Agriculture. Our deliberations have benefited from a presentation by the International Plant Genetic Resources Institute of the Consultative Group on International Agricultural Research that we hope will play a major role in the Multilateral System.

We have made significant progress on the critical issue of the financial resources in the Multilateral System. We welcomed the advice given by Intergovernmental Organisations such as the WTO and WIPO. It is our common understanding that some issues regarding the benefit-sharing arising from commercialisation need further clarification. We, the members of the Contact Group, commit ourselves to achieving a fair and equitable as well as a workable system of benefit sharing.

We remain committed to bringing the negotiations to a successful completion as soon as possible.

We wish to express our gratitude to the People and Government of Switzerland for their support and generous hospitality. We appreciated the excellent facilities, the opportunity to enjoy local products and the beautiful surroundings that have contributed substantially to the success of the meeting.

Draft 17 November 2000

## INTERNATIONAL UNDERTAKING

### TEXTS OF ARTICLES 12, 13, 14, 16 and 17

#### Unofficial Final Texts from the Fourth Inter-sessional Meeting of the Contact Group, Neuchâtel, Switzerland, 12–17 November 2000

##### Article 12 –Coverage of the Multilateral System<sup>a a1</sup>

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.<sup>b</sup>

[12.2 The multilateral system shall also cover:

(a) material held in *ex situ* collections by International Agricultural Research Centres of the Consultative Group on International Agricultural Research<sup>c</sup> [international centres]<sup>d</sup> that accept the provisions of [Annex V to] this Undertaking;

[(b) material held in collections of other international institutions that accept the provisions of this Undertaking, and with the agreement of the Governing Body of this Undertaking.]<sup>e</sup>]

**OR**

[12.2 Parties agree that the germplasm collections held in *ex situ* collections by the CG International Centres and other international institutions shall be subject to the provisions of this International Undertaking and in accordance with the provisions of Annex V.]

[12.3 The Governing Body<sup>1</sup> shall keep Annex I under periodic review as well as Annexes II, III and IV on the conditions of access, benefit-sharing and financial resources respectively, taking into account the inter-relationship among those annexes.]

[12.4 Parties agree that any alteration to Annex I and Annex V of this Undertaking shall only be possible with the consensus of all Parties to this International Undertaking.]

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- a1. The final decision on Article 12 will depend on its harmonisation with Articles 13, 14, 16 and 17, which are pending completion
- a. *For further consideration:* the issues of the identification and of the end use of material in collections.
- b. Adopted *ad referendum*, and pending the adoption of Article 21, including the issue of the adoption of annexes by consensus.
- c. *For further consideration:* The CGIAR Centres shall respect the rights of countries that provide material or from which material is collected.
- d. *For further consideration:* Specific Conditions shall apply to international centres other than CGIAR Centres.
- e. *For further consideration.*

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<sup>1</sup> In the text, the term “Governing Body” has been used to designate the intergovernmental body that will implement the revised International Undertaking as a legally binding instrument, without prejudice to the actual status of the instrument. See Article 17.

### **Article 13 – Facilitated access to plant genetic resources for food and agriculture within the Multilateral System<sup>2</sup>**

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] utilisation 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

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<sup>2</sup> Two countries registered that Article 13 was negotiated in good faith pending symmetrical advances in Articles 14 and 16.

Governing Body. [Pursuant to the above, access will be provided to plant genetic resources for food and agriculture in areas designated, or programmes 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.

13.4<sup>3</sup> [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 standardised MTA, agreed by the Parties.]

#### **Article 14 - Benefit-sharing in the Multilateral System**

14.1 The Parties recognise 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 commercialisation, 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 characterisation, evaluation and utilisation, 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.

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<sup>3</sup> All issues relating to the CGIAR and other international organizations involved in plant genetic resources for food and agriculture will be discussed together.

(b) Access to and transfer of technology

- (i) Parties undertake to provide and/or facilitate access to technologies for the conservation, characterisation, evaluation and use of plant genetic resources for food and agriculture, which are under the Multilateral System. Recognising that some technologies can only be transferred through genetic material, 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 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 utilisation 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,<sup>4</sup> 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,<sup>4</sup> 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 recognise 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 programmes, 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 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.

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<sup>4</sup> One country requested the inclusion of “and countries with economies in transition”.

(d) Sharing of [monetary] benefits on commercialisation

- (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 [x] 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 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 hectareage 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)<sup>5 6</sup> 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 utilisation 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 that product into the mechanism referred to in Article 17.2, as a contribution to the implementation of agreed plans and programmes as established under this Undertaking.

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 utilisation of that product for research and plant breeding, Parties shall take measures, as appropriate, to encourage the rights-holder to pay into the above mechanism a royalty on the commercial exploitation of that product, taking into account the need to exempt farmers in developing countries,<sup>7</sup> especially in least developed countries, from this provision.

The Governing Body shall review the provisions of Article 14.2d(iv) within a period of five years of the entry into force of the International Undertaking, with a view to optimising 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 20.

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<sup>5</sup> Four countries stated that they do not agree to the text of Article 14.2d(iv).

<sup>6</sup> 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.

<sup>7</sup> Two countries requested the inclusion of “and countries with economies in transition”.

*To be inserted in 17.2*

(\*\*) Identify [, by consensus,] forms of intellectual property right that restrict utilisation for research and plant breeding, for the purposes of Article 14.2d(iv).

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 utilise 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 recognise 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.

(\*\*) <sup>8</sup> 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.

### **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.

16.3 In order to mobilise 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 Pursuant to this funding strategy:

(a) 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 the International Undertaking.

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<sup>8</sup> The principle was adopted; the position of the sub-article is still to be decided.

- (b) The extent to which developing country Parties and countries with economies in transition will effectively implement their commitments under this International Undertaking will depend on the effective allocation, particularly by the developed country Parties, of the resources referred to in this Article. Developing country Parties and 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) Each 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.<sup>9</sup>
  - (d) The developed country Parties also provide, and developing country Parties and Parties which are countries with economies in transition avail themselves of, financial resources for the implementation of this International Undertaking through bilateral and regional and multilateral channels. Such channels shall include the mechanism referred to in Article 17.2.
  - (e) [Parties undertake to provide the financial benefits arising from Article 14.2(d)] / [Parties agree that the equitable royalties accruing from the sharing of benefits arising from commercialisation according to Article 14.2 d (iv) shall be incorporated into the funding strategy];
  - (f) Voluntary contributions may also be provided by Parties, the private sector, non-governmental organisations and other sources. Parties agree that the Governing Body shall consider modalities of a strategy to promote such contributions;
- 16.5 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 utilisation of plant genetic resources for food and agriculture;<sup>10</sup>

## **PART VII - INSTITUTIONAL PROVISIONS**

### **Article 17 – Governing Body**<sup>11</sup>

[17.1 A Governing Body of the Undertaking is hereby established [within the framework of the Food and Agriculture Organisation of the United Nations].

17.2 The functions of the Governing Body shall be to promote the full implementation of the objectives of the Undertaking and, in particular, to:

- (a) review the state of plant genetic resources for food and agriculture and implications for world food security;

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<sup>9</sup> One country reserved the right to consult its capital.

<sup>10</sup> For four countries, the issue of priority category will be determined by the outcome of the negotiations of Article 4.

<sup>11</sup> These provisions are based on those of revised text of the International Plant Protection Convention as adopted by the FAO Conference in November 1997.



- (b) periodically review and, as necessary, update the rolling Global Plan of Action provided for in Article 8;
- (c) provide policy direction for, and monitor, the implementation of the Undertaking and, in particular, for the operation of the Multilateral System of Access and Benefit Sharing;
- (d) adopt the plans and programmes for the implementation of the Undertaking;
- (e) adopt and periodically review the funding strategy for the implementation of the Undertaking and adopt the budget of the Undertaking;
- (f) establish such subsidiary bodies as may be necessary for the proper implementation of its functions;
- (g) establish rules and procedures for the resolution of disputes in accordance with Article 19;]
- (h) Establish, as needed, an appropriate mechanism, such as a Trust Account, for receiving and utilising financial resources that will accrue to it for purposes of implementing the International Undertaking;
- (i) establish cooperation with other relevant international organisations on matters covered by this Undertaking, including their participation in the funding strategy;
- [(j) adopt amendments to the Undertaking, in accordance with the provisions of Article 20;
- (k) periodically review and as necessary amend the annexes to this Undertaking, in accordance with the provisions of Article 21;
- (l) adopt such recommendations for the implementation of the Undertaking as necessary; and
- (m) perform such other functions as may be necessary to the fulfilment of the objectives of this Undertaking.

17.3 The Governing Body shall be composed of all Parties to this Undertaking.

17.4 Each Party 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 an alternate who is duly authorised to substitute for the delegate.

17.5 The 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 Parties present and voting.

17.6 For the purpose of this Article, “Parties present and voting” shall mean Parties present and casting an affirmative or negative vote.

17.7 A Member Organisation of FAO that is a Party and the member states of that Member Organisation that are Parties shall exercise their membership rights and fulfil their membership obligations in accordance, *mutatis mutandis*, with the Constitution and General Rules of FAO.

17.8 The Governing Body may adopt and amend, as required, its own Rules of Procedure, which shall not be inconsistent with this Undertaking [or with the Constitution of FAO].

17.9 The Governing Body shall hold regular sessions at least once every two years.

17.10 Special sessions of the Governing Body shall be convened at the request in writing of at least one-third of the Parties to this Undertaking.

17.11 The Governing Body shall elect its Chairperson and Vice-Chairpersons (collectively referred to as “the Bureau”), each of whom shall serve for a term of two years.]

## [ANNEX V

### **CONDITIONS FOR PARTICIPATION OF INTERNATIONAL INSTITUTIONS IN THE MULTILATERAL SYSTEM AND PLACING OF INTERNATIONAL *EX SITU* COLLECTIONS IN THE MULTILATERAL SYSTEM**

*(Institutions that formally agree to be bound by this Annex agree thereby also to accept and abide by the policy direction of the Governing Body of the Undertaking with respect to matters relating to their ex situ collections, conditions of access to material under the multilateral system and the equitable sharing of benefits resulting from the use of such material.)*

International Institutions holding international collections of germplasm that accept the provisions of this Annex agree as follows:

#### **Article 1 – Application of this Annex**

This Annex shall be open to acceptance by any centre holding international collections of germplasm (hereinafter referred to as the “Institution”).

#### **Article 2 – Basic Undertaking**

a) Institutions accepting this Annex agree thereby to participate in the multilateral system established under the International Undertaking in accordance with the provisions of this Annex.

b) The Institution hereby places its *ex situ* collection of plant genetic resources for food and agriculture in the multilateral system, in accordance with the terms and conditions set forth in this Annex.

c) Lists of the germplasm contained in the collection shall be provided to FAO by the Institution and periodically updated in print or machine-readable form, together with such other information on the germplasm as may be required.

### **Article 3 – Status of Germplasm in the Collection**

- a) The Institution shall hold the germplasm in the collection in trust for the benefit of the international community, in particular the developing countries in accordance with the International Undertaking and the terms and conditions set out in this Annex.
- b) The Institution shall not claim legal ownership over the germplasm, nor shall it seek any intellectual property rights over that germplasm or related information.

### **Article 4 – Premises**

- a) The premises in which the germplasm is conserved shall remain in the charge of the Institution.
- b) FAO shall have a right of access to the premises at any time and the right to inspect all activities performed therein directly related to the conservation and exchange of the germplasm.

### **Article 5 – Management and Administration**

- a) The Institution undertakes to manage and administer that part of the germplasm that is held for the purposes of long-term conservation in accordance with internationally accepted standards, including, with respect to the storage, exchange and distribution of seeds, international Genebank Standards, and ensuring that all the germplasm is duplicated in order to ensure its safety.
- b) FAO may recommend action, if it considers such action to be desirable, in order to ensure the proper conservation of that part of the germplasm that is held for long-term conservation purposes.
- c) If the orderly maintenance of the germplasm collection of the Institution is impeded or threatened by whatever event, including *force majeure*, FAO shall assist in the evacuation and/or transfer of the collections, to the extent possible. The cost of such an operation will be covered by the Institution concerned.

### **Article 6 – Policies**

The Institution recognises the intergovernmental authority of the Governing Body of the International Undertaking in setting policies for the multilateral system.

### **Article 7 – Staff**

- (a) Staff responsible to manage and administer the germplasm shall be employed and remunerated by the Institution.
- (b) As and when deemed appropriate, FAO shall furnish technical backstopping on request by the Institution, either directly or through an implementing mechanism.

### **Article 8 – Finances**

Except as otherwise provided for in the International Undertaking, the Institution shall remain entirely responsible for financing the maintenance of the germplasm.

## **Article 9 – Availability of Germplasm and Related Information**

The Institution undertakes to make samples of the germplasm and related information available directly to users or through FAO, for the purpose of scientific research, plant breeding or genetic resource conservation, in accordance with Article 12 of the International Undertaking and the conditions of access set out in Annex II to the International Undertaking, and in accordance with the conditions set out in the International Undertaking relating to the equitable sharing of benefits arising from the use of such material.

## **Article 10 – Transfer of Germplasm and Related Information**

Where samples of the germplasm and/or related information are transferred to any other person or institution, the Institution shall ensure that such other person or institution, and any further entity receiving samples of the germplasm from such person or institution, are bound by the conditions set out in Article 3 (b) and, in the case of samples duplicated for safety purposes, to the provisions of Article 5 (a).

This provision shall not apply to the repatriation of germplasm to the country that provided such germplasm.]

**OR**

### **[ANNEX V**

## **CONDITIONS FOR INTERNATIONAL INSTITUTIONS HOLDING *EX SITU* COLLECTIONS**

International Institutions holding collections of germplasm shall conduct all the related activities, aimed at the objectives of conservation and sustainable use of PGRFA and the fair and equitable sharing of the benefits resulting from their use, and shall give access to such material, under this International Undertaking and in particular within the frame of the following provisions:

### **Article 1 – Application of this Annex**

This annex shall include all the international institutions holding Ex- Situ collections of PGRFA.

### **Article 2 – Basic Undertaking**

- a) Access to material of such collections, referred to the list defined in Annex 1, will be subject to the same provisions defined for the Multilateral System established under this International Undertaking
- b) Access to material other than that referred to the annex 1, will be subject to a standardised material transfer agreement, which in addition to the conditions established for the Multilateral system, will include all those conditions agreed with the country that provided the respective material or where the collection was made, in particular the prohibition to give access to a third party, who will have to make the desired requirement the institution directly.
- c) When access to germplasm and/or related information is granted, the Institution shall inform of such accession to the country that provided such germplasm or where the collection was made.

### **Article 3 – Status of Germplasm in the Collection**

a) The Institution shall hold the germplasm in the collection in trust, in compliance with the rights of the countries that provided the material or where collection was made, for the benefit of the international community, in particular the developing countries in accordance with the International Undertaking and the terms and conditions set out in this Annex.

b) Germplasm collections will be put in trust of the international centres by mean of standardised agreement, with the country provider or where the material has been collected, which will be renewable periodically. The standardised agreement will set forth the in trust conditions, including the fair and equitable sharing o benefits resulting from the use of the such material, the prohibition of claiming ownership or any legal protection, including Intellectual property rights, on the material received, their parts or their genetic components, or the related information.

### **Article 4 – Premises**

a) The scientific and technical premises in which the germplasm is conserved shall remain in the charge of the Institution.

b) The secretariat of the multilateral system shall have a right of access to the premises at any time and the right to inspect all activities performed therein directly related to the conservation and exchange of the germplasm.

### **Article 5 – Management and Administration**

a) The Institution undertakes to manage and administer that part of the germplasm that is held for the purposes of long-term conservation in accordance with internationally accepted standards, including, with respect to the storage, exchange and distribution of seeds, international Genebank Standards, and ensuring that all the germplasm is duplicated in order to ensure its safety.

b) The Secretariat of the system may recommend action, if it considers such action to be desirable, in order to ensure the proper conservation of that part of the germplasm that is held for long-term conservation purposes.

c) If the orderly maintenance of the germplasm collection of the Institution is impeded or threatened by whatever event, including *force majeure*, the secretariat of the multilateral system, with the approval of the Governing Body and in consultation with the host Country, shall assist in the evacuation and/or transfer of the collections, to the extent possible. The cost of such an operation will be covered by the Institution concerned.

### **Article 6 – Policies**

The Institution recognises the intergovernmental authority of the Governing Body of the International Undertaking in setting policies for the multilateral system

### **Article 7 – Staff**

- (a) Staff responsible to manage and administer the germplasm shall be employed and remunerated by the Institution.
- (b) As and when deemed appropriate, the secretariat of the multilateral system shall furnish technical backstopping on request by the Institution, either directly or through an implementing mechanism.

### **Article 8 – Finances**

Except as otherwise provided for in the International Undertaking, the Institution shall remain entirely responsible for financing the maintenance of the germplasm.

### **Article 9 – Availability of Germplasm and Related Information**

- (a) The Institution undertakes to make samples of the germplasm and related information available directly to users, for the purpose of scientific research, plant breeding or genetic resource conservation, in accordance with Article 12 of the International Undertaking and the conditions of access set out in Annex II to the International Undertaking, and in accordance with the conditions set out in the International Undertaking relating to the equitable sharing of benefits arising from the use of such material.
- (b) This provision shall not apply to the repatriation of germplasm to the country that provided such germplasm.]