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CONFERENCE OF THE PARTIES TO THE
CONVENTION ON BIOLOGICAL DIVERSITY
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Nairobi, 15-26 May 2000
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AGRICULTURAL BIOLOGICAL DIVERSITY: REVIEW OF PHASE I OF THE PROGRAMME OF
WORK AND ADOPTION OF A MULTI-YEAR PROGRAMME OF WORK

Report on the negotiations for the revision of the International
Undertaking on Plant Genetic Resources

Note by the Executive Secretary

1. In its decision II/15, the Conference of the Parties declared its support for the process engaged in the Commission on Genetic Resources for Food and Agriculture (CGRFA) of the Food and Agriculture Organization of the United Nations (FAO) to adapt the International Undertaking on Plant Genetic Resources in harmony with the Convention. By decision III/11 (paragraph 18), the Conference of the Parties requested FAO to inform the COP of the deliberations of the CGRFA.

2. Pursuant to that request, FAO has provided the Secretariat with a progress report on the revision of the International Undertaking, which the Executive Secretary is circulating herewith as it was received from FAO.

* UNEP/CBD/COP/5/1.



منظمة الأغذية
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pour
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l'agriculture

Organización
de las
Naciones
Unidas
para la
Agricultura
y la
Alimentación

FIFTH MEETING OF THE CONFERENCE OF THE PARTIES TO THE CONVENTION ON BIOLOGICAL DIVERSITY

**Nairobi, Kenya
15-26 May, 2000,**

REPORT ON THE NEGOTIATIONS FOR THE REVISION OF THE INTERNATIONAL UNDERTAKING ON PLANT GENETIC RESOURCES

**Report by the Chairman of the FAO Commission on
Genetic Resources for Food and Agriculture**

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REPORT ON THE NEGOTIATIONS FOR THE REVISION OF THE INTERNATIONAL UNDERTAKING ON PLANT GENETIC RESOURCES

**Report by His Excellency, Ambassador Fernando Gerbasi (Venezuela),
Chairman of the FAO Commission on Genetic Resources
for Food and Agriculture**

Introduction

1. The Conference of the Parties to the Convention on Biological Diversity has been regularly informed of progress in the negotiations for the revision of the International Undertaking, most recently at its Fourth Meeting in Bratislava in May 1998, when the Report of the Fourth Extraordinary Negotiating Session of the FAO Commission on Genetic Resources for Food and Agriculture was transmitted to the Conference, as document UNEP/CBD/COP/4/Inf. 20.
2. I now wish to report on the considerable progress that has been achieved since the last meeting of the Conference of the Parties, and on the current prospects for bringing these negotiations to a successful conclusion.

Background

3. The International Undertaking was originally adopted by the FAO Conference in 1983, under Resolution 8/83. The Undertaking was subsequently the subject of a number of agreed interpretations, through FAO Conference Resolutions, which are now annexed to it. The Undertaking, with its agreed interpretations, was the first comprehensive international agreement in the field of plant genetic resources for food and agriculture, and sought to “ensure that plant genetic resources of economic and/or social interest, particularly for agriculture, will be explored, preserved, evaluated and made available for plant breeding and scientific purposes”.
4. The Undertaking is monitored by the FAO Commission on Genetic Resources for Food and Agriculture, of which 160 countries and the European Community are currently members; 113 countries have adhered to the Undertaking.¹ I have the honour of being the current Chairman of that Commission.
5. In adopting the Agreed Text of the Convention on Biological Diversity in 1992, countries also adopted Resolution 3 of the Nairobi Final Act, which recognized that access to *ex situ* collections not acquired in accordance with the Convention, and Farmers’ Rights, were outstanding matters which the Convention had not addressed, for which solutions should be sought within FAO’s Global System on Plant Genetic Resources for Food and Agriculture. The International Undertaking is the corner-stone of the Global System. In June 1992, UNCED called for the strengthening of the FAO Global System and its adjustment in line with the Convention on Biological Diversity, as well as for the realization of Farmers’ Rights.

¹ Including two countries not members of FAO: Liechtenstein and Russia.

6. At its Twenty-seventh Session, the FAO Conference accordingly adopted Resolution 7/93, which requested the Director-General to provide a forum for negotiation among governments for:
 - the adaptation of the International Undertaking on Plant Genetic Resources, in harmony with the Convention on Biological Diversity;²
 - consideration of the issue of access on mutually agreed terms to plant genetic resources, including *ex situ* collections not addressed by the Convention;³ and
 - the issue of the realization of Farmers' Rights.
7. In a process parallel to the negotiations for the revision of the International Undertaking, the Commission convened the Leipzig International Technical Conference on Plant Genetic Resources, in June 1996, where 150 countries adopted the rolling *Global Plan of Action for the Conservation and Sustainable Utilization of Plant Genetic Resources for Food and Agriculture*, which had been prepared through a country-driven process. The *Global Plan of Action* responded to a decision of the Commission, in 1993, that the technical and financial needs to ensure conservation, and to promote the sustainable use of plant genetic resources for food and agriculture, needed to be determined and quantified.
8. The Leipzig Conference also adopted the Leipzig Declaration, by these countries undertook to take the steps necessary to implement the Global Plan of Action, and called for the completion of the negotiations for the revision of the International Undertaking. The successful outcome of the negotiations for the revision of the Undertaking will facilitate the mobilization of the funds needed to implement fully the *Global Plan of Action*, which, as the Commission has noted, would be an important contribution to the practical realization of Farmers' Rights, and to benefit-sharing.
9. Negotiations have been conducted through regular and extraordinary sessions of the Commission. In Decision II/15, the Conference of the Parties recognized the special nature of agricultural biodiversity, its distinctive features and problems needing distinctive solutions, and declared its support for the development of the *Global Plan of Action*, through the Leipzig International Technical Conference, and for the revision of the Undertaking. Progress in the negotiations has been reported regularly to the Conference of the Parties to the Convention on Biological Diversity, which has repeatedly stressed its support for the negotiations, and has called for their rapid conclusion. The Convention's Secretariat has regularly participated in the negotiating process as an observer, and contributed useful information as needed.

Progress since the Fourth Meeting of the Conference of the Parties

10. Following the Fourth Meeting of the Conference of the Parties, in May 1998, negotiations continued at the Fifth Extraordinary Session of the Commission on Genetic Resources for Food and Agriculture, in June 1998. I subsequently reported to the Hundred and Fifteenth Session of the FAO Council, in November 1998, that I believed that, despite considerable progress, Members and Regions' positions on certain issues remained distinct and distant. I informed the Council that the Commission had therefore mandated me to hold consultations, in order to assess the situation, and that, in order to advance the negotiations, I proposed to convene an Informal Meeting of a Group of Experts, who, although attending in their personal capacity, would represent the various Regions and positions, in order to help me identify areas of possible compromise, and prepare Chairman's draft elements for relevant Articles, before continuing the negotiating process. The Council supported this proposal, and requested me to report to it on further progress in the negotiations, at its June 1999 session.

² While the Convention covers all types of biological diversity, the scope of the Undertaking is limited to plant genetic resources for food and agriculture.

³ This formula, adopted after careful negotiations, although limited to plant genetic resources for food and agriculture, is not limited only to *ex situ* collections not addressed by the Convention.

11. This Informal Meeting of Experts was held in Montreux, Switzerland, in January 1999. The broad consensus that was achieved there enabled me to draw up a series of “Chairman’s Elements”, as the proposed basis for further negotiations. These included that the scope should be plant genetic resources for food and agriculture, and the objectives their conservation and use, and the fair and equitable sharing of benefits arising from their use, in harmony with the Convention, for sustainable agriculture and food security. They also included a Multilateral System, for facilitated access and benefit-sharing, the coverage of which would be a list of crops, established on the criteria of food security and interdependence, and the collections of the International Agricultural Research Centres on terms to be accepted by the Centres. Facilitated access would minimize transaction costs, obviate the need to track individual accessions, and ensure expeditious access, in accordance with applicable property regimes. Plant genetic resources in the multilateral system might be used in research, breeding and/or training, for food and agriculture only. For other uses, mutually agreed arrangements under the Convention would apply. Fair and equitable sharing of benefits arising from the use of plant genetic resources for food and agriculture would, *inter alia*, be through transfer of technology, capacity-building, the exchange of information, and funding, taking into account the priorities in the rolling *Global Plan of Action*, under the guidance of the Governing Body. Benefits should flow primarily, directly and indirectly, to farmers in developing countries, embodying traditional lifestyles relevant for the conservation and sustainable utilization of plant genetic resources for food and agriculture. The Undertaking would recognize the enormous contribution that farmers of all regions of the world, particularly those in the centres of origin and crop diversity, had 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. The responsibility for realizing Farmers’ Rights, as they relate to plant genetic resources for food and agriculture, would rest with national governments. In accordance with their needs and priorities, each Party should, as appropriate, and subject to its national legislation, take measures to protect and promote Farmers’ Rights. With regard to financial resources, there would be commitment to a funding strategy for the implementation of the Undertaking, which included a budget and contributions to manage the operations of the Governing Body and Secretariat, and agreed and predictable contributions to implement agreed plans and programmes, in particular in developing countries, from a variety of sources, with priority given to implementation of the rolling *Global Plan of Action*, in particular in support of Farmers’ Rights in developing countries. The Undertaking would be a legally binding instrument.
12. This represented a break-through in the negotiations, and made it possible to speed up the process, and make considerable progress during 1999. The Eighth Regular Session of the CGRFA, in April last year, decided to use the Chairman’s Elements as the basis for negotiations, and worked from a new Composite Draft Text that had been prepared embodying these Elements. This allowed the negotiation of the text of a number of important Articles. It also established a Chairman’s Contact Group,⁴ and authorized me to convene sessions of this Group, to advance the negotiations, and, when I believed that a point had been reached where the Commission might adopt the final text, to request the Director-General of the FAO to convene an Extraordinary Session of the Commission on Genetic Resources for Food and Agriculture, so that the revised Undertaking might be submitted to the FAO Council in November 2000.
13. I therefore reported to the FAO Council, at its Hundred and Sixteenth Session in June 1999, that considerable progress had been achieved during 1999, and that countries appeared to have the political will to reach a broad consensus. The Council endorsed the mandate that the Commission had given me for the inter-sessional negotiating process, and appealed to countries to show flexibility and a spirit of compromise and to maintain and increase the momentum. It

⁴ Angola, Argentina, Australia, Benin, Brazil, Burkina Faso, Canada, China, Colombia, Cuba, European Community, Ethiopia, the Presidency of the European Union, France, Germany, India, Islamic Republic of Iran, Japan, Republic of Korea, Libya, Malaysia, Malta, Mexico, Morocco, Netherlands, New Zealand, Norway, Philippines, Poland, Romania, Samoa, Senegal, South Africa, Switzerland, United Republic of Tanzania, United Kingdom, Uruguay, United States of America, Venezuela, Zambia, Zimbabwe.

recommended that a report on progress on the negotiations be considered by the FAO Conference at its Thirtieth Session in November 1999.

14. I accordingly convened the first Inter-sessional Meeting of the Contact Group in September 1999. At this meeting, further progress was made on the text of a number of controversial Articles, in particular on Farmers' Rights, and the exchange of information. The Contact Group also recognized that the ability to fully implement the *Global Plan of Action* would depend largely on the implementation of the Article on benefit-sharing and of the Undertaking's funding strategy. Developing Countries undertook to present modalities to give practical expression to the fair and equitable sharing of commercial benefits, and the possibility of involving the private sector.
15. I therefore reported to the Thirtieth Session of the FAO Conference, in November 1999, that, in the light of the very constructive atmosphere during the meeting of the Contact Group, it appears that the political will existed to bring these important negotiations to a successful conclusion, so that the revised Undertaking might be submitted to the Hundred and Nineteenth Session of the Council, in November 2000. I noted that the Undertaking was at a cross-roads where agriculture, the environment and trade met, and that its successful conclusion had the potential to create considerable synergy between these international processes, in the specific field of food and agriculture.
16. The FAO Conference:
 - considered that the successful completion of the negotiations for the revision of the International Undertaking, as an international instrument for the conservation and sustainable utilization of plant genetic resources for food and agriculture, and for access to these resources, was essential in ensuring global food security and sustainable agriculture for present and future generations;
 - considered that the Undertaking was at the meeting point between agriculture, the environment and commerce, and agreed that there should be consistency and synergy in the agreements being developed in these different sectors. It felt that early success in these negotiations should allow the agricultural sector to shape solutions that took its specific needs into account;
 - agreed that the Chairman's Elements developed in Montreux, Switzerland, in January 1999 should continue to provide the framework in which to seek further consensus on the text of the revised Undertaking. It appealed for the Negotiating Parties to show flexibility and a spirit of constructive compromise in this regard;
 - agreed that a cornerstone of the revised Undertaking should be the Multilateral System for Access and Benefit-sharing;
 - confirmed that the negotiations on the revision of the International Undertaking would proceed on the basis that the Undertaking would take the form of a legally-binding instrument, closely linked to FAO and the Convention on Biological Diversity. It recognized that the full implementation of the *Global Plan of Action for the Conservation and Sustainable Utilization of Plant Genetic Resources for Food and Agriculture* would be greatly facilitated by the funding strategy of the International Undertaking;
 - requested that the text of the revised International Undertaking be finalized, as planned, for submission to the Hundred and Nineteenth Session of the FAO Council in November 2000. It appealed to all countries to facilitate this process. In this spirit, Members stressed the importance for countries that are developing relevant legislation to do so in such a way that

would enable them to take into account and allow for the elements of this new international agreement.⁵

17. The Conference expressed satisfaction with the progress made during 1999, but stressed that much work was still needed in order to finalize the negotiations in the year 2000, and expressed its desire that I carry the process through to completion.
18. The Contact Group held a further meeting in April 2000, with very intense negotiations. On this occasion, in particular, a number of new and creative ideas were introduced and negotiated by countries for the Articles on: Facilitated Access; the Sharing of Monetary Benefits on Commercialization; and Financial Resources. As a result, although a number of issues remain to be resolved, there is now a coherent negotiating text for the overall Undertaking, and a good understanding of the inter-relationship between the issues and where realistic consensus can be reached in each Article. The objective remains to complete the negotiations for the FAO Council this year.
19. It is my fervent hope that the next Conference of the Parties will see the final results of our work, that is, a revised International Undertaking on Plant Genetic Resources, adopted in harmony with the Convention.

⁵ This is consistent with the conclusions of the high level international Panel of Experts on Access and Benefit-sharing, convened by the Convention on Biological Diversity in Costa Rica, 4-8 October 1999, that “in developing national legislation on access, Parties should take into account and allow for the development of the multilateral system to facilitate access and benefit-sharing for plant genetic resources for food and agriculture”, being developed within the negotiations for the revision of the Undertaking.