

**REPORT OF THE  
COMMISSION ON PLANT GENETICS RESOURCES**

**First Extraordinary Session  
Rome, 7 - 11 November 1994**

CONTENTS

	<u>Paragraphs</u>
Introduction	1 - 6
Working Arrangements and Adoption of the Agenda and Timetable	7 - 8
Reports of the Ninth Regular and First Extraordinary Sessions of the Working Group	9 - 10
Revision of the International Undertaking - Stage I: The Integration of the Annexes into the Main Text of the Undertaking, and adjusting the Undertaking in Harmony with the Convention on Biological Diversity	11 - 15
Progress Report on the Preparatory Process for the Fourth International Technical Conference on the Conservation and Utilization of Plant Genetic Resources	16 - 30
Report to be submitted to the First Conference of the Parties to the Convention on Biological Diversity: Progress Report on Resolution 3 of the Nairobi Final Act	31 - 36
The International Network of <i>Ex situ</i> Germplasm Collections: Progress Report on Agreements with the International Agricultural Research Centres (CGIAR Centres)	37 - 44
The Possible Broadening of the Scope of the Commission, to Other Forms of Biodiversity for Food and Agriculture	45 - 51
Date and Agenda of the Next Session	52 - 57
Adoption of the Report	58

Appendices

- A. Agenda for the First Extraordinary Session
- B. List of Documents
- C. Report by the Chairman of the Ninth Session of the Working Group of the Commission
- D. Report by the Chairman of the First Extraordinary Session of the Working Group of the Commission
- E. Members of the FAO Commission on Plant Genetic Resources, and/or countries which have adhered to the International Undertaking on Plant Genetic Resources
- F. List of Delegates and Observers

## **INTRODUCTION**

1. The First Extraordinary Session of the Commission on Plant Genetic Resources was held in Rome from 7 to 11 November 1994. A list of delegates and observers is attached as *Appendix F*.
2. In the absence of Mr. Rashad Ahmed Abo Elenein (Egypt), Chairman of the Fifth Session of the Commission, Mr. Brad Fraleigh (Canada), first Vice-Chairman of the Commission, welcomed delegates, for the important task of the step-by-step revision of the International Undertaking. A decade of hard work and dedication lay behind the Commission. He hoped this would now lead to a worldwide agreement for the conservation and sustainable use of plant genetic resources for food and agriculture.
3. Mr. Hartwig de Haen, Assistant Director-General, Department of Agriculture, further welcomed delegates. The Extraordinary Session of the Commission had been convened in response to Conference Resolution 7/93, which provided for FAO's response to Resolution 3 of the Nairobi Final Act of the Conference on Biological Diversity, and foresaw negotiations among governments, in particular on the question of access to plant genetic resources for food and agriculture and the realization of Farmers' Rights, in full harmony with the provisions of the Convention on Biological Diversity. The main subject before the Commission was the revision of the International Undertaking. A progress report on the Fourth International Technical Conference on Plant Genetic Resources was also to be considered. He stated that the processes of the revision of the Undertaking, and the preparation of a Global Plan of Action, should be complementary and integrated.
4. He drew attention to the financial implications, both for extra sessions of the Commission, and for ensuring the participation of developing countries. FAO had earmarked US\$ 433,000 by reallocation of regular programme funds for the costs of the extra sessions. FAO had written to potential donors in May 1994, and had organized a donor meeting on 7 October, to seek support for such participation: he was pleased to note that one donor, Canada, had provided sufficient funds to cover the participation of a number of developing countries that had requested assistance in the current session.
5. Mr. de Haen noted that, while harmonizing the Undertaking with the Convention, a number of other matters would need to be taken into account, particularly the TRIPs agreement of the GATT Uruguay Round, UPOV and Agenda 21 of the UNCED. The guidance of the Commission would be needed. Guidance was also required on the preparation of documents for Stage III of the revision, when a number of key legal and institutional questions would arise.
6. Mr. de Haen stressed the uniqueness of plant genetic resources for food and agriculture: they were the basis of long-term food security; they were the direct result of ten thousand years of human activity; and there was great interdependence of all countries for these resources. Finally, he noted the importance of the Fourth International Technical Conference on Plant Genetic Resources and the preparatory process, which would also address access to genetic resources, elaborate the Global Plan of Action, and provide a technical basis for the realization of Farmers' Rights, in the light of Agenda 21 and the Convention.

## **WORKING ARRANGEMENTS AND ADOPTION OF THE AGENDA AND TIMETABLE**

7. The Legal Counsel informed the Commission of FAO's normal practice regarding extraordinary sessions of intergovernmental bodies, according to which the officers elected by the last regular session usually remained in office until new officers were elected at the next regular session. He stressed, however, that all decisions on such matters, and the organization of its work, were the prerogative of the Commission.

8. After considerable discussion, it was agreed to accept a proposal advanced by the Group of 77 and the OECD group, that this procedure be followed, on this particular occasion, pending any decision to the contrary, following further consultation between the groups. The Commission noted that the first and second Vice-Chairs, respectively Mr. B. Fraleigh (Canada) and Mr. R.S. Rana (India), had agreed to alternate in chairing the Commission. Following a further proposal from the Group of 77 and the OECD group, Mr. M. Chauvet (France), chairman of the drafting committee of the previous session, was elected as rapporteur for the Commission. The provisional agenda and time-table were adopted, with a provision that there might be need for some flexibility to allow full discussion of Stage I issues.

#### **REPORTS OF THE NINTH REGULAR AND FIRST EXTRAORDINARY SESSIONS OF THE WORKING GROUP**

9. This item was introduced by Mr. J.M. Bolívar (Spain) who had chaired the two sessions of the Working Group held in Rome, 11 and 12 May 1994 and 3 and 4 November 1994, respectively. Both sessions had considered similar questions. Before presenting the work of the First Extraordinary Session therefore, he referred delegates to the report of the Ninth Regular Session, which had been distributed (*Appendix C*).

10. The Commission, in discussing the report of the First Extraordinary Session (*Appendix D*), appreciated the contribution of the Working Group, and its hard work in preparing the negotiating sessions of the Commission. The Commission noted the Working Group's suggestions for the organization of its work. It expressed particular appreciation for the great commitment of the Chairman, Mr. J.M. Bolívar (Spain), and for his excellent reports.

#### **REVISION OF THE INTERNATIONAL UNDERTAKING - STAGE I: THE INTEGRATION OF THE ANNEXES INTO THE MAIN TEXT OF THE UNDERTAKING, AND ADJUSTING THE UNDERTAKING IN HARMONY WITH THE CONVENTION ON BIOLOGICAL DIVERSITY**

11. The Legal Counsel introduced the item. He recalled that, in Stage I, the objective was to integrate the annexes into the body of the International Undertaking, and harmonize the text with that of the Convention on Biological Diversity. The Working Group, at its Ninth Regular Session, had considered that it had no mandate to negotiate the text of the revised Undertaking, and had therefore confined itself to preparing annotations - with comments made by participants, on the various items - for the first draft prepared by the Secretariat. It had wished it to be made clear that the comments were in no way intended to be endorsements or recommendations, but merely ideas that might contribute to the Commission's discussions. These ideas were presented in neutral language in the draft that had been prepared by the Secretariat, without any attempt to record, in any way, the degree of support received in the Working Group for each idea.

12. To further prepare the work of the Commission, the Working Group had requested the text to be prepared in two versions (without any substantive changes): the first, in the original format of the Undertaking, and the second in a revised format considered at that session. The two versions were contained in documents CPGR-Ex1/94/4 and CPGR-Ex1/94/4 Alt., respectively. The Working Group, at its First Extraordinary Session, discussed procedural issues, with a view to facilitating the work of the Commission. It had felt that the Commission could use the version in the revised format (document CPGR-Ex1/94/4 Alt), as a basis on which to conduct its further negotiations. The Commission accepted this recommendation.

13. The Commission considered how best to approach the first stage of renegotiating the International Undertaking, and decided to consider the text of the first draft, paragraph by paragraph, noting alternative wordings that countries wished to suggest, the identification of subjects that would require further negotiation, further comments on the structure of the text, and proposals for modifications. It was agreed to begin discussions with Article 1, moving on to the following Articles, and to return to the preamble only once all other Articles had been read. In this way, it would be possible to establish a second draft of the Revised Text of the International Undertaking, incorporating the comments, and the alternative readings that had been proposed, as a basis for further negotiations. It was agreed that the second negotiating draft of the International Undertaking should be prepared as a Secretariat draft, incorporating all comments and changes suggested by members of the Commission, during the discussions. The new draft should set out, in parallel columns, the text of the Undertaking, and the relevant provisions of the Convention on Biological Diversity, to aid the work of the next session of the Commission.

14. It was also agreed that the Commission, at this session, would not formally move to consideration of Stage II issues, before the text had been fully considered, within the framework of Stage I. However, it was also agreed that general comments on the revision of the Undertaking, including the principles expressed in the preamble, might also be made.

15. The Commission accordingly undertook a first reading of Articles 1 to 14 of the text; proposals for modifications, including alternative and new wording, subjects requiring further negotiation, comments on the structure, and general reservations, were noted, in readiness for negotiations at a future session of the Commission.

### **PROGRESS REPORT ON THE PREPARATORY PROCESS FOR THE FOURTH INTERNATIONAL TECHNICAL CONFERENCE ON PLANT GENETIC RESOURCES.**

16. A Progress report on the status of the International Conference and Programme for Plant Genetic Resources (ICPPGR) was presented to the Commission. The Commission unanimously expressed its eagerness to see the Fourth International Technical Conference on Plant Genetic Resources achieve results, and supported the approach taken by the ICPPGR Secretariat, as previously endorsed by the FAO Conference. It complimented the Secretariat on its achievements to date, including the direct contacts that had been established with technical experts and policy makers in countries of all developing country regions, as well as in a number of OECD countries. The importance of the participatory, country-driven approach was reaffirmed, and the role of the Secretariat staff in facilitating this was stressed. However, the Commission expressed concern over the project's short time-frame: in this respect, it was suggested that the Secretariat of the ICPPGR should be strengthened. Some contingency time-planning might be necessary. Some

delegations emphasized the need for pragmatic policy-setting, given the time and resource constraints.

17. The quality of the introductory guidelines for country reports was recognised. It was suggested that developed countries be asked to provide information on the impact of their aid programmes on genetic resource conservation and use, with emphasis on agricultural development projects and programmes.

18. The report on the State of the World's Plant Genetic Resources, and the Global Plan of Action, would cover plant genetic resources for food and agriculture. Some countries felt that this should not include forestry. It was noted that the Global Plan would move the process from words to action.

19. The importance of support for the sustainable utilization of plant genetic resources - as a step towards the realization of Farmers' Rights - was identified as a major objective for the Global Plan of Action, along with their conservation. Other suggested elements for the Global Plan of Action included training, and the transfer of technology. In all these activities, particular attention should be given to supporting farmers and their communities directly. The primary purpose of increased support should be to "add value" to genetic resources, particularly in developing countries.

20. The Secretariat was requested to provide a forward-looking report to the Commission, on technical and scientific questions, especially on the sustainable utilization of plant genetic resources for food and agriculture. The report should include a study on new approaches to plant breeding, which draw upon a wider range of genetic material, and allow the maintenance of a wider genetic base in crops.

21. It was suggested that the Commission review in detail the drafts of the report on the State of the World's Plant Genetic Resources for Food and Agriculture, and the costed Global Plan of Action, for transmission to the International Technical Conference. The Commission should examine outlines of these two reports at its next meeting. The Working Group might provide policy guidance to the Secretariat between sessions of the Commission.

22. The Commission expressed gratitude to Germany, Sweden, Norway and the United States, for their generous contributions to the International Technical Conference and its preparatory process, and welcomed confirmation of the pledges by France (which had also provided the services of an Associate Professional Officer), Italy and Japan. The Commission also expressed appreciation for Canada's in-kind contributions (Canada had also provided the services of an Associate Professional Officer), and for those of Iran. China and Iran announced their intentions to host sub-regional meetings.

23. The Commission expressed concern over the shortfall in funding, for the preparatory process, of about \$US 2 million, as well as the lack of contributions to finance the participation of developing countries in the International Technical Conference itself. The Secretariat reaffirmed that it would spare no effort to seek sufficient resources to allow the participation of two representatives from each developing country, and to meet the remaining funding needs. Germany reported that it was initiating a national funding effort, with these objectives. It was suggested that

the FAO Council, in the absence of sufficient extrabudgetary contributions, make funds available from the Regular Programme, in order to guarantee the success of the process.

24. Germany announced that the International Technical Conference would be held in Leipzig, Germany, from 17 to 23 June 1996. Some delegations stressed the need for the International Technical Conference to have high-level participation. It was even suggested that the International Technical Conference might be held back-to-back with a ministerial-level meeting. It was emphasized that, irrespective of the word, "Technical", in the title of the International Technical Conference, and of the need to assure a high level of technical excellence, the process was both political and technical.

25. The Secretariat was requested to prepare well in advance a draft agenda for the International Technical Conference, for consideration of the Commission at its next regular session.

26. The link between the preparations for the 1996 International Technical Conference and the negotiations, within the Commission, for the revision of the International Undertaking, was discussed. It was reaffirmed that it would be desirable if the process of revising the International Undertaking could be completed in time for the 1996 International Technical Conference, so that the revised Undertaking be available together with the report on the State of the World's Plant Genetic Resources and the Global Plan of Action. However, it was also felt that the revision of the Undertaking should be conducted carefully, and should not be rushed in order to meet this target.

27. It was also noted that the outcome of the ICPPGR would assist the Commission in arriving at understandings which would help the revision of the International Undertaking.

28. The Commission also stressed the important links between the Global Plan of Action, and the workplan of the Convention on Biological Diversity, as well as with the relevant parts of Agenda 21. It therefore considered that, in the preparation of the Global Plan of Action, there should be regular consultations between the ICPPGR Secretariat, and the Secretariats of the Conference on Biological Diversity and the Commission on Sustainable Development, as well as regular contact with the Conference of the Parties to the Convention on Biological Diversity.

29. The Commission suggested that the World Bank, UNDP, and other multilateral financing institutions be contacted to seek assistance in the funding of the ICPPGR, and that projects identified during the elaboration of the Global Plan might also be referred to these agencies. The Commission commended the working relationships established between the ICPPGR Secretariat and IPGRI, and called for the greater involvement of other CGIAR centres. The effective involvement of non-governmental organizations, the private sector and farmers' organizations, in the International Technical Conference and its preparatory process, were considered desirable.

30. It was proposed that consideration should be given to extending subsequent negotiating sessions of the Commission to a duration of two weeks, and that sufficient extrabudgetary funds be sought to cover the participation of two delegates from each developing country. One country suggested that an additional session be convened, in order to allow more time for negotiation, and the contribution of the Commission, acting as a preparatory committee for the 1996 International Technical Conference. The financial implications of these suggestions should be analyzed, and ways and means explored to mobilize funds.

**REPORT TO BE SUBMITTED TO THE FIRST CONFERENCE OF THE PARTIES  
TO THE CONVENTION ON BIOLOGICAL DIVERSITY: PROGRESS REPORT ON  
RESOLUTION 3 OF THE NAIROBI FINAL ACT**

31. The Commission was informed that FAO had submitted a progress report on follow-up to Resolution 3 of the Nairobi Final Act to both sessions of the Intergovernmental Committee of the Convention on Biological Diversity (ICCBD). In expressing appreciation for FAO's report, the second ICCBD had invited FAO to submit a similar progress report to the first Conference of the Parties. This Conference was scheduled to begin in late November, and it had not been possible to bring the draft of the report to the notice of the Commission earlier, for guidance. It was agreed that Commission meetings should be scheduled to permit Commission consideration of reports before submission.

32. The report to the first Conference of the Parties was contained in the information document, CPGR-Ex1/94/Inf. 4, "Progress made on Resolution 3 of the Nairobi Final Act: *Ex Situ* Collections and Farmers' Rights". The Commission took note that the report had been transmitted by FAO to the Interim Secretariat of the Convention. The Commission agreed that, in order to update the information in this report, the report of the First Extraordinary Session of the Commission should be transmitted through the normal channels to the Conference of the Parties to the Convention on Biological Diversity.

33. The Commission noted that the document, CPGR-Ex1/94/5 Supp., "Revision of the International Undertaking: Analysis of Some Technical, Economic and Legal Aspects for Consideration in Stage II", in connection with the issues identified in Resolution 3 of the Nairobi Final Act, contained valuable analysis, and background information that could be of use to the Conference of the Parties. Although the Commission had not discussed or endorsed the document, it was agreed that it should also be transmitted by FAO to the Conference of the Parties to the Convention on Biological Diversity, at the same time, as an information document.

34. The Commission expressed the wish that its deliberations be transmitted, in due course, to the Commission on Sustainable Development, and that the Secretariat ensure, whenever appropriate, that the Commission on Sustainable Development be informed of its work.

35. The Commission was informed of FAO's offer to take part in a joint secretariat for the Convention on Biological Diversity. It expressed firm support for FAO's proposals, and suggested that the document, CPGR-Ex1/94/Inf. 8, "Participation of FAO in the Secretariat of the Convention on Biological Diversity", be brought to the attention of the FAO Council at its 107th session, together with its report.

36. Some delegations expressed the view that the report should address itself to aspects of the promotion of sustainable agriculture, in addition to Farmers' Rights and ex situ collections acquired before the entry into force of the Convention on Biological Diversity. The Commission acknowledged, however, that the report had already been forwarded to the Conference of the Parties to the Convention on Biological Diversity as an information document. It agreed that, for the future, documents must be prepared with adequate time for review and discussion by the Commission.

**THE INTERNATIONAL NETWORK OF *EX SITU* GERMPLASM COLLECTIONS:  
PROGRESS REPORT ON AGREEMENTS WITH THE INTERNATIONAL  
AGRICULTURAL RESEARCH CENTRES (CGIAR CENTRES)**

37. The Legal Counsel introduced documents CPGR-Ex1/94/Inf.5 and Inf. 5/Add.1. The latter document updated the information that had been presented to the Ninth Session of the Working Group, in May 1994. The Working Group had agreed that the changes incorporated in that version of the agreement substantially met the concerns voiced by the Commission. It had endorsed the proposal that the CGIAR Centres and FAO make a joint statement on their common understanding concerning certain provisions of the agreement. Discussions between FAO and the CGIAR Centres had followed, and had led to agreed final texts of the basic agreement and of the Joint Statement. The Legal Counsel wished to place on record the cordial and constructive nature of the discussions with IPGRI. Both texts were annexed to document CPGR-Ex1/94/Inf.5/Add.1. The text of the agreement was identical to that presented to the Working Group in May 1994, with the addition, at the beginning of Article 9, of the expression, "*Subject to the provisions of Article 10 below*". The Joint Statement referred, *inter alia*, to the interpretation of Article 3(b), Article 9 and Article 10. It indicates that the expression, "*without restriction*", should be interpreted consistently with the Convention on Biological Diversity; and states that the conclusion of the agreement represents but one stage of a continuing dynamic process, and that the dialogue between FAO and the CGIAR Centres should continue in the context of the implementation of the Convention on Biological Diversity and the FAO Global System on Plant Genetic Resources.

38. On 26 October 1994, twelve Centres and FAO signed the agreement. To this effect, each of the Centres has delegated to the Chairman of the CGIAR powers to sign the agreement on its behalf whereby they placed their collections in the International Network under the auspices of FAO. This was an important step in giving effect to FAO's Global System on Plant Genetic Resources, and should encourage others holding such collections to sign similar agreements. It was stated that these agreements could evolve in time.

39. The Director-General of IPGRI, on behalf of the CGIAR Centres, expressed great pleasure that the discussions has been brought to a successful conclusion. The CGIAR confirmed that the cooperation that had led to this agreement would continue, which would allow taking into account new decisions taken in the Commission and other relevant international fora.

40. In reply to a question regarding the precise material that the Centres had designated under their agreements, the Director-General of IPGRI stated that only material collected before the entry into force of the Convention on Biological Diversity, was as yet included. Nearly all material held by the Centres (with some exceptions: when material was undergoing multiplication and insufficient seed was available, when the provider had set restrictions, some breeding lines of Centres) had been designated. In future, material that donor countries may wish to deposit would be designated under the agreement only with the consent of the donor countries, and subject to the conditions they imposed, in the context of multilateral or bilateral agreements.

41. The Director-General of IPGRI noted that discussions were ongoing, within the CGIAR, regarding the extent to which it was appropriate to designate breeding lines, when these were genetically closely related. In breeding programmes, many thousands of gene combinations may

be generated annually, without adding significantly to the total gene-pool, which would make long-term storage economically unviable.

42. The Commission warmly congratulated FAO and IPGRI, as well as the other CGIAR Centres, for taking this important step, that will strengthen the Global System, in line with recommendations of Agenda 21. It was also considered to be an important contribution to the process of revising the International Undertaking. This represented the beginning of a new era of cooperation between FAO, the CGIAR Centres and national institutions. It was also recommended that FAO redouble its efforts to have countries put their national collections of plant genetic resources for food and agriculture into the International Network.

43. The question of duplicating material for safety reasons was discussed. The Legal Counsel noted that the agreements, in Article 5, made provision for safety duplication, and for handling emergency situations. The FAO Information and Early Warning System on Plant Genetic Resources for Food and Agriculture would also be relevant for this purpose. He also clarified that, where samples were transferred as safety duplicates to third parties, the obligations to observe standards for their maintenance, and not to seek legal ownership or intellectual property rights over them, would follow the samples. The Assistant Director-General, Agriculture Department, recalled that a number of countries had already offered space within their genebanks for such purposes. FAO was seeking such offers in regions as yet uncovered, for use in emergencies.

44. It was noted that the Commission should actively monitor the functioning of the agreements between FAO and the CGIAR Centres, and, in this context, that Article 6 of the agreements provided that signatories recognized the intergovernmental authority of FAO and its Commission in setting policies for the International Network. It was requested that this item be included in the agenda of the next session of the Commission.

#### **THE POSSIBLE BROADENING OF THE SCOPE OF THE COMMISSION, TO OTHER FORMS OF BIOLOGICAL DIVERSITY FOR FOOD AND AGRICULTURE**

45. The Commission considered, as an information item, document CL 107/18 of the forthcoming session of the FAO Council, which dealt with the possible broadening of the mandate of the FAO Commission on Plant Genetic Resources, to include all genetic resources of interest for food and agriculture. The matter will be formally considered by the FAO Council.

46. The Commission noted various reasons for the broadening of its mandate, and a change of its name to "Commission on Genetic Resources for Food and Agriculture".

47. It was recalled that when, in 1991, the Commission and Council had discussed this possible broadening of the mandate of the Commission, they had considered the idea, at that time, to be premature. However, developments since then - in particular the entry into force of the Convention on Biological Diversity - were felt to have strengthened the arguments for broadening the scope of the Commission. Some countries considered that it was now politically necessary for the scope to be broadened. Others considered that further examination of the proposal was required. In this context, it was pointed out that the Commission would, in any event, have a heavy agenda for its next session.

48. In particular, further clarification was sought on the following points:

- the implications for the workload of the Commission, including the impact on the time available for the discussion of plant genetic resources at sessions of the Commission, and whether the Secretariat envisaged a reduction of work on plant genetic resources after 1996;
- whether the Secretariat of a broader Commission would be drawn from all technical departments in FAO;
- arrangements for the consideration of sectorial issues within a broadened Commission (for example, the possibility of using working groups for specific sectors, and of holding sessions of the Commission on specific themes);
- the implications for the size and composition of member countries' representations in Commission sessions; and
- the financial implications.

49. It was suggested that the FAO Council, and its technical committees, as well as COAG, COFI, and COFO, and the FAO Secretariat, should be invited to address these questions.

50. It was recalled that, in the session of the Working Group that had met immediately before the Commission itself, most countries had been in favour of broadening the scope of the Commission, but had felt that this should be implemented in a step-by-step manner.

51. The Commission agreed that if its mandate were to be broadened, this should be done in a cautious, step-by step manner, possibly beginning with domesticated animal genetic diversity. The inclusion of forest genetic resources, and of microbial genetic resources, within the scope of a broadened Commission, was questioned, prior to a discussion of these issues in COFO, and the deliberations of the first Conference of the Parties to the Convention on Biological Diversity. Some delegations expressed the view that the question of forest genetic resources should be reconsidered in the light of the different initiatives to implement the UNCED Forest Principles.

#### **DATE AND AGENDA OF THE NEXT SESSION**

52. The Commission discussed possible dates for its next regular session, and it was proposed that this should be held between 12 and 23 June 1995. It was agreed that a regular session of the Working Group would be held two months beforehand, to discuss, *inter alia*, Articles 3, Scope; 11, Access and 12; Farmers' Rights, using the documents that had been made available to the present session, but which had not been discussed due to lack of time, and the outcome of the present session. In this way, the Working Group would prepare the Commission's work for the future negotiations. It was recalled that the Working Group did not have a mandate to negotiate, but that its task was to examine various options, and identify the advantages and disadvantages they offered, so that countries might consider them. The Working Group should also further review the progress made and provide guidance for the further development of the ICPPGR.

53. Reference was made to the Latin American Conference on Biodiversity, held in Lima, Peru, on 7 and 8 November 1994, that gave a regional position regarding the questions of biological diversity, and the Convention on Biological Diversity.<sup>1</sup>

54. It was further agreed that the Working Group should meet for three days and that allowance should be made for possible night sessions.

55. The Commission considered the Provisional Agenda that had been proposed at its 5th Session, for its 6th Session, and suggested the modification of the title of Item 8 to read as "Continuation of Negotiations for the Revision of the International Undertaking". High priority should be given to items 7 and 8. The need was stressed to compress other items of the Agenda as much as possible, in order to allow concentration on these important negotiations. It was also agreed that there would be no Working Group immediately prior to the 6th regular session of the Commission.

56. A number of countries expressed great appreciation for the support Canada had given to the participation of delegations from developing countries in the present session of the Commission. The importance of ensuring the presence of representatives from developing countries (particularly scientists and policy makers), in the process of negotiating the International Undertaking, in line with Conference Resolution 7/93, was again stressed. For this purpose, the Commission supported an arrangement whereby donor countries are invited to make it possible that developing country delegates can have their travel expenses provided, and would be provided with an adequate lump sum to cover living expenses in Rome.

57. The Commission warmly thanked the two Vice-Chairpersons for the very able and constructive manner in which they had conducted the Session.

#### **ADOPTION OF THE REPORT**

58. The Commission adopted the Report on 11 November 1994.

---

1 The document in question was at the disposal of Members of the Commission, and Peru would distribute it at the next meeting of the Working Group, as a contribution by the region to the debate.

AGENDA

Item 1 Adoption of the Agenda and Timetable for the session

Item 2 Reports of the Working Group

Item 3 Revision of the International Undertaking

Item 3.1 Stage I: The integration of the annexes into the main text of the Undertaking and adjusting the Undertaking in harmony with the Convention on Biological Diversity

Item 3.2 Stage II: Consideration of other issues to be incorporated into the revised Undertaking at later stages of the process

Item 4 Progress Report on the preparatory process for the 4th International Technical Conference on the Conservation and Utilization of Plant Genetic Resources

Item 4.1 State of the World's Plant Genetic Resources

Item 4.2 Global Plan of Action on Plant Genetic Resources

Item 5 Other Business

Item 5.1 Report to be submitted to the First Conference of the Parties to the Convention on Biological Diversity: Progress Report on Resolution 3 of the Nairobi Final Act

Item 5.2 The International Network of *Ex situ* Germplasm Collections: Progress Report on Agreements with the International Agricultural Research Centres

Item 5.3 The possible broadening of the scope of the Commission, to other forms of biological diversity for food and agriculture

Item 6 Adoption of the Report

**LIST OF DOCUMENTS**

CPGR-Ex1/94/1	Provisional Annotated Agenda
CPGR-Ex1/94/2	Report by the Chairman of the Working Group on the Group's Ninth Meeting
CPGR-Ex1/94/3	Revision of the International Undertaking. Mandate, context, background and proposed process
CPGR-Ex1/94/4	Revision of the International Undertaking. Stage I: Integration of the annexes and harmonization with the Convention on Biological Diversity. (First Draft)
CPGR-Ex1/94/4 Alt.	Revision of the International Undertaking. Stage I: Integration of the annexes and harmonization with the Convention on Biological Diversity. (First Draft, in a possible new structure)
CPGR-Ex1/94/5	Revision of the International Undertaking. Issues for consideration in Stage II: Access to Plant Genetic Resources, and Farmers' Rights
CPGR-Ex1/94/5 Supp.	Revision of the International Undertaking. Analysis of some technical, economic and legal aspects for consideration in Stage II.
CPGR-Ex1/94/5 Annex	Survey of existing data on <i>ex situ</i> collections of plant genetic resources for food and agriculture
CPGR-Ex1/94/6	Progress Report on the International Conference and Programme for Plant Genetic Resources
CPGR-Ex1/94/Inf. 1	The International Undertaking on Plant Genetic Resources
CPGR-Ex1/94/Inf. 2	The Convention on Biological Diversity and related Resolutions
CPGR-Ex1/94/Inf. 3	Global System for the Conservation and Utilization of Plant Genetic Resources
CPGR-Ex1/94/Inf. 4	Information document presented to the First Session of the Conference of the Parties to the Convention on Biological Diversity (28 November - 9 December 1994) on Progress Made on Resolution 3 of the Nairobi Final Act: <i>Ex situ</i> Collections and Farmers' Rights.
CPGR-Ex1/94/Inf. 5	The International network of <i>ex situ</i> germplasm collections: Progress report on agreements with the International

B2

Agricultural Research Centres, discussed by the Ninth Session of the Working Group (11 - 12 May 1994).

- |                                                                      |                                                                                                                                                                       |
|----------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CPGR-Ex1/94/Inf. 5 Add.1                                             | The International Network of <i>ex situ</i> germplasm collections: Updating of the Progress Report on Agreements with the International Agricultural Research Centres |
| CPGR-Ex1/94/Inf. 6                                                   | Report to be Submitted to the 107th Session of the Council: Broadening the mandate of the FAO Commission on Plant Genetic Resources                                   |
| CPGR-Ex1/94/Inf. 7                                                   | Statement of Competence and Voting Rights Submitted by the European Economic Community (EEC) and its Member States                                                    |
| CPGR-Ex1/94/Inf. 8                                                   | Participation of FAO in the Secretariat of the Convention on Biological Diversity                                                                                     |
| Background Study - Paper No. 1<br><i>(available only in English)</i> | The Appropriation of the Benefits of Plant Genetic Resources for Agriculture: An Economic Analysis of the Alternative Mechanisms for Biodiversity Conservation        |
| Background Study - Paper No. 2<br><i>(available only in English)</i> | Sovereign and Property Rights over Plant Genetic Resources                                                                                                            |
| Background Study - Paper No. 3<br><i>(available only in English)</i> | Providing Farmers' Rights Through <i>in situ</i> Conservation of Crop Genetic Resources                                                                               |
| Background Study - Paper No. 4                                       | Identifying genetic resources and their origin: <i>(available only in English)</i> The capabilities and limitations of modern biochemical and legal systems           |

**REPORT BY THE CHAIRMAN OF THE WORKING GROUP  
ON THE GROUP'S NINTH MEETING**

**INTRODUCTION**

1. The ninth meeting of the working group, held on 11 and 12 May 1994, was attended by representatives from Australia, Brazil, Canada, Cape Verde, Egypt, Ethiopia, France, Germany, India, Israel, Japan, Libya, Madagascar, Malaysia, Peru, Poland, Sweden, Thailand, Tunisia and Venezuela. The European Union was also represented at the meeting, in accordance with paragraphs 8 and 9 of Article II of the FAO Constitution. The meeting was chaired by Mr M. Bolívar (Spain).
2. The Chairman called the meeting to order. The Assistant Director-General, Mr de Haen, then presented the provisional agenda. He noted the importance of the themes to be discussed, and the negotiations under way which were designed to provide a solid basis for the conservation and sustainable use of plant genetic resources for food and agriculture purposes. Mr de Haen emphasized the features which distinguished these resources from other classes of biodiversity: they were vital to long-term food security and to the satisfaction of the basic needs of present and future generations; their biodiversity had been steered by human beings; and countries were far more interdependent on each others' plant genetic resources than on other classes of biodiversity. The uniqueness of plant genetic resources for agriculture and food meant that they might have to be dealt with in a different way from other classes of biodiversity. Mr de Haen mentioned Resolution 7/93 of the FAO Conference, and stated that the Director-General had guaranteed Regular Programme funding for the Commission to prepare and hold regular and extraordinary negotiation meetings in 1994 and 1995 in implementation of the Resolution. He also pointed out that the Regular Programme resources available would not suffice to allow economic support for the attendance of delegations from the developing countries. Accordingly, extra-budgetary resources had been requested from potential donors.
3. After running through the provisional agenda, Mr de Haen informed members that, in line with the spirit of the recommendations made at the Commission's fifth meeting, the Chairman of the Intergovernmental Committee on the Convention on Biological Diversity had been invited to the present working group meeting. The Director-General of IPGRI had also been invited to attend the debate on agenda item 4: International Network of *Ex Situ* Germplasm Collections: Progress Report on Agreements with the International Agricultural Research Centres (CPGR/94/WG9/6).
4. The agenda was approved, subject to the addition of an item 6 proposed by the Canadian Delegation: Examination of the Agenda for the next Commission meeting.
5. A number of Delegations emphasized how important it was that developing countries be able to play a full part in the meetings, stressing that no efforts should be spared to secure the requisite funds. This view received broad endorsement.

**REVISION OF THE INTERNATIONAL UNDERTAKING**

**Stage I: Integration of the Annexes and Harmonization with the Convention on Biological Diversity  
(CPGR/94/WG9/2 and CPGR/94/WG9/3)**

6. The Legal Adviser, Mr Moore, presented the relevant documents and cited Resolution 7/93 of the Conference which requested that intergovernmental negotiations be held for the adaptation of the International Undertaking on Plant Genetic Resources, in harmony with the Convention on Biological Diversity. Mr Moore also mentioned the need to examine the legal status of the International Undertaking and its relation to the Convention on Biological Diversity, as well as the recommendation of the Commission and the Conference that the Undertaking be revised on a step-by-step basis.

7. Mr Moore then proposed that the Undertaking now be discussed article by article, leaving the preamble until last.

8. In order to proceed on a step-by-step basis as recommended by the Commission and the Conference, the Working Group accepted Mr Moore's proposal. Given the scale and diversity of the comments and proposals made on each article by the various delegations, and as the Working Group is not a negotiating body, it was agreed that the secretariat would add the Group's comments to those already contained in the document, thereby giving the Commission further items for discussion.

9. Several countries highlighted the importance of altering the structure of the document, as set out in the Annex, to offer the Commission a clear and useful text when it came to discuss the articles. However, it was noted that the new lay-out might make it more difficult to compare the text with the original Undertaking. It would therefore be helpful for the secretariat to draft two versions of the document, one using the present format and the other using the one proposed in the Annex, so that the Commission could decide which it preferred to work with.

10. During the examination of the Undertaking and its Annexes, the following main points were made:

\_. The Working Group is not a negotiating body. Its task is to raise basic points and to highlight the principles and concepts which will aid the Commission in its negotiations.

\_. The negotiation of the revised Undertaking must be based on the results of over ten years of negotiations, which are reflected in the Undertaking and its Annexes. The consensus which had previously been secured must be maintained. The essence of the Undertaking must be conserved, and no unnecessary alterations must be made. Account must also be taken of the changed situation.

\_. The Undertaking must fit in with the Convention, but it must be remembered that two subjects (access to resources conserved *ex situ* which are not addressed by the Convention, and Farmers' Rights) are not included in the Convention and must be discussed within the FAO World System of Plant Genetic Resources.

\_. As far as possible, the wording of the revised Undertaking must be aligned with that of the Convention.

\_-

The revised Undertaking must also take account of other international agreements, such as Agenda 21 and the Uruguay Round, particularly the provisions on *sui generis* intellectual property systems for plant varieties, within the context of TRIPS. \_It would be desirable for the revised Undertaking to be legally binding. \_It was felt that the specific question of plant genetic resources for food and agriculture purposes merited specific discussions and solutions which might not necessarily be valid for other classes of biodiversity.

\_International cooperation is needed to avoid the loss of endangered plant genetic resources and to ensure a better distribution of the benefits derived from them.

\_The revision of the Undertaking should alter its format to include conditions of access to germplasm, financial aspects, Farmers' Rights, legal and institutional aspects, and international cooperation.

\_The revised Undertaking should cover conservation and sustainable use of plant genetic resources for food and agriculture purposes. Some countries felt that the Undertaking should also cover medicinal plants. Others disagreed. A distinction was drawn between cultivated and non-cultivated medicinal plants.

\_It was important that the secretariat prepare the new version of the document as soon as possible, incorporating the comments made at the present meeting on the individual articles.

\_It was agreed that the revision process must be done with the cooperation of the Conference of the Parties. It was also noted that the work should be done in close contact with the Commission on Sustainable Development.

## **Stage II: Consideration of other Topics to be incorporated in the revised Undertaking at Later Stages of the Process (CPGR/94/WG9/2 and CPGR/94/WG9/4)**

11. The Secretary of the Commission, Mr Esquinas-Alcázar, introduced this item. He pointed out that the second stage in the revision of the Undertaking would address the following issues identified in Resolution 7/93:

\_access on mutually agreed terms to plant genetic resources, including *ex situ* collections not addressed by the Convention on Biological Diversity;

\_ "the need to realize Farmers' Rights".

12. One country felt that discussion should be limited to a) access to *ex situ* collections existing before the entry into force of the Convention on Biological Diversity, and b) Farmers' Rights.

13. However, several countries thought that, in accordance with Resolution 7/93, the discussion should also consider access to new collections and the case for framing a multilateral agreement embracing both types of collection. They considered that the Parties were unlikely to limit the regulation of access to plant genetic resources to bilateral agreements. These countries stressed that plant genetic resources for food and agriculture purposes came within FAO terms of reference.

14. It was also proposed that discussion of the second stage of the revision of the Undertaking should include these institutional aspects.

15. One country emphasized the difficulty of plenary negotiations and suggested that working groups be set up at Commission meetings as a discussion forum open to all countries. Other countries pointed out that the developing nations would find it difficult to send enough delegates to participate in different working groups at the same time.

16. It was felt that the negotiations should be confined to plant genetic resources for food and agriculture purposes, and it was proposed that this and other comments made by the delegates in response to the questions raised in the secretariat paper be included in the revised document to be presented at the extraordinary session of the Commission.

**PROGRESS REPORT ON THE INTERNATIONAL CONFERENCE AND PROGRAMME  
ON THE CONSERVATION AND UTILIZATION OF PLANT GENETIC RESOURCES  
(CPGR/94/WG9/5)**

17. The Assistant Director-General, Mr de Haen, introduced this item. He noted that the International Technical Conference would be held in June 1996. He stressed that it should constitute a concrete step towards world food security, and emphasized the participatory nature of the Global Plan of Action. He charted the progress of the preparations:

\_.setting-up of a Secretariat;

\_.finalization of guidelines for the drafting of country reports;

\_. cooperation with other bodies;

\_.initial contacts with the countries for the drafting of their reports.

18. Around 80 to 85 questionnaires containing the requisite information had already been returned by the Member Nations.

19. US\$2.7 million in funding had already been committed, and there were firm pledges for almost another million. This meant that around US\$ 4 million were still needed for total project funding. In these conditions, FAO could not obtain commitments, even though these were necessary to expedite the preparatory process. Support was also needed to enable the developing countries to play an active part in the process.

20. The Working Group expressed concern at these financial problems and their repercussions on the preparatory process. It urged that funds be mobilized from all possible sources. It also emphasized the importance of active participation of the developing countries in both the preparatory process and the Conference.

21. The Working Group noted that both the revision of the Undertaking and the preparation of the "State of the World" Report and the Plan of Action should be viewed as part of the preparatory process carried out by countries under the guidance of the Commission and its Working Group within the context of the Global System on Plant Genetic Resources. It also pointed out that country consultations and cooperation with other bodies should be stepped up.

22. The Group stressed that although the Conference would not be solely technical in nature, all aspects of plant genetic resources for food and agriculture purposes should be examined with due scientific rigour.

23. The country hosting the Conference expressed concern about possible failure to respect the scheduled dates.

**INTERNATIONAL NETWORK OF *EX SITU* GERMPLASM COLLECTIONS:  
PROGRESS REPORT ON AGREEMENTS WITH THE INTERNATIONAL AGRICULTURAL  
RESEARCH CENTRES (CPGR/94/WG9/6)**

24. This item was introduced by the Legal Adviser, who elucidated the negotiations which had taken place with countries and international centres at the request of the Commission. Mr Moore told the Group that 34 governments had offered to place their *ex situ* collections under FAO auspices, and chosen their preferred model agreement, while nine of them had already confirmed that they would sign the agreement.

25. The Working Group reviewed the latest draft of the agreement with the international centres, noting that it was the fruit of negotiations between FAO and the centres conducted through IPGRI.

26. The Working Group agreed that the changes incorporated in the latest version substantially met the concerns about the previous drafts, voiced by the Commission at its fifth meeting.

27. Certain countries thought that the draft still left room for improvement, but felt that further changes would lead to delays in its formalization. In their view, it was important that the CGIAR centres integrate their germplasm collections into the FAO network as soon as possible. This was why it was important to sign the agreement in its present form. Some members of the Working Group wished to be informed of any major change to the final version of the agreement. Some countries thought that the words "without restriction" in Article 9 might clash with certain articles of the Convention on Biological Diversity and impede negotiations on the revision of the Undertaking. The Working Group therefore proposed that when the final agreements were drawn up, the case for deleting the words "without restriction" should be discussed with the centres. The Legal Adviser pointed out that the agreement was for a four-year period. He suggested that the best way of tackling the "without restriction" problem might be a joint FAO-IPGRI declaration to the Commission on Plant Genetic Resources, so that the agreement would not be held up. Mr Iwanaga, representing IPGRI, seconded this proposal, which the Working Group then endorsed.

**DRAFT TERMS OF REFERENCE AND PROCEDURES FOR THE WORKING GROUP  
(CPGR/94/WG9/7)**

28. The Working Group examined the paper on this subject which had been prepared by the secretariat pursuant to recommendations made by the Commission.

29. The procedure for electing Working Group members was discussed at some length. It was agreed that election should be at the discretion of the regional groups, as should the question of rotation and continuity.

30. The Legal Adviser noted that the election of the Chairman and Vice-Chairman was up to the Commission.

31. Some countries felt that allowing observers to attend "upon request" might lead to over-representation of the developed countries, which could be undesirable during negotiations. They suggested that observers only be allowed to take the floor at the Chairman's request.

32. The Working Group recommended that the subject, with the Group's comments, be discussed by the Commission.

#### **EXAMINATION OF THE AGENDA FOR THE NEXT COMMISSION MEETING**

33. The secretariat distributed copies of the provisional agenda for the sixth meeting of the Commission on Plant Genetic Resources, scheduled for 1995. The provisional agenda had been adopted at the fifth meeting.

34. The Secretary of the Commission noted that the extraordinary meeting to be held in autumn 1994 would seek to: i) negotiate the revision of the International Undertaking in line with Resolution 7/93; and ii) discuss the preparation of the report on the State of World Plant Genetic Resources, the Global Plan of Action, and other preparations for the Fourth International Technical Conference.

35. The Working Group agreed that the extraordinary meeting of the Commission should confine itself to plant genetic resources for food and agriculture purposes. It was also agreed that the secretariat should present a report on the financial position of the trustee project for the International Conference and Programme on the Conservation and Utilization of Plant Genetic Resources.

36. The Working Group asked that the provisional agenda for the sixth meeting of the Commission, adopted at the fifth meeting, include detailed information on FAO programmes and projects on the conservation and use of plant genetic resources. This might take the form of an item 6: Reports, programmes and activities on plant genetic resources.

**REPORT OF THE CHAIRMAN OF THE WORKING GROUP  
ON ITS FIRST EXTRAORDINARY SESSION**

**(Rome, 3 and 4 November 1994)**

1. The first extraordinary session of the Working Group, held on 3 and 4 November 1994, was attended by representatives of Australia, Brazil, Cape Verde, Canada, Egypt, France, Germany, India, Israel, Japan, Libya, Madagascar, Malaysia, Mexico, Peru, Sweden, Tunis and Venezuela. The European Community also participated in accordance with paragraphs 8 and 9 of Article II of the FAO Constitution. The meeting was chaired by Mr J.M. Bolívar (Spain).
2. After the session had been opened by the Chairman, the Assistant Director-General Dr de Haen presented the provisional agenda. He emphasized the importance of considering the two items identified in Resolution 3 of the Final Act of Nairobi. He also referred to the process of revision of the International Undertaking, which could be undertaken in three staggered phases: a first integrating the annexes in the text of the Undertaking; a second further developing the Undertaking, with the inclusion of the issues of access to plant genetic resources and implementation of farmers' rights; and, finally, a third stage centring on juridical and institutional aspects to give effect to the revised Undertaking. He mentioned the need for discussions to take other developments into account, such as the Convention on Biological Diversity, TRIPS, UPOV and Agenda 21. The first and second phases would be discussed in this meeting and in that of the Commission, but aspects relating to the third phase would inevitably also emerge because of the general overlapping of issues.
3. Dr de Haen mentioned the substantial financial resources that would be needed for the process of revision of the Undertaking and announced that some additional US\$433 000 had been earmarked for the organization of these meetings through the reallocation of resources under the Regular Programme. He recalled that, its last session, the Working Group had underlined the importance of ensuring that the developing countries were involved in the negotiations. The FAO Secretariat had contacted potential donors and was pleased to announce that Canada had provided Can\$38 000 for this purpose. However, additional funds would be needed for future negotiation meetings and for the IV International Technical Conference. He reported that important activities were already taking place in connection with this IV International Technical Conference and thanked those countries that were involved in the organization of regional meetings. He welcomed the signing of the Agreement between FAO and the IARCs of the CGIAR to place their collections under the auspices of FAO, and informed the meeting that FAO had sent formal notification of its willingness to participate in a joint secretariat of the Convention on Biological Diversity, which would be considered at the first session of the Conference of the Parties.
4. The Legal Adviser, Mr Moore, introduced documents CPGR-Ex1/94/4 and CPGR-Ex1/94/4 Alt. He stressed that the Working Group was not a negotiating body but that, at its last session, it had put forward a number of suggestions as a panel of experts. These had been presented in neutral form without indicating the support that they had received.

5. The Working Group congratulated the Secretariat on the excellent quality of the documents submitted. The Group reiterated the fact that it was not a forum for negotiation and that its task was to prepare the work of the Commission. It also considered that the organizational arrangements for the negotiations, including the decision whether or not to establish a drafting and other groups, should be left to the Commission itself.
6. The Working Group noted with satisfaction that, as it had suggested at its last ordinary session, the Secretariat had prepared two versions of the text of the International Undertaking to be revised in accordance with the Convention: the first version, included in document CPGR-Ex1/94/4, provides the text in its original form; the second, given in document CPGR-Ex1/94/4 Alt, presents the same text but with a new form, as proposed at the last session. Both documents report the observations made, which should not be considered as recommendations to the Commission but merely as suggestions for possible consideration during the negotiating process. The Working Group felt that the work of the Commission could be facilitated if it based its work on the version with the new form, as given in document CPGR-Ex1/94/4 Alt. This, however, was not to be interpreted, in any way, as a recommendation regarding the substantive matters to be negotiated.
7. In the opinion of the Group, the revision of the Undertaking should begin with Article 1 rather than with the Preamble, followed by discussion on how to reconcile the text of the Undertaking with the Convention. Attention could then be given to Article 2 which would enable the terminology to be harmonized; then to Article 3, with discussion on the type of resources included in the Undertaking, and so on, leaving discussion of the Preamble to the very end.
8. It was suggested that discussion of the juridical tie-in of the Undertaking should be left to a later stage, and not dealt with prior to completion of phases 1 and 2. It was generally agreed that the revision of the Undertaking should be taken step by step, without undue haste. While one country stated that the negotiation process should be completed before the Technical Conference of 1996, another indicated that these were independent processes, and that negotiation of the International Undertaking should pursue its normal course without being necessarily linked to the Conference, though so much the better, if it were completed beforehand.
9. The Group mentioned the advisability of employing, as far as possible, the terminology of the Convention in the revised text of the Undertaking, using terms such as "sustainable use", "sharing in a fair and equitable way .... the benefits", "sovereign rights of States", etc. It also mentioned the importance of technology transfer for developing countries and that the countries of origin of the resources should be involved in research on the use and conservation of biodiversity and should have access to information. Financial resources would be needed for this purpose.

10. One country was of the opinion that access to plant genetic resources covered two spheres:
  - (a) access to *ex situ* collections not covered by the Convention;
  - (b) access to plant genetic resources in general.

Other countries felt, however, that conditions of access to both types of resource should be dealt with concurrently, and indicated that countries' sovereign rights were not in contradiction to the establishment of multilateral agreements, which were part and parcel of the exercise of such sovereign rights.

11. Some countries considered that the revision of the Undertaking should be restricted to the provisions of Resolution 3 of the Final Act of Nairobi. Others, on the other hand, indicated that the Commission's mandate had been determined by Resolution 7/93 of the Conference of FAO, which had been unanimously adopted after extensive negotiation. This Resolution defines a much broader scope of negotiation than that referred to in Resolution 3 of Nairobi, as it includes revision of the International Undertaking and access to all plant genetic resources for food and agriculture. One country recalled that the report of the second session of the ICCBD held in Nairobi, in June/July 1994, had expressed firm general endorsement of the process of renegotiation of the International Undertaking as stipulated in Resolution 7/93 of the Conference, for this to be harmonized with the Convention.

12. The importance of the issue of farmers' rights was emphasized. It was agreed that this concept needed to be further developed and that such rights should be made enforceable, subject to already existing terms. Efforts would have to be made to protect and broaden these rights and, in this connection, a number of countries suggested looking into the possibility of establishing an international intellectual property system for the protection of plant genetic varieties obtained from traditional farmer practices, a system which could be *sui generis*. One country stated that compensation for these rights should extend beyond the level of a fund that was also directed towards the conservation of plant genetic resources. There was general consensus that farmers' rights and access to plant genetic resources were closely linked issues. One country drew attention to the relevance of document CPGR-Ex1/94/5 Sup. which could shed much light on these matters.

13. The Working Group was pleased to hear the report of the Secretariat on progress made in preparation for the IV International Technical Conference and welcomed the Memorandum established between FAO and the IPGRI for the preparation of this Conference. The Delegation of Germany informed the session that the Technical Conference would be held in Leipzig. The Working Group noted that the Commission would have to give the Secretariat guidelines on the preparatory process at its extraordinary session. It was observed that national programmes on plant genetic resources for food and agriculture were already being implemented within the framework of the Convention, and that these should be adequately coordinated. Mr Fowler reported that he had been assured by UNEP that the studies in question were indeed complementary. A number of questions were raised on the group of advisory experts for the preparation of the Technical Conference. It was mentioned that this group of advisers should not assume the steering functions of the Commission. The participation of NGOs and the private sector in the Technical Conference was also discussed, as was the desirability of their active involvement. One country felt that a report on the status of plant genetic resources might not be

sufficient to involve the private sector and that perhaps a report on the exchange of such resources might have more appeal. Another country wondered to what extent the preparatory work of the Technical Conference could be of interest to the next session of the Commission on Sustainable Development and requested that the Commission be sent a report on progress to date in the preparation of the Conference, together with the report sent to the Conference of the Parties on progress made regarding Resolution 3 of the Final Act of Nairobi.

14. One country stated that one fundamental issue to be considered when preparing for the International Technical Conference was the forest sector, and was of the opinion that forestry activity should not be included in the Global Plan of Action or dealt with at the Technical Conference. It requested that its position be recorded in this report.

15. Mr Fowler reported that no positive answer had so far been received regarding the intention of the GEF to contribute to the Technical Conference process. With regard to the recruitment of the group of expert advisers, he suggested that certain leeway could perhaps be given to the Secretariat. He recalled that the Secretariat for the preparatory work for the Technical Conference had only existed for two months. He also explained that the documents that had been sent to the countries for their reports were not questionnaires, but guidelines.

16. The Working Group welcomed the Agreement between FAO and the IARCs of the CGIAR, whereby these placed their collections in the International Network under the auspices of FAO. This Agreement was held to represent an important step in giving effect to FAO's Global System on Plant Genetic Resources and should encourage those holding other collections to sign similar agreements. One country noted that negotiations to include national collections in the International Network should be flexible, as the Commission had agreed, and should be based on the use of different models, such as those already defined by the Legal Office of FAO.

17. The Director-General of IPGRI, who had been invited to join in the discussions of this item, also expressed his satisfaction with the Agreement which would cover some 450,000 accessions, representing 90 percent of the materials in the Centres. He explained that the Agreement stipulated that the Centres did not claim ownership of these materials but acted as their depositaries for the benefit of the international community. He explained that the Agreement would apply to plant genetic resources not covered by the Convention on Biological Diversity and to those that had subsequently been included, but in this case only when the countries of origin agreed. Some countries might consider it in their interest to participate in international programmes. One country was of the opinion that this Agreement only covered *ex situ* collections that were not covered by the Convention and requested that its standpoint be duly recorded in the report of the Working Group.

18. The question of compatibility between the Agreement and the Convention was raised. Several countries considered that it tallied with the Convention and could not be interpreted as obstructing the exercise of countries' sovereign rights. It was recalled that in Article 6 of the Agreement, the Centres acknowledged the intergovernmental authority of FAO and its Commission to establish the policies of the International Network. The Legal Adviser, Mr Moore, drew attention in this connection to the joint declaration of FAO and the CGIAR Centres and indicated that the Agreement was part of an ongoing process and was therefore subject to modification as circumstances changed.

19. It was also stated that up until now, these collections had lacked clear juridical status and that the Agreement provided a juridical base which, if necessary, could be modified to reflect international agreements reached by countries as a result of the negotiations in process within the framework of the Convention and of the revision of the International Undertaking. It was also mentioned that the preparatory work for the IV International Technical Conference could help identify solutions to some of the outstanding issues.

20. With regard to the possible broadening of the Commission's mandate to include other forms of biological diversity related to food and agriculture, most countries were in favour of such a measure, though some felt that this should be done in stages. It was also stated that specific international undertakings would have to be envisaged for each distinct sector of biodiversity, in accordance with respective biological characteristics. The importance of animal genetic resources was emphasized as was the significant technical advance that had been made in this area. This might be a useful sphere to begin the broadening of the Commission's mandate. It was also mentioned that the broadening of the Commission's mandate and the revision of the International Undertaking were two independent processes. Several countries called for a study into the possible financial implications of a broadened mandate.

21. The Secretary of the Commission, Dr Esquinas, reported on cooperation between government bodies and the Secretariat of the Convention. He reported that, as part of this cooperation, FAO had sent progress reports on implementation of Resolution 3 of the Final Act of Nairobi to the first and second sessions of the ICCBD. He also explained that, upon the request of the ICCBD, FAO had sent a document to the first session of the Conference of the Parties (doc. CPGR-Ex1/94/Inf. 4) on progress made regarding Resolution 3 of the Final Act of Nairobi, and that it had not been possible to submit this to the attention of the Commission because of the time-frames. It was noted that implementation of Resolution 3 was not a specific item on the provisional agenda of the first Conference of the Parties, but that this should not prevent discussion at an appropriate moment. Dr Esquinas also reported that the interim Secretariat of the Convention had been invited, through UNEP, to attend the meeting of the Commission. Several countries drew attention to the importance of reciprocal information and cooperation between government bodies and the Secretariats of the Convention and Commission.

22. The Legal Officer reported on the offer of the FAO Secretariat to form part of a secretariat for the Convention on Biological Diversity, together with other UN agencies. This cooperation would entail the assignment of one or two officers, mutual cooperation at secretariat and government body level and the performance of specific tasks. The Working Group welcomed this initiative and requested that the corresponding document be made available to the Commission at its first extraordinary session. One country suggested that FAO's offer be considered flexible regarding the resources needed for the FAO officers assigned to the joint Secretariat. The Deputy Director-General, Dr de Haen, remarked that FAO would contribute with its own resources toward the specific tasks defined in its own programme, but that in the case of the seconded officers, the matter would have to be referred to its governing body as provisions to this effect were not included in its Regular Programme.

23. FAO's technical competence in the field of agro-biodiversity was emphasized and discussions focused on the relationship between the Convention and the revised Compromise, and on the latter's possible inclusion as a protocol.

24. The Legal Officer was asked to clarify the situation regarding the Chair of the Commission at its extraordinary session. Mr Moore stated that the terms of reference of the Commission did not specify whether a new Chairperson was to be elected in the event of an extraordinary session, and that the decision as to how to proceed pertained to the Commission.

August 1994

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

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

1/ Members of the Commission.

2/ Countries which have adhered to the International Undertaking.

The above totals 140 countries and Regional Economic Integration Organizations which have become members of the Commission on Plant Genetic Resources (123) or which have adhered to the International Undertaking (110).