

CPGR/93/REP

REPORT OF THE
COMMISSION ON PLANT GENETIC RESOURCES

FIFTH SESSION
ROME, 19 - 23 APRIL, 1993

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INTRODUCTION

1. The Fifth Session of the Commission on Plant Genetic Resources (hereafter referred to as "The Commission") was held in Rome from 19 to 23 April 1993. A list of delegates and observers attending is attached as *Appendix I*.
2. The Session was opened by Mr. Parviz Karbasi (Islamic Republic of Iran), second Vice-Chairman of the Commission, who welcomed delegates. Mr. Karbasi stated that the meeting was being held on the 10th Anniversary of its establishment, and that he was pleased to look back at progress achieved during those ten years.

ELECTION OF THE CHAIRMAN AND VICE-CHAIRMAN

3. The Commission elected Mr. Rashad Ahmed Abo Elenein (Egypt) as Chairman of the Commission, who then took the Chair.
4. The Commission elected Mr. Brad Fraleigh (Canada) as first Vice-Chairman and Mr. R.S. Rana (India) as second Vice-Chairman.
5. The Commission appointed the following members to serve on the Drafting Committee: Belgium, Brazil, Congo, France, Germany, India, the Islamic Republic of Iran, Malaysia, Malta, Peru, Sweden, Tunisia, and the United States of America. Mr. Michel Chauvet of France was elected to Chair the Drafting Committee.

ADOPTION OF THE AGENDA AND TIMETABLE

6. The Agenda, as adopted, is set out in *Appendix B*. The list of documents appears as *Appendix C*.
7. The Commission discussed the provisional draft timetable and decided to modify it in order to allow more time for discussion of the items that were considered to be more complex, in particular those dealing with the proposed Code of Conduct on Biotechnology, and the Network of *ex situ* collections (Items 8.1 and 8.2).
8. Mr. Hartig de Haen, Assistant Director-General, Department of Agriculture, welcomed delegates to the Commission and extended a special welcome to the new members of the Commission: Estonia, Malaysia, Malta, New Zealand, Lithuania, Romania and Trinidad & Tobago. A list of members of the Commission and of countries that have adhered to the International Undertaking is attached as *Appendix H*. Mr. de Haen noted that the Session was being held on the tenth anniversary of the establishment of the Commission, and the adoption of its companion International Undertaking on Plant Genetic Resources. In creating the Commission in 1983, governments, for the first time, had determined that it was necessary to

have a permanent forum for debate and discussion on the technical, social, economic and political issues which inevitably surround the conservation and utilization of plant genetic resources. Mr. de Haen summarized the important achievements of the Commission during its first ten years, and drew attention to some items on the Agenda of the Commission.

REPORTS OF THE SEVENTH AND EIGHTH SESSIONS OF THE WORKING GROUP

9. Mr. José Miguel Bolivar (Spain), who had chaired the Eighth Session of the Working Group, reported on the two meetings of the Working Group that had been held in FAO, Rome, since the Fourth Session of the Commission, in April 1991. The Seventh Session had been held from 22 to 23 October 1992, and the Eighth Session from 15 to 16 April 1993.

10. The Working Group at its Seventh Session had discussed two main documents:
- (i) Preparation for the Fourth International Technical Conference on the Conservation and Utilization of the Plant Genetic Resources (CPGR/WG/92/3); and
 - (ii) Implications of UNCED for the Global System on PGR (CPGR/WG/92/4).

The Report of the Seventh Session is attached as *Appendix D*.

11. The Working Group, at its Eighth Session, had selected from the Provisional Agenda of the Fifth Session of the Commission those topics which it thought might facilitate the work of the Commission. The Working Group discussed the following documents in some detail: Draft International Code of Conduct for Plant Germplasm Collecting and Transfer (CPGR/93/8); Towards a Code of Conduct on Biotechnology as it affects Plant Genetic Resources (CPGR/93/9); and International Network of *Ex Situ* Base Collections under the Auspices and/or Jurisdiction of FAO: Model Agreement for the International Research Centres (CPGR/93/11). The Working Group also reviewed other matters concerning *ex situ* collections and the implications of UNCED (documents CPGR/93/5 and CPGR/93/7), and discussed possible changes in the terms of reference of the Working Group, and election procedures for its members and Chairman. The Report of the Eighth Session of the Working Group is attached as *Appendix E*.

12. The Commission was appreciative of the Working Group, and of its efforts in paving the way for the deliberations of the Commission during its various Sessions. The Commission expressed its appreciation for the excellent work and personal commitment of Mr. Carlo di Mottola (Costa Rica), as Chairman of its Working Group since 1986, and accepted his resignation. It also thanked Mr. Melaku Worede (Ethiopia) and Mr. José Miguel Bolivar (Spain), who had chaired the Seventh and Eighth Sessions of the Working Group respectively.

PROGRESS REPORT ON THE GLOBAL SYSTEM

Overview of Global System on Plant Genetic Resources

13. The Commission noted the recommendations of UNCED's Agenda 21, to strengthen the Global System for the Conservation and Sustainable Utilization of Plant Genetic Resources for Food and Agriculture, and to take further steps to realize Farmers' Rights. It also noted that Resolution 3 of the Nairobi Final Act identified access to *ex situ* collections not acquired in accordance with the Convention on Biological Diversity, and the question of Farmers' Rights, as "outstanding matters", on which solutions should be sought, within the context of the FAO Global System.

14. The Commission also recognized that the future development of the Global System would allow the Commission to exercise its role in coordination and assessment at a world level, through:

- (i) reviewing the state of the world's plant genetic resources, through regular reports;
- (ii) determining priorities and needs within a rolling Global Plan of Action to be financed, *inter alia*, through the funding mechanism foreseen in Conference Resolution 3/91, to realize Farmers' Rights.

15. The Commission recognized the progress made in the development of the Global System and its defined components (see *Appendix F*), and concentrated its discussions, under this item, on Farmers' Rights, the World Information and Early Warning System, and the network of *in situ* conservation areas (these matters were covered in CPGR/93/5), since the other components of the system were to be discussed under other agenda items.

Farmers' Rights and International Funding Mechanisms

16. With respect to Farmers' Rights, the Commission reviewed the progress made and considered what remained to be done. In reviewing previous activities, it noted that the concept of Farmers' Rights was developed in Conference Resolution 5/89, and ways and means for its implementation were further developed in Conference Resolution 3/91. It also noted that both resolutions that had been negotiated by the Commission had been unanimously endorsed by the FAO Conference, and were now annexed to the Undertaking. Resolution 3/91 specified that Farmers' Rights would be implemented through an international fund, and other funding mechanisms to support plant genetic resources conservation and utilization programmes, and that the Commission would determine and oversee the policies, programmes and priorities of the fund, and other funding mechanisms, with the advice of appropriate bodies.

17.. The Commission noted further that the nature of contributions to the fund, and the other funding mechanisms referred to in Resolution 3/91, had been extensively discussed, but that no agreement had been reached in previous discussions of the Commission. However, it noted that the technical and financial needs to ensure conservation, and to promote the sustainable use of the world's plant genetic resources, had to be determined and quantified. The Commission had agreed that this should be done through a country-driven process, whereby the first report on the State of the World's Plant Genetic Resources and the Global Plan of Action on Plant Genetic Resources would be developed, as part of this participatory process, for the International Conference and Programme on PGR. It agreed that the Global Plan of Action would identify the activities, projects and programmes needed to overcome present constraints, in line with the relevant parts of Agenda 21. By financing the Global Plan of Action, through the international fund, and other funding mechanisms, as foreseen in Resolution 3/91, the international community would contribute to the practical realization of Farmers' Rights.

18. The Commission agreed, however, that a number of questions remain open and would need to be addressed. These include the nature of the funding (voluntary or mandatory); the question of linkage between the financial responsibilities and the benefits derived from the use of PGR, and the question of who should bear financial responsibilities (countries, users or consumers). It also remained to be determined how the relative needs and entitlements of beneficiaries, especially developing countries, were to be estimated, and how farmers and local communities would benefit from the funding. The Commission recognized that, since its last meeting, there had been significant debates on these and related issues in FAO, UNEP and UNCED, as well as in a number of NGO fora. Consensus was already emerging, as reflected in Agenda 21, and the Convention on Biological Diversity. Nonetheless, more conceptual thinking was required, to answer these questions, and to determine appropriate mechanisms for the realization of Farmers' Rights. The Commission considered that such thinking should be developed during the next two years, drawing as appropriate upon the preparation for the International Conference on PGR. It *requested* that the Secretariat prepare a progress report on the subject for its next session.

World Information and Early Warning System on Plant Genetic Resources

19. The Commission was informed of the steps aiming at development of the World Information and Early Warning System (PGR/WIS), and its role to collect and disseminate data which would facilitate the exchange of information on PGR and related technologies. It agreed that the PGR/WIS should be a dynamic, constantly updated database of databases, and other important information sources, on all potential areas of interest to the scientific community. Although an early warning mechanism had not been fully developed, the Commission noted its potential importance in drawing attention to hazards threatening the operation of genebanks holding base collections, and to the loss of genetic diversity throughout the world.

20. The Commission noted that the development of the PGR/WIS would contribute to the implementation of Agenda 21 of UNCED, and the Convention on Biological Diversity. The Commission welcomed the FAO's offer to cooperate in the UNEP-sponsored Biodiversity Country Case Studies, which would provide useful information PGR/WIS.

21. One of the major objectives of the PGR/WIS is to provide detailed information on which to base the report on the State of the World's Plant Genetic Resources, the first of which would be elaborated as part of the preparatory process of the Fourth International Technical Conference on Plant Genetic Resources.

22. The Commission noted with satisfaction that, in line with its request, endorsed by the FAO Conference, FAO had integrated the existing Seed Information System into the PGR/WIS, established the Plant Information and Exchange Unit, and filled the position of Information Systems Officer.

23. The Commission reviewed progress in developing the PGR/WIS. Information for the PGR/WIS was being solicited from Member Countries of the Commission, principally through a national plant genetic resources programme questionnaire. This questionnaire listed the data currently maintained in the system, and requested the relevant authorities to confirm, update and complement the existing information. At the start of this Commission, 52 countries had provided information in response, and four others had made preliminary replies. A follow-up letter, together with the questionnaire, had been sent to the leading individuals (mainly National Coordinators) in the field of PGR in other member countries. The Commission *urged* countries that had not yet completed the questionnaire to do so.

24. A complementary questionnaire related to forest genetic resources had been sent, in March 1993, by FAO's Forestry Department to heads of national forest services. A third questionnaire had been sent requesting information from organizations about existing PGR information systems and databases. The Commission *urged* all countries and organizations concerned to reply as soon as possible.

25. The Commission agreed with the recommendations of the Secretariat, that the World Information and Early Warning System should provide, as a service to member nations, facts and figures on the conservation and utilization of plant genetic resources such as:

- (i) a description of national programmes on PGR in each country;
- (ii) a register of institutions involved in PGR activities, plant breeding and seed production;
- (iii) a register of *ex situ* collections;
- (iv) variety lists;
- (v) information on *in situ* conservation of plant genetic resources, within and outside protected areas; and a
- (vi) description of other activities on PGR at country level.

The Network of *In Situ* Conservation Areas

26. The Commission noted, with satisfaction progress in this field, as outlined in Section VI of CPGR/93/5, and reiterated its earlier support to *in situ* conservation, which it considered an important element in a global strategy for the conservation of plant genetic resources. It *requested* that aspects related to the *in situ* conservation of plant genetic resources be given due attention in the future work of the Commission, and in the development of the Global Plan of Action on Plant Genetic Resources.

27. The Commission stressed that the development of internationally coordinated networks of *in situ* conservation areas, as recommended at its earlier Sessions, must be underpinned by strong national commitment, and adequate international support, and must be based on national level priorities and action. It *requested* FAO to strengthen its programmes aimed at assisting Governments to build up local institutions, infrastructures and expertise in this regard, and to assist them in the implementation of the recommendations of Agenda 21 and the Convention on Biological Diversity.

28. The Commission noted the complementarity of Protected Area management, on the one hand, and the conservation *in situ* of plant genetic resources on the other. While the former was mainly focused on the conservation of landscapes, ecosystems and species, the latter implied the active management of the intra-specific diversity of specified target species, including on-farm management of landraces and the management of wild populations of actual or potential socio-economic value. *In situ* conservation, aimed at meeting present-day, as well as future human needs, was thus closely related to the sustainable utilization of the resources being conserved, and was, by definition, carried out both within and outside Protected Areas.

29. Noting the considerable number of organizations involved in various aspects of the sustainable management of natural renewable resources, and the conservation of ecosystems, species and genetic resources at the global level, the Commission *requested* FAO to further strengthen its collaboration with other international agencies and bodies concerned, with special reference to UNESCO's *Man and the Biosphere Programme*, and bodies concerned with coordination of follow-up to the UNCED Conference. The Commission likewise stressed the need to develop research and scientific assessment linked to *in situ* conservation programmes.

Genebank Standards

30. The Commission considered the Genebank Standards (CPGR/93/5 Annex) that had been prepared by a FAO/IBPGR expert group in response to a previous request of the

Commission. The Commission *endorsed* the standards, in order that they might acquire universal value and be more easily adopted by countries.

REPORT ON ACTIVITIES ON PLANT GENETIC RESOURCES

31. The Commission expressed its appreciation to all the organizations and institutions which had provided reports on their programmes and activities to the Commission, recognizing it as the appropriate intergovernmental forum dealing with the conservation and use of plant genetic resources for food and agriculture. The Commission reviewed the document CPGR/93/6, which contained an account of FAO activities, and reports from UNEP, UNESCO, UNIDO, ICARDA, ICRAF, CIAT, CIMMYT, IBPGR, ICRISAT, IITA, ILCA, CIP, IRRI, WARDA, IUCN, WWF. Brief oral reports on activities and programmes were presented by UNEP, the Commonwealth Secretariat, IBPGR, ICRISAT, IRRI, IUCN, WWF, GRAIN and RAFI to complement the written reports contained in CPGR/93/6.
32. The Commission, recognising that FAO, and many of its member nations, had close working relations with UN agencies, International Agricultural Research Centres, and other inter-governmental and non-governmental organisations, welcomed the opportunity to discuss relevant issues, and to promote cooperation.
33. The Commission took note of the current and proposed activities of both FAO's Regular and Field Programmes related to policies, and legal and technical issues regarding the conservation and sustainable utilization of PGR for food and agriculture. The Commission *requested* more detailed information on FAO's programmes and activities, including human and financial resource allocations relevant to the Commission's interest in conservation, training, seed activities, etc. FAO agreed to furnish this information to the Commission, and to include it in subsequent reports to the Commission.
34. The Commission recognized the importance of close cooperation with the Governing Body of the Convention on Biological Diversity in the follow-up to the Convention, and, before it entered into force, with the Intergovernmental Committee for a Convention on Biological Diversity. It *recommended* that this cooperation should include mutual reporting under specific agenda items in their respective Regular Sessions. The Commission also recognized the importance of close cooperation between FAO, UNEP and UNESCO in establishing and operating both the interim, and the regular Secretariats of the Convention.
35. The Commission expressed its satisfaction with the closer and effective programmatic working relationships between FAO and IBPGR, and encouraged both parties to continue such cooperation and the complementarity of their functions. The Commission also stressed the importance of continued cooperation with the International Agricultural Research Centres dealing with plant genetic resources, on matters related to crops under their specific mandate.

36. The Commission encouraged organizations which had submitted reports to this Session to continue to do so. It also *requested* that the Secretariat invite other governments and non-governmental international and regional organizations which had programmes or projects that affected the conservation and utilization of plant genetic resources for food and agriculture, including relevant multilateral financial institutions (including the World Bank, IFAD and Regional Development Banks), GEF, UNDP and other UN organizations to submit reports to future Sessions. It was also suggested that future reports might include a synthesis of bilateral programmes, and of the activities of grassroots NGOs. The Commission took note of the relevant information provided by the NGOs present at the Session.

IMPLICATIONS OF UNCED FOR THE GLOBAL SYSTEM ON PGR

37. The Commission recognized the relevance of Agenda 21 and the Convention on Biological Diversity for its work. It reviewed document CPGR/93/7, and agreed that it provided a useful and clear summary of the issues under consideration.

38. The Commission noted that Agenda 21 is a comprehensive programme of action agreed by about 180 countries. Its Chapter 14 recognizes the identity and special character of Plant Genetic Resources for Food and Agriculture (PGRFA), giving them the status of a comprehensive "programme area". Agenda 21 recommends the strengthening of the Global System and its components, as well as actions at the national and international level. It makes specific reference to a number of components of the Global System. These include the World Information and Early Warning System, the *in situ* network, the report on the State of the World's PGR, and the Global Plan of Action. Furthermore, Agenda 21 supports the convening of the Fourth International Technical Conference on PGR. It also recommends taking further steps to realize Farmers' Rights.

39. The Commission recognized that the Convention on Biological Diversity, once operative, will play a central role in determining policy on PGR in the future. The Commission noted that the main implications of the Convention are at the policy, legal and institutional levels, and include issues which need to be addressed within the Global System, not only those already covered by the Convention, but also those identified as outstanding matters in Resolution 3 of the Nairobi Final Act of the Convention on Biological Diversity: access to *ex situ* collections not acquired in accordance with the Convention on Biological Diversity, and the question of Farmers' Rights.

40. The Commission noted that the Convention had not yet entered into force, but would likely do so in 1993 or 1994. It also noted that the Convention may adopt protocols. The Commission also indicated that this possibility could be applied to the PGR sector, and, if so, it should play the major role in developing any proposed protocol, in full cooperation with the Conference of the Parties of the Convention on Biological Diversity and its precursor, the Intergovernmental Committee for the Convention on Biological Diversity. It was stated that a

protocol on PGR may be served by its own governing body, secretariat, and a financial mechanism subject to the governing body of the Convention.

Review of the International Undertaking

41. The Commission recognized that the concepts contained in the Global System had evolved, and that the Undertaking included three annexes recognizing the sovereign rights of countries over their plant genetic resources, and plant breeders' rights and Farmers' Rights.

42. The Commission *agreed* that the process of adjusting the Undertaking should address several questions: consolidation of annexes into the Undertaking, and its harmonization with the relevant provisions of the Convention; issues such as access to samples of genetic resources for food and agriculture, for breeding and research purposes, especially those in *ex situ* collections not acquired in accordance with the Convention; realization of Farmers' Rights, and the funding of activities pertaining to the conservation and sustainable use of PGR. The revision of the Undertaking should be conducted carefully, as a gradual pragmatic and step-by-step process, building on the consensus already achieved through the Commission's previous discussions, as embodied in the Undertaking and its annexes.

43. The Commission recognized that the negotiations should be carried out at the inter-governmental level. It suggested that, while using the Commission, and its Working Group, as the forum, negotiations must proceed in cooperation with the Governing Body of the international Convention on Biological Diversity.

44. The Commission *recommended* that FAO should collaborate with the Secretariat of the Convention on Biological Diversity, as proposed in Resolution 2 of the Nairobi Final Act. The Commission noted that, at a later stage, FAO might, if it were requested, convert the revised Undertaking into a binding legal instrument, and that this might take the form of a protocol to the Convention. The Commission emphasized that the decision whether or not to transform the Undertaking into a protocol to the Convention would have to be taken at a later stage, by the Conference of the Parties to the Convention, and that the first steps of the process of revising the Undertaking should not pre-empt this later decision.

45. The Commission also emphasized that efforts to realize Farmers' Rights through the fund envisaged in Conference Resolution 91/3 should continue, and that the need for a separate funding mechanism would be especially important in the event that the addition of the revised Undertaking to the Convention on Biological Diversity as a legally binding protocol was not achieved. It was also suggested that the Commission carefully monitor developments with respect to Intellectual Property Rights legislation, and assess their implications for the Undertaking.

46. The Commission emphasized that a revision of the Undertaking should not imply any slowing down of the efforts to develop and implement the Global Plan of Action, in line with its decisions, as endorsed by UNCED in Rio de Janeiro. The revision process, and the development of the Global Plan of Action, should be an integral part of the preparatory process for the International Technical Conference on Plant Genetic Resources. The Commission *recommended* that the Director-General inform the Commission on Sustainable Development, and the Intergovernmental Committee of the Convention on Biological Diversity, on the process of revising the Undertaking. The Commission further *recommended* that extra-budgetary financial resources be mobilized to secure the full participation of developing countries in the negotiating process in the Commission and its Working Group.

47. The Commission *agreed to recommend* a tentative timetable for the revision, which included a Session of the Working Group in October 1993, followed by an extraordinary meeting of the Commission early in 1994. The intention was to conclude negotiations at the 1995 Session of the Commission, with the results presented at the International Technical Conference on PGR.

48. With the aim of revising the Undertaking, the Commission prepared and agreed the Resolution found in *Appendix A*.

Institutional

49. At the institutional level, the Commission agreed that:

- (i) the FAO Conference could provide recommendations to the Conference of the Parties to the Convention, on matters related to plant genetic resources for food and agriculture, and through this, to the financial mechanism of the Convention, on the funding of programme areas related to PGR for Food and Agriculture; and that
- (ii) the UN Commission on Sustainable Development should be periodically informed of the progress made by the Commission in the implementation of aspects of the Agenda 21 programme areas related to PGR for Food and Agriculture.

50. The possibility of establishing a joint CPGR and IGC/CBD task force was suggested, so as to facilitate complementarity between the Global System (including the Undertaking) and the Convention.

Access to Existing *Ex Situ* Collections

51. The Commission recognized that the Convention did not address the question of access to *ex situ* collections not acquired in accordance with the Convention on Biological

Diversity. The Commission took note of the following possible interpretations of this question submitted in Document CPGR/93/7:

- (i) that these genetic resources were outside the Convention, and, since most of them were collected on the general understanding that PGR were the heritage of mankind, these resources should continue to be freely available, with a global compensatory mechanism;
- (ii) that these genetic resources were outside the Convention, and therefore that the host country could legislate on ownership and conditions of access; and
- iii) that, since Parties to the Convention can provide only those genetic resources originating in their own countries, or acquired under the terms of the Convention, that the permission of the country of origin is required for the release of genetic resources from pre-existing collections. It was noted, however, that, in many cases, countries of origin cannot be identified, and that the collections are widely dispersed.

The Commission recognized that these interpretations needed further discussion before a conclusion could be reached.

52. The Commission suggested that a number of options that were not mutually exclusive might be explored within the Global System, including:

- (i) the facilitation of bilateral agreements between countries of origin, when they can be identified, and countries holding *ex situ* collections, for the sharing of the benefits;
- (ii) the establishment of agreements between FAO and the owners of genebanks, including on access, along the lines of the "model basic agreements", as agreed at the Fourth Session of the Commission, and
- iii) the facilitation of a comprehensive multilateral agreement concerning access to *ex situ* collections, including mechanisms to compensate countries of origin, possibly in the context of the proposed revision of the Undertaking.

53. However, the Commission agreed that there was a need to develop solutions to the issue of access to *ex situ* collections not acquired in accordance with the Convention on Biological Diversity, as well as to the related issues of sharing the benefits, and the realization of Farmers' Rights. The Commission recommended that these matters be dealt with in close consultation with the IGC/CBD.

54. It was suggested that FAO collaborate with the Secretariat of the Convention on Biological Diversity, the Member Nations, UNEP, the CGIAR and other governmental and non-governmental organizations, to examine these issues regarding *ex situ* collections.

**DRAFT INTERNATIONAL CODE OF CONDUCT FOR PLANT GERMPLASM
COLLECTION AND TRANSFER**

55. The Commission considered the Draft International Code of Conduct for Plant Germplasm Collecting and Transfer (CPGR/93/8), as well as the minor modifications to the Code proposed by the Eighth Session of the Working Group (Appendix E). Further modifications were proposed, discussed and agreed during the session including modifications of the changes suggested by the Working Group (the agreed text is in Annex 1, a separate volume).

56. The Commission noted that the document was the result of the numerous consultations and difficult compromises that had followed the request by the Commission, in 1989, for the elaboration of a draft Code. The present draft incorporated comments received from several member countries, since the discussion of the previous version by the Commission in 1991. It was consistent with the Convention on Biological Diversity.

57. The Commission noted the voluntary nature of the draft Code, and that one of its primary functions would be to serve as a reference document, to help individual countries establish their own codes or regulations, especially until the Convention on Biological Diversity enters into forces.

58. The Commission reaffirmed the need for the International Code of Conduct for Plant Germplasm Collecting and Transfer to become effective. It would allow countries to exercise sovereignty over, and to benefit from, their plant genetic resources, while at the same time creating conditions to facilitate access to genetic resources for environmentally sound uses. The concern was expressed that while discussions and negotiations went on in various international fora, genetic erosion was continuing. Potentially harmful and insidious collecting activities might also take place.

59. The Commission further recognised that the Code would need to be adaptable to changing needs and circumstances. It was noted that the Code could be updated, amended or modified, when appropriate, through the Commission.

60. With these considerations, the Commission endorsed the Draft International Code of Conduct for Plant Germplasm Collecting and Transfer. The Commission *requested* the Director-General to submit the draft Code and draft Resolution, through the Council, to the next Session of the FAO Conference, for its decision. The Commission proposed that the text of the Draft Resolution become the preamble to the Code, once adopted by the Conference.

TOWARDS AN INTERNATIONAL CODE OF CONDUCT FOR PLANT BIOTECHNOLOGY AS IT AFFECTS THE CONSERVATION AND UTILIZATION OF PLANT GENETIC RESOURCES

61. The Commission considered document CPGR/93/9, Towards an International Code of Conduct for Plant Biotechnology as it affects the Conservation and Utilization of Plant

Genetic Resources, which included a preliminary draft Code of Conduct, as had been requested by the Third and Fourth Sessions of the Commission. The Commission noted that this draft Code was presented for discussion as a preliminary draft only, and not for endorsement.

62. The Commission recalled that, at its Fourth Session, it had concluded that the Code of Conduct should, among other things, promote:

- (i) the sustainable use of biotechnology in the conservation and utilization of plant genetic resources;
- (ii) access to plant genetic resources;
- (iii) biosafety to minimize environmental risks throughout the world; and
- (iv) the equitable sharing of the benefits of biotechnology between the owners of the technology, and the donors of the germplasm.

63. The Commission expressed satisfaction that, together with the draft Code, the document provided information on recent developments that may influence policy matters related to biotechnology, as it affects the conservation and utilization of plant genetic resources, particularly as a result of UNCED's Agenda 21, and the Convention on Biological Diversity and associated resolutions.

64. The Commission reasserted the importance of the new biotechnologies as tools leading to increased food production and sustainable agriculture. It recognized the great potential of biotechnology for the conservation and utilization of plant genetic resources. It highlighted the urgency of meeting the challenges posed by applications of biotechnologies which might lead to possible trade and economic distortions, and the neglect of crops of local importance, and of commodities most needed by the developing countries and resource-poor farmers. It also expressed its concern with potentially unsafe applications of biotechnology. The Commission noted that the preliminary draft Code of Conduct addressed these major issues.

65. The Commission considered a number of questions addressed to it by the Secretariat in view of the recent developments in various international fora (especially UNCED Agenda 21, the Convention on Biological Diversity, WIPO and GATT). These included:

- (i) whether a code of conduct on biotechnology was the most appropriate way of treating the various issues presently covered by the preliminary draft or whether some of them may be better treated as guidelines or in other ways;
- (ii) whether the various matters (maximizing benefits; minimizing potential negative effects, intellectual property rights, biosafety, etc.) should all be addressed by a single code on biotechnology, or whether they should be separated.

66. The Commission agreed that the biotechnological developments concerning the sustained, equitable, and efficient conservation and use of PGR for food and agriculture

should be critically examined by the Commission, so that appropriate policy advice, and other support, could be provided to the Member Countries. It recommended that the implications of biotechnological developments for the availability of PGR, access to PGR, genetic erosion, technology transfer, and positive or negative socio-economic development, should be reviewed and analyzed by the Commission.

67. The Commission endorsed the recommendation of the Eighth Session of the Working Group, to deal with the various major issues separately, rather than to maintain them under a single Code. The Commission noted that the Intergovernmental Committee on the Convention on Biological Diversity (IGC/CBD), in accordance with Convention Articles 19(3) and 19(4), would consider the option of developing a biosafety protocol to the Convention. It *recommended* that, in order to avoid duplication and inconsistencies, the "biosafety and other environmental concerns" component of the preliminary draft Code would constitute an input to the work of the IGC/CBD on this matter. The Commission *recommended* that FAO participate in this work, in order to ensure that the aspects of biosafety in relation to plant genetic resources for food and agriculture are appropriately covered.

68. It was *suggested* that FAO further develop the remaining components of the draft Code. This should be done in close collaboration with the Commission on Sustainable Development, the Governing Body of the Convention on Biological Diversity, and other relevant international and national programmes, drawing, as appropriate, upon the preparatory process of the International Technical Conference. The objectives should be to help maximise the positive effects of biotechnology which applies to PGR for food and agriculture, and to minimise any potential negative effects, especially in developing countries. It should promote access to germplasm, as well as to biotechnology and related information. The Working Group should advise the Secretariat whether a revised draft Code should be prepared for presentation to the 1995 Session of the Commission.

69. The Commission recognized that, while several agencies and institutions are active in the area of biotechnology and related policy issues, the Commission was the only international forum for considering issues related specifically to biotechnology, in the context of the improved and sustained conservation and utilization of plant genetic resources for food and agriculture. It recognised the need for further studies and discussions on the issues of access to genetic resources, intellectual property rights, and the equitable sharing of the benefits, in the context of biotechnology as it affects plant genetic resources. These should take into account the relevant provisions already included in the Convention, and the UNCED follow-up process. It recognized that related studies are being carried out by FAO, CGIAR, the interim Secretariat of the Convention, and other international and national programmes, and suggested that close links be maintained between these initiatives. The outcome of such studies and analyses would provide a good background for the further development of the draft Code. It further recommended that this subject, and results of the studies, be discussed at one of its next sessions, and at the Fourth International Technical Conference.

70. The Commission recognised that some of the other technical aspects covered in the draft Code could be incorporated into the Biotechnology Programme being developed by FAO, and that the Commission *should be informed* of the progress made in its development and implementation, at one of its future sessions. The Commission *recommended* that the Programme put particular emphasis on training scientists and technicians, as well as on increasing the understanding of policy makers - especially in the developing countries - of the need to develop and adopt appropriate biotechnologies. Emphasis should also be placed on increasing national capabilities for the assessment and transfer of the technologies, including the establishment and management of linkages among the sectors concerned.

INTERNATIONAL NETWORK OF *EX SITU* BASE COLLECTIONS UNDER THE AUSPICES OR JURISDICTION OF FAO

71. The Commission reviewed developments regarding the International Network of Ex Situ Base Collections under the Auspices and/or Jurisdiction of FAO, and confirmed its endorsement of activities with respect to the establishment of this network (part V of document CPGR/93/5, and document CPGR/93/11).

72. The Commission welcomed the offer made by the CGIAR Centres to place their base and active collections under the auspices of FAO, and to receive policy guidance from the Commission on these collections, this being an important step towards the further development of the International Network. Clarification of certain specific points was sought, in view of the complexity of these matters, particularly concerning "ownership" of the resources held in these collections, and the implication of the concept, "trusteeship".

73. The Commission noted the explanations provided by representatives of the IARCs and the CGIAR, who stated that they did not regard themselves as "owners", but as "trustees" for these collections, which were the result of international cooperation. They managed them on behalf of the beneficiaries, in particular the developing countries, and they had the obligation to conserve the material to the highest technical standards, to duplicate it for safety reasons, to make it available without restrictions, and not to seek any intellectual property right over it. This last obligation would include, where possible, a transfer mechanism to avoid another party subsequently making the collections unavailable for research and breeding. The Commission *requested* that the draft proposal reflect these obligations.

74. The Commission recognised that the concept of the trusteeship of plant genetic resources needed to be clarified, in particular as it related to the concept of ownership. It *recommended* that these concepts, and that of "beneficiary", needed to be studied further by the Working Group, which would then report back to the Commission.

75. The Commission considered that, given its status as the only permanent intergovernmental forum dealing with plant genetic resources for food and agriculture, it

should play a role in the development of policy related to the collections. In line with this, the Commission *suggested* that the wording of Article 5 in the draft model agreement (*Appendix I* to document CPGR/93/11), be modified, and that the Centres be responsible for "developing", rather than "determining", policies related to the designated germplasm.

76. With these considerations, the Commission accepted the proposed model as a basis for negotiations between FAO and the CGIAR centres. The Commission *requested* the Director-General to negotiate and, if satisfied, to conclude agreements with the CGIAR Centres, taking into account the concerns it had expressed, and that the agreement reached would be reviewed by the Commission every four years.

THE FOURTH INTERNATIONAL TECHNICAL CONFERENCE, AND PROGRAMME ON THE CONSERVATION AND UTILIZATION OF PLANT GENETIC RESOURCES

77. The Commission discussed document CPGR/93/10, and *endorsed* the Working Group's support for the aims and strategy of the proposed Fourth International Technical Conference, and Programme on the Conservation and Utilization of Plant Genetic Resources (ICPGR). It noted, in particular, that the ICPGR would:

- (i) transform the relevant parts of the UNCED process (including Agenda 21 and the Convention on Biological Diversity) into a costed Global Plan of Action, based on the Report on the State of the World's Genetic Resources; and
- (ii) make the Global System for the Conservation and Use of Plant Genetic Resources fully operational.

78. The Commission stressed the importance of the work of the ICPGR for the related activities of FAO and other agencies, as well as a follow-up to the recommendations of Agenda 21, and the Convention on Biological Diversity. It *strongly emphasized* the urgent need to initiate the ICPGR, as soon as funding is identified, and extra-budgetary resources are pledged. It noted the risks involved in delaying the process and observed that use of Regular Programme funds to initiate the process, could be considered.

79. The Commission welcomed the offer of Germany to host the Conference, and thanked governments that had already pledged contributions, or expressed their intention to provide financial support.¹ The Commission also *urged* other donors to provide the needed funds and noted the offer of some countries to provide support through other means.

80. The Commission emphasized that the preparatory process must be participatory and country-driven, and that it should ensure the participation of all relevant organizations and

¹ During this Session the following countries have pledged: Germany, the Netherlands, Spain and Sweden.

institutions dealing with *ex situ* and *in situ* conservation, as well as the sustainable utilization of plant genetic resources, especially CGIAR, UNEP, the Governing Body of the Convention on Biodiversity, and NGOs. In relation to the costing of the Global Plan of Action and its identified projects, the need for cooperation with the World Bank, other multilateral funding agencies, and the GEF, was stressed. It was noted that the process of ICPGR is likely to be discussed at the proposed Intergovernmental Committee of the Convention on Biological Diversity. UNEP offered cooperation with FAO in this matter.

81. The Commission emphasized that the ICPGR should aim to develop consensus, and commitment from countries to the Global Plan of Action, and in accordance with the recommendations of Agenda 21. The Commission stated, in endorsing the view of the Working Group, that the Commission and its Working Group would provide policy guidance. It was stated that the 1995 session of the Commission would review the Global Plan of Action. There was agreement that the Global Plan of Action and revised Undertaking be presented to the Fourth International Technical Conference, attended at a high level.

82. The Commission agreed that ICPGR would play a major role in implementing Agenda 21, in the further implementation of the Convention on Biological Diversity, and in making the Global System fully operational.

83. The Commission *agreed* on the need to facilitate the participation of developing countries, including both technical experts and policy makers, at the Conference.

84. To facilitate the preparatory process, the Commission *urged* that a Secretariat be appointed, according to the rules of FAO, as soon as possible.

TERMS OF REFERENCE AND PROCEDURES FOR THE WORKING GROUP

85. The Commission reviewed the terms of reference, and procedures of its Working Group. With respect to the terms of reference of the Working Group, the Commission agreed that they should be broad, in order to permit sufficient flexibility for the Commission to assign specific tasks to the Working Group. It was suggested that the Working Group take an active role reviewing the preliminary agenda of the Commission.

86. The Commission reaffirmed the present composition of the Working Group, stressing the need to provide for the participation, upon invitation, in an observer capacity, of members of the Commission that are not members of the Working Group, and experts, as well as representatives of specialized international organizations.

87. The Commission confirmed by acclamation Mr. Bolivar (Spain) for the Chair of the Working Group, to serve in this position until the next session of the Commission.

88. The Commission agreed that the members of the Working Group should be nominated by the Chairman of the Working Group, according to the regional distribution agreed by the

Commission in 1985, on the advice of each regional group. The regional groups should communicate to the Secretariat their nominations prior to 1 June 1993, according to the present procedures.

89. The Commission *requested* the Secretariat to prepare, for its next session, draft statutes for the Working Group which would include the mandate, the composition of the Group, and the frequency of meetings.

AGENDA, TIME AND PLACE OF THE NEXT SESSION

90. The Secretary of the Commission presented the draft agenda of the Sixth Session of the Commission. The agreed draft agenda is attached in *Appendix G*. It was agreed that final decisions on the agenda, date and place of the Sixth Session would be determined by the Director-General, in consultation with the Chairman.

ADOPTION OF THE REPORT

91. The report was adopted by the Commission on 23 April, 1993.

AGREED TEXT ON
DRAFT INTERNATIONAL CODE OF CONDUCT FOR
PLANT GERMPLASM COLLECTING AND TRANSFER

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DRAFT INTERNATIONAL CODE OF CONDUCT FOR PLANT GERMPLASM COLLECTING AND TRANSFER

CHAPTER I

Objectives and Definitions

Article 1: Objectives

This Code has the following objectives:

- 1.1 to promote the conservation, collection and use of plant genetic resources from their natural habitats or surroundings, in ways that respect the environment and local traditions and cultures;
- 1.2 to foster the direct participation of farmers, scientists and organizations in countries where germplasm is collected, in programmes and actions aimed at the conservation and use of plant genetic resources;
- 1.3 to avoid genetic erosion and permanent loss of resources caused by excessive or uncontrolled collection of germplasm;
- 1.4 to promote the safe exchange of plant genetic resources, as well as the exchange of related information and technologies;
- 1.5 to help ensure that any collecting of germplasm is undertaken in full respect of national laws, local customs, rules and regulations;
- 1.6 to provide appropriate standards of conduct and to define obligations of collectors;
- 1.7 to promote the sharing of benefits derived from plant genetic resources between the donors and users of germplasm, related information and technologies by suggesting ways in which the users may pass on a share of the benefits to the donors, taking into account the costs of conserving and developing germplasm;
- 1.8 to bring recognition to the rights and needs of local communities and farmers, and those who manage wild and cultivated plant genetic resources and in particular to promote mechanisms:
 - a) to facilitate compensation of local communities and farmers for their contribution to the conservation and development of plant genetic resources; and
 - b) to avoid situations whereby benefits currently derived from plant genetic resources by these local communities and farmers are undermined by the transfer or use by others of the resources.

Article 2: Definitions

- 2.1 "**Collector**" means a legal or natural person that collects plant genetic resources and related information;
- 2.2 "**Curator**" means a legal or natural person that conserves and manages plant genetic resources and related information.
- 2.3 "**Donors**" means a country or legal or natural person that makes available plant genetic resources for collection.
- 2.4 "**Farmers' Rights**" means the rights arising from the past, present and future contributions of farmers in conserving, improving, and making available plant genetic resources, particularly those in the centres of origin/diversity. These rights are vested in the International Community, as trustee for present and future generations of farmers, for the purpose of ensuring full benefits to farmers, and supporting the continuation of their contributions, as well as the attainment of the overall purposes of the International Undertaking.¹
- 2.5 "**Ex situ conservation**" means the conservation of plant genetic resources outside their natural habitat.
- 2.6 "**Genetic erosion**" means loss of genetic diversity;
- 2.7 "**In situ conservation**" means the conservation of plant genetic resources in the areas where they have naturally evolved, and, in the case of cultivated species or varieties, in the surroundings where they have developed their distinctive properties;
- 2.8 "**Plant genetic resources**" - means germplasm or genetic material of actual or potential value.
- 2.9 "**Plant germplasm**" or "**genetic material**" means the reproductive or vegetative propagating material of plants.
- 2.10 "**Sponsor**" means a legal or natural person that sponsors, financially or otherwise, a plant collecting mission;
- 2.11 "**User**" means a legal or natural person that utilizes and benefits from plant genetic resources and related information.

CHAPTER II

Nature and Scope of the Code

Article 3: Nature of the Code

- 3.1 The Code is voluntary.
- 3.2 The code recognizes that nations have sovereign rights over their plant genetic resources in their territories and it is based on the principle according to which the conservation and continued availability of plant genetic resources is a common concern of humankind. In executing these rights, access to plant genetic resources should not be unduly restricted.
- 3.3 The Code is addressed primarily to governments. All relevant legal and natural persons are also invited to observe its provisions, in particular those dealing with plant exploration and plant collection, agricultural and botanical activities and research on endangered species or habitat conservation, research institutes, botanical gardens, harvesting of wild plant resources, agro-industry including pharmaceutical plants and the seed trade.
- 3.4 The provisions of the Code should be implemented through collaborative action by governments, appropriate organizations and professional societies, field collectors and their sponsors, and curators and users of plant germplasm.
- 3.5 FAO and other competent organizations, are invited to promote full observance of the Code.
- 3.6 The Code provides a set of general principles which governments may wish to use in developing their national regulations, or formulating bilateral agreements on the collection of germplasm.

Article 4: Scope

- 4.1 The Code describes the shared responsibilities of collectors, donors, sponsors, curators and users of germplasm so as to ensure that the collection, transfer and use of plant germplasm is carried out with the maximum benefit to the international community, and with minimal adverse effects on the evolution of crop plant diversity and the environment. While initial responsibility rests with field collectors and their sponsors, obligations should extend to parties who fund or authorize

collecting activities, or donate, conserve or use germplasm. The Code emphasizes the need for cooperation and a sense of reciprocity among donors, curators and users of plant genetic resources. Governments should consider taking appropriate action to facilitate and promote observance of this Code by sponsors, collectors, curators and users of germplasm operating under their jurisdiction.

- 4.2 The Code should enable national authorities to permit collecting activities within its territories expeditiously. It recognizes that national authorities are entitled to set specific requirements and conditions for collectors and sponsors and that sponsors and collectors are obliged to respect all relevant national laws as well as adhering to the principles of this Code.
- 4.3 The Code is to be implemented within the context of the FAO Global System on Plant Genetic Resources, including the International Undertaking and its annexes. In order to promote the continued availability of germplasm for plant improvement programmes on an equitable basis governments and users of germplasm should endeavour to give practical expression to the principles of Farmers' Rights.

Article 5: Relationship with the other legal instruments

- 5.1 The Code is to be implemented in harmony with:
- a) the Convention on Biological Diversity and other legal instruments protecting biological diversity or parts of it;
 - b) the International Plant Protection Convention (IPPC) and other agreements restricting the spread of pests and diseases;
 - c) the national laws of the host country; and
 - d) any agreements between the collector, host country, sponsors, and the gene bank storing the germplasm.

CHAPTER III

Collectors' permits

Article 6: Authority for Issuing Permits

- 6.1 States have the sovereign right, and accept the responsibility, to establish and implement national policies for the conservation and use of their plant genetic resources, and within this framework, should set up a system for the issuance of permits to collectors.

- 6.2 Governments should designate the authority competent for issuing permits. This authority should inform proposed collectors, sponsors, and the other agencies of the government's rules and regulations in this matter, and of the approval process to be followed, and of follow-up action to be taken.

Article 7: Requesting of permits

To enable the permit issuing authority to arrive at a decision to grant or to refuse a permit, prospective collectors and sponsors should address an application to the issuing authority to which they:

- a) undertake to respect the relevant national laws;
- b) demonstrate knowledge of, and familiarity with, the species to be collected, their distribution and methods of collection;
- c) provide indicative plans for the field mission - including provisional route, estimated timing of expedition, the types of material to be collected, species and quantities - and their plans for evaluation, storage and use of the material collected; where possible, the sort of benefits the host country may expect to derive from the collection of the germplasm should be indicated;
- d) notify the host country of the kind of assistance, that may be required to facilitate the success of the mission;
- e) indicate, if the host country so desires, plans for cooperation with national scholars, scientists, students, non-governmental organizations and others who may assist or benefit from participation in the field mission or its follow-up activities;
- f) list, so far as it is known, the national and foreign curators to whom the germplasm and information is intended to be distributed on the completion of the mission; and
- g) supply such personal information as the host country may require.

Article 8: Granting of permits

The permit issuing authority of the country in which a field mission proposes collecting plant genetic resources should expeditiously:

- a) acknowledge the application, indicating the estimated time needed to examine it;

- b) communicate to the collectors and sponsors of the proposed collecting mission its decision. In case of a positive decision, conditions of collaboration be established as soon as possible before the mission arrives in the country, or begins field work. If the decision is to prohibit or restrict the mission, whenever possible, the reasons should be given, and where appropriate, an opportunity should be given to modify the application.
- c) indicate, when applicable, what categories and quantities of germplasm may or may not be collected or exported, and those which are required for deposit within the country; indicate areas and species which are governed by special regulation;
- d) inform the applicant of any restrictions on travel or any modification of plans desired by the host country;
- e) state any special arrangement or restriction placed on the distribution or use of the germplasm, or improved materials derived from it;
- f) if it so desired, designate a national counterpart for the field mission, and/or for subsequent collaboration;
- g) define any financial obligation to be met by the applicant including possible national participation in the collecting team, and other services to be provided; and
- h) provide the applicant with the relevant information regarding the country, its genetic resources policy, germplasm management system, quarantine procedures, and all relevant laws and regulations. Particular attention should be drawn to the culture and the society of the areas through which the collectors will be travelling.

CHAPTER IV

Responsibilities of Collectors

Article 9: Pre-collection

- 9.1 Upon arrival in the host country, collectors should acquaint themselves with all research results, or work in progress in the country, that might have a bearing on the mission.
- 9.2 Before field work begins, collectors and their national collaborators should discuss, and to the extent possible, decide on practical arrangements including: (i) collecting priorities, methodologies and strategies, (ii) information to be gathered during collection, (iii) processing and conservation arrangements for germplasm samples, associated soil/symbiont samples, and voucher specimens, and (iv) financial arrangements for the mission.

Article 10: During collection

- 10.1 Collectors should respect local customs, traditions, and values, and property rights and should demonstrate a sense of gratitude towards local communities, especially if use is made of local knowledge on the characteristics and value of germplasm. Collectors should respond to their requests for information, germplasm or assistance, to the extent feasible.
- 10.2 In order not to increase the risk of genetic erosion, the acquisition of germplasm should not deplete the populations of the farmers' planting stocks or wild species, or remove significant genetic variation from the local gene pool.
- 10.3 When collecting cultivated or wild genetic resources, it is desirable that the local communities and farmers concerned be informed about the purpose of the mission, and about how and where they could request and obtain samples of the collected germplasm. If requested, duplicate samples should be also left with them.
- 10.4 Whenever germplasm is collected, the collector should systematically record the passport data, and describe in detail the plant population, its diversity, habitat and ecology, so as to provide curators and users of germplasm with an understanding of its original context. For this purpose, as much as local knowledge about the resources (including observations on environmental adaptation and local methods and technologies of preparing and using the plant) should be also documented; photographs may be of special value.

Article 11: Post-collection

- 11.1 Upon the completion of the field mission, collectors and their sponsors should:
- a) process, in a timely fashion, the plant samples, and any associated microbial symbionts, pests and pathogens that may have been collected for conservation; the relevant passport data should be prepared at the same time;
 - b) deposit duplicate sets of all collections and associated materials, and records of any pertinent information, with the host country and other agreed curators;
 - c) make arrangements with quarantine officials, seed storage managers and curators to ensure that the samples are transferred as quickly as possible to conditions which optimize their viability;
 - d) obtain, in accordance with the importing countries' requirements, the phytosanitary certificate(s) and other documentation needed for transferring the material collected;

- e) alert the host country and the FAO Commission on Plant Genetic Resources about any impending threat to plant populations, or evidence of accelerated genetic erosion, and make recommendations for remedial action; and
 - f) prepare a consolidated report on the collecting mission, including the localities visited, the confirmed identifications and passport data of plant samples collected, and the intended site(s) of conservation. Copies of the report should be submitted to the host country's permit issuing authority, to national counterparts and curators, and to the FAO for the information of its Commission on Plant Genetic Resources and for inclusion in its World Information and Early Warning System on PGR.
- 11.2 Collectors should take steps to promote observance of the Code by the curators and users to whom they have passed the germplasm which they have collected. Where appropriate, this might be by means of agreements with curators and users consistent with Articles 13 and 14.

CHAPTER V

Responsibilities of Sponsors, Curators and Users

Article 12: Responsibilities of Sponsors

- 12.1 Sponsors should take steps to ensure, as far as is possible and appropriate, that collectors of collecting missions which they sponsor abide by the Code, particularly Articles 9, 10 and 11.
- 12.2 Sponsors should, as far as is possible and appropriate, establish agreements with curators of the germplasm collected under missions that they sponsor to ensure that curators abide by the Code particularly Article 13. Such agreements should, as far as is possible and appropriate ensure that subsequent curators and users of the collected germplasm also abide by the Code.

Article 13: Responsibilities of Curators

- 13.1 In order to be able to identify in the future the origin of the samples, curators should ensure that the collectors' original identification numbers, or codes, continue to be associated with the samples to which they refer.
- 13.2 Curators of the collected germplasm, should take practical steps to ensure, as far as is possible and appropriate, that future enquiries from the local communities and farmers who have provided the original material, and the host country, are

responded to, and the samples of the plant germplasm collected are supplied upon request.

- 13.3 Curators should take practical steps, *inter alia* by the use of material transfer agreements, to promote the objectives of this code including the sharing of benefits derived from collected germplasm by the users with the local communities, farmers and host countries as indicated in Article 14.

Article 14: Responsibilities of Users

Without prejudice to the concept of Farmers' Rights, and taking into account Articles 1.7 & 1.8, users of the germplasm, should, to benefit the local communities, farmers and the host countries, consider providing some form of compensation for the benefits derived from the use of germplasm such as:

- a) facilitating access to new, improved varieties and other products, on mutually agreed terms;
- b) support for research of relevance to conservation and utilization of plant genetic resources, including community-based, conventional and new technologies, as well as conservation strategies, for both *ex situ* and *in situ* conservation;
- c) training, at both the institutional and farmer levels, to enhance local skills in genetic resources conservation, evaluation, development, propagation and use;
- d) facilitate the transfer of appropriate technology for the conservation and use of plant genetic resources;

- e) support for programmes to evaluate and enhance local land races and other indigenous germplasm, so as to encourage the optimal use of plant genetic resources at national, sub-national, and farmers and community level and to encourage conservation;
- f) any other appropriate support for farmers and communities for conservation of indigenous germplasm of the type collected by the mission; and
- g) scientific and technical information obtained from the germplasm.

CHAPTER VI

Reporting, Monitoring and Evaluating the Observance of the Code

Article 15: Reporting by Governments

- 15.1 Governments should periodically inform the FAO Commission on Plant Genetic Resources of actions taken with regard to the application of this Code. When appropriate, this may be effected in the context of the yearly reports provided under Article 11 of the International Undertaking on Plant Genetic Resources.
- 15.2 Governments should inform the FAO Commission on Plant Genetic Resources of any decision to prohibit or restrict proposed collecting missions.
- 15.3 In cases of non-observance by a collector or sponsor of the rules and regulations of a host country regarding the collecting and transfer of plant genetic resources, or the principles of this Code, the government may wish to inform the FAO Commission on Plant Genetic Resources. The collector and sponsor should receive copies of this communication, and have the right to reply to the host country with copy to the FAO Commission. At the request of collectors or their sponsors, FAO may provide a certificate stating that no unresolved complaints are outstanding about them under this Code.

Article 16: Monitoring and Evaluating

- 16.1 Appropriate national authorities and the FAO Commission on Plant Genetic Resources should periodically review the relevance and effectiveness of the Code. The Code should be considered a dynamic text that may be brought up to date as required, to take into account technical, economic, social, ethical and legal developments and constraints.

- 16.2 Relevant professional associations and other similar bodies accepting the principles embodied in this Code may wish to establish peer review ethics committees to consider their members' compliance with the Code.
- 16.3 At a suitable time, it may be desirable to develop procedures for monitoring and evaluating the observance of the principles embodied in this Code, under the auspices of the FAO Commission on Plant Genetic Resources which, where invited to do so by the parties concerned, may settle differences that may arise.

Appendix 1

DRAFT RESOLUTION FOR FAO CONFERENCE

International Code of Conduct for Plant Germplasm Collecting and Transfer

The Conference

reaffirming that

- the conservation of plant genetic resources is a common concern of humankind;
- nations have sovereign rights over their plant genetic resources in their territories;
- plant genetic resources should be made available for plant breeding and other scientific purposes of human benefit;

noting that

- the best way to guarantee the maintenance of plant genetic resources is to ensure their effective and beneficial utilization, in all countries;
- the farmers of the world have, over the millennia, domesticated, conserved, nurtured, improved and made available plant genetic resources, and continue to do so today;

recognizing

- the close and traditional dependence of many indigenous and local communities embodying traditional lifestyles on plant genetic resources;

adopts

- the voluntary International Code of Conduct for Plant Germplasm Collecting and Transfer the over-riding purpose of which is to contribute, within the context of the FAO Global System on Plant Genetic Resources, to the conservation and rational use of plant genetic resources for sustainable development by providing broad guidelines for plant germplasm collection and transfer.

¹. This definition is extracted from the FAO Conference Resolution 5/89.

**RESOLUTION CPGR 93/1
REVISION OF THE INTERNATIONAL UNDERTAKING
ON PLANT GENETIC RESOURCES**

The Commission on Plant Genetic Resources

noting that:

- the United Nations Conference on Environment and Development (UNCED), in Chapter 14 of its programme of action, Agenda 21, recommended that the Global System on the Conservation and Sustainable Use of Plant Genetic Resources for Food and Sustainable Agriculture, be strengthened, and that the System should be adjusted to be in line with the outcome of the negotiations of a convention on biological diversity;
- the Convention on Biological Diversity, signed at UNCED by 156 governments and the European Communities, covers plant genetic resources, and recognizes that the authority to determine access to genetic resources rests with the national governments, that access to genetic resources shall be subject to the prior informed consent of the Contracting Party providing such resources, and shall be on mutually agreed terms;
- the Final Act of the Nairobi Conference for the adoption of the agreed text of the Convention on Biological Diversity, in a resolution on the inter-relationship between the Convention on Biological Diversity and the promotion of sustainable agriculture, urged that ways and means should be explored to develop complementarity and cooperation between the Convention on Biological Diversity and the Global System for the Conservation and Sustainable Use of Plant Genetic Resources for food and sustainable agriculture, and recognized the need to seek solutions to outstanding matters concerning plant genetic resources;
- the Fourth Session of the FAO Commission on Plant Genetic Resources agreed that conditions of access to plant genetic resources needed further clarification;

recognizing:

- the importance and urgency of revising the International Undertaking, in harmony with the Convention on Biological Diversity, on a step-by- step basis, starting with the integration of the Undertaking and its annexes;
- the need to ensure fair and equitable sharing of benefits with the countries providing plant genetic resources;
- the need to consider agreement on the terms of access to samples of plant genetic resources, including those preserved in *ex situ* collections, and not addressed by the Convention on Biological Diversity;
- the need to realize Farmers' Rights;

- the importance of close collaboration, including mutual reporting, in these matters, between the Commission on Plant Genetic Resources and the Governing Body of the Convention on Biological Diversity, and before the entry into force of the Convention, the Intergovernmental Committee on the Convention on Biological Diversity, as well as the Commission on Sustainable Development;

The Commission:

recommends to the Conference that the Director-General be requested to provide a forum for negotiations among governments:

- for the adaptation of the International Undertaking on Plant Genetic Resources, in harmony with the Convention on Biological Diversity;
- for consideration of the issue of access on mutually agreed terms to plant genetic resources, including *ex situ* collections not addressed by the Convention; as well as
- for the issue of realization of Farmers' Rights;

urges that the process be carried out through regular and extraordinary Sessions of the Commission on Plant Genetic Resources, convened, if necessary, with extra-budgetary financing, and with the help of its subsidiary body, in close collaboration with the Intergovernmental Committee on the Convention on Biological Diversity, and, after the entry into force of the Convention, with its Governing Body;

expresses the hope that the process be concluded in time for the FAO International Technical Conference on Plant Genetic Resources; and

suggests that the outcome be submitted to the International Technical Conference, and to the Conference of the Parties to the Convention on Biological Diversity.

AGENDA OF THE FIFTH SESSION

1. Election of the Chairman & Vice-Chairmen
2. Adoption of the agenda and timetable for the session
3. Reports of the Working Groups
4. Progress Reports on the Global System for the Conservation and Utilization of Plant Genetic Resources
5. Reports, programmes and activities on Plant Genetic Resources
6. Implications of UNCED for the Global System
7. Code of Conduct for Plant Germplasm Collecting and Transfer
8. Progress reports on the development of other international agreements and codes of conduct:
 - 8.1 Towards a Code of Conduct on Biotechnology as it affects Plant Genetic Resources
 - 8.2 The international network of *ex situ* base collections under the auspices or jurisdiction of FAO
9. The International Conference and Programme on Plant Genetic Resources
10. The future work of the Commission
11. Other business
12. Date and place of the next session
13. Adoption of the report

LIST OF DOCUMENTS

CPGR/93/1	Provisional annotated agenda
CPGR/93/2	Provisional timetable
CPGR/93/3	Report by the Chairman of the Working Group on its Seventh Session
CPGR/93/4	Report by the Chairman of the Working Group on its Eighth Session
CPGR/93/5	Progress Report on the Global System for the conservation and utilization of plant genetic resources
CPGR/93/5 Annex	Genebank Standards
CPGR/93/6	Reports on activities on plant genetic resources by FAO, IBPGR and other organizations
CPGR/93/7	Implications of UNCED for the Global System
CPGR/93/8	Draft International Code of Conduct for Plant Germplasm Collecting and Transfer
CPGR/93/9	Towards a Code of Conduct on Biotechnology as it affects the conservation and utilization of plant genetic resources
CPGR/93/10	The International Conference and Programme on plant genetic resources
CPGR/93/11	The international network of <i>ex situ</i> base collections under the auspices and/or jurisdiction of FAO: model agreement for the International Agricultural Research Centres

- CPGR/93/Inf. 1 Provisional List of Delegates and Observers Members of the Commission
- CPGR/93/Inf. 2 International Undertaking on Plant Genetic Resources
- CPGR/93/Inf. 3 Convention on Biological Diversity and Related Resolutions
- CPGR/93/Inf. 4 Agenda 21 Programme Area G on "Conservation and Sustainable Utilization of Plant Genetic Resources for Food and Agriculture (extracted from Chapter 14 "Promoting Sustainable Agriculture and Rural Development of the UNCED's Agenda 21
- CPGR/93/Inf. 5 Statement of Competence and Voting Rights submitted by EEC and its Member States
- CPGR/93/Inf. 6 Note on the Legal Significance of Terms Related to the Status of Plant Genetic Resources

SEVENTH SESSION OF THE WORKING GROUP OF THE COMMISSION ON PLANT GENETIC RESOURCES

REPORT BY THE CHAIRMAN

I. Introduction

1. The 7th Session of the Working Group was attended by Cape Verde, Congo, Egypt, El Salvador, Ethiopia, Indonesia, Italy, Kenya, Libya, Madagascar, Mexico, Netherlands, Peru, Philippines, Spain, Sweden, Thailand, U.S.A. and Venezuela., and was chaired by Mr. M. Worede (Ethiopia). The Working Group discussed two main documents: CPGR/WG/92/3 - Preparations for the 4th International Technical Conference on the Conservation and Use of Plant Genetic Resources (ICPGR), and CPGR/WG/92/4 - Implications of UNCED for the Global System on PGR.

II. The International Conference and Programme on PGR.

2. The Secretariat informed the Working Group that the International Technical Conference had been requested by both FAO Conference and Agenda 21 of UNCED. It also informed that the modifications introduced in the project document to meet the recommendations of an Expert Consultation held in June 1992 on this subject had raised the estimated cost of the project from about US\$ 7 million to almost US\$ 10 million and expressed concern for the budgetary implication it may have for the organization, asking the Group to identify areas where the cost could be reduced.

3. The Group agreed that major aims of the Conference and its preparatory process would be:

- (i) to transform the relevant parts of Agenda 21 (especially area G of Chapter 14) into a costed Global Plan of Action; and
- (ii) to make the Global System for the Conservation and Use of PGR fully operational.

4. It was underlined that some of the activities envisaged at national, regional and global level during the two and a half years of preparatory process would enhance record keeping of existing PGR, raise public awareness and promote effective dialogue and coordination between all parties concerned with PGR and that these activities should be considered as concrete steps towards the implementation of Agenda 21. The Working Group also emphasized that the ICPGR should give similar importance to the conservation (*in situ* and "on-farm" - especially the Vavilov areas - and *ex situ*) and utilization (including plant breeding, biotechnology and seed production) aspects of PGR. It finally stressed the need to address economic aspects of PGR and to quantify genetic erosion.

5. The Group emphasized that the project document CPGR/WG/92/3 envisaged a full "programme" and not just a "conference". Given the need to raise awareness and forge commitment for action, the Group observed that the process involved more than the simple production of a number of documents. Indeed, the conference should be seen as a step in the process of developing

consensus and commitment for a Global Plan of Action. The Group stressed the importance of the bottom-up country driven approach and suggested that this approach be given prominence in the project document. It was thought that, with such a clarification, potential donors would understand that the budget includes far more than the holding of a conference.

6. While some delegations thought that the cost of the project reflected in the draft project document, *circa* \$10m, was fully justified, other delegations thought that there were possibilities for reducing the cost. The Working Group recognized that the budget for the ICPGR may have to be reduced, and expressed its hope that such reductions, if necessary, should compromise neither the scientific integrity nor the bottom-up country driven, approach of the process currently reflected in the draft project document. Amongst the items cited for possible budget reductions were: reducing the size of the core secretariat; reducing the amount allocated for financing travel by developing country representatives to various meetings; reducing general administrative and servicing costs; reducing the amount of documentation; reducing the number of sub-regional meetings; reducing the number of country reports; and/or reducing the number of theme papers and case studies.

7. On the question of funding, the Group noted the recommendation of the Commission and the Conference that funds should be extra-budgetary. However, some countries encourage the idea of exploring that some resources be made available from the FAO programme of work & budget for 94/95. Other sources such as the GEF were also mentioned. During the discussion, some countries expressed their intention to provide extra-budgetary funds for the ICPGR, following the reception of the project proposal.

8. The Group considered that, given the constraints on time and the need to get soonest concrete financial commitments, the project document should be sent to potential donors as soon as possible. Work on the preparatory process should be well under way before the meeting of the Commission in April. The Commission then will have the opportunity to review the process in the light of the donors' financial commitments made and provide appropriate Terms of Reference of the ICPGR.

9. The Working Group discussed its possible role and that of the proposed "Advisory Committee" during the preparatory process of the ICPGR. A suggested solution for which there seemed to be agreement was:

- (i) that a "Group of Experts" provides technical and scientific expert advice to the Secretariat. FAO would have responsibility for appointing the Group of Experts, recognizing that the primary concern is competence, but with regard to the need for regional balance;
- (ii) that the Commission provides guidance at a political and policy level and that it decides - in its regular session in April 1993 -- the precise role and mandate of its Working Group in the preparatory process;
- (iii) additionally, the Commission might wish to function, at its 6th Regular Session in April 1995, as a preparatory body to review and negotiate the draft Global Plan of Action.

In this context one country observed that the meetings of the Commission and its Working Group discussing the ICPGR should be regarded as part of the FAO contribution.

10. With regard to the question of whether or not there should be a meeting of the Commission immediately after the ICPGR, an alternative suggestion to be also proposed to the Commission in April is that the ICPGR be attended by both technical experts and policy makers and that it will effectively become a "summit meeting" for its last two days -- for adoption and signing of the Global Plan of Action -- during which attendance at a high level will be encouraged .

11. The Group agreed on the need to facilitate participation of developing countries at the Conference if funding is available. In order that both technical experts and policy makers can attend, a minimum of two participants per country was found desirable. Funding might possibly come from bilateral donors, but efforts should be made to allow multilateral funding of at least one participant from each interested developing country. The country suggested that the establishment of a separate trust fund might facilitate financing participation of developing countries representatives.

12. There was general support for the proposal of using the FAO Regional Conferences in the consultation process, and some countries supported the idea of extending these Regional Conferences in order to allow time for discussions related to the ICPGR.

13. The Group agreed that although "country reports" are part of the project proposal, full-scale "country studies", which may or may not be undertaken in parallel, are outside the proposal. However, the preparatory process should draw upon any relevant information arising from the later. In this context the Group encouraged the full and active involvement of FAO in the country studies on biodiversity, which are being coordinated by UNEP.

14. The Group considered that the preparatory process of the conference to be led by FAO should ensure the participation of relevant organizations dealing with *ex situ* and *in situ* conservation as well as utilization of PGR. IBPGR, the IARCs and the Secretariat of the Biodiversity Convention as well as the World Bank, GEF and other multilateral financial institutions were singled out.

III. Other Implications of UNCED

15. It was recognized that there were many complex issues under this item and that further discussion would be required at the Commission. Some delegations expressed disappointment that an extraordinary session of the Commission to consider the implications of UNCED had not been convened due to lack of funding. A delegation member considered that the ICPGR would be a suitable forum to address some of these issues.

16. The Group noted that Agenda 21 has recommended the strengthening of the Global System and its different components making special reference to the need to take further steps to develop Farmers' Rights. The Group supported the strengthening of the Global System and the need to

realizing Farmers' Rights by implementing Resolution C 91/3. Some countries suggested that the International Fund and mechanism envisaged in this resolution can be a window of the fund for the Convention on Biodiversity, and maybe of GEF during the interim period.

17. The Group noted that the Resolution 3 "The Interrelationship Between between the Convention on Biological Diversity and the Promotion of Sustainable Agriculture" approved without reservation by the Diplomatic Conference for the Adoption of the Convention on Biological Diversity, considered that there should be complementarity between the Convention and the FAO Global System on PGR and the "outstanding matters" such as access to existing *ex situ* collections and the development of Farmers' Rights should seek solutions within the Global System.

18. While some delegations did not express a view on the interpretation of the Convention on Biodiversity with regard to the issues of access to existing *ex situ* collections, those which did express a view favoured the interpretation that these genetic resources are excluded from the Convention and since most of them were collected on the general understanding that PGR were the heritage of mankind, these resources should continue to be freely available, possibly with a global compensatory mechanism. The problem (in some cases impossibility) of identifying the country/ies of origin for much of the material stored in genebanks was noted and recognized as an handicap for developing bilateral agreements with each country of origin. It was further noted that much of the material stored in *ex situ* collections has been widely distributed to many genebanks and breeders and consequently the country of origin, when known, and even if bilateral agreements were granted to it, might have real difficulties to exercise any kind of control on these collections. It was suggested that the implementation of Farmers Rights, as envisaged in FAO Conference Resolution 3/91, might provide a suitable compensation mechanism.

19. The hope was expressed that the Code of Conduct for Germplasm Collection and Transfer should be finalized and agreed at the next meeting of the Commission.

20. The issue of "on-farm" conservation was discussed, and it was noted that this would be an important and complementary method for conserving PGR for food and agriculture productive importance, particularly in Vavilov centres of diversity.

21. There was general agreement that consideration should be given to a possible review of the International Undertaking. While some delegations thought that this should be limited to revising the Undertaking in order to integrate the three annexes with the main text of the Undertaking in order to improve internal consistency, others thought that the Undertaking should be re-negotiated to become a legally binding instrument, possibly as a protocol to the Convention on Biological Diversity with its own funding, secretariat and governing body. In this context, it was emphasized that the agreements embodied in the Undertaking and its annexes were the result of many years of careful and painstaking work and negotiation that must be preserved and form the basis of any further negotiations. It was agreed that any revision or re-negotiation of the Undertaking should be a step-by-step process in the FAO Commission on Plant Genetic Resources, and that while ensuring the maintenance of the current adherence, it should aim at attracting the countries which did not yet adhere to it. It was suggested that the Secretariat might prepare a note for the next

meeting of the Commission on this idea. A country expressed its hope that a reviewed International Undertaking could be ready for endorsement during the ICPGR.

22. The need for full cooperation and interaction between the Commission on Plant Genetic Resources and the Conference of the Parties of the Convention on Biological Diversity, and in the interim period, the intergovernmental Committee on the Convention on Biological Diversity as well as between both Secretariats was recognized.

23. Several countries stressed the special nature of Plant Genetic Resources for Food and Agriculture (PGRFA) and the differences on methodologies and strategies between the conservation and sustainable use of general Biodiversity and that of PGRFA, including the different emphasis needed on intra-species diversity. Based on these considerations, there was general agreement that the CPGR should keep its role as the primary intergovernmental forum for discussions and negotiations of technical and policy matters related to conservation and sustainable use of PGRFA, including the development of possible protocols for the Convention on Biodiversity related to PGRFA. In this context the Group suggested that ways and means for cooperation and distribution of responsibilities between the CPGR and the interim Intergovernmental Committee on the Convention on Biological Diversity should be developed.

24. Support was expressed for the ideas that at the institutional level: (i) the Commission should provide policy advice to the Conference of the Parties of the Convention on matters related to PGRFA, and to the Participants' Assembly of the GEF on funding of PGRFA projects; (ii) the Commission should report to the UN Commission on Sustainable Development on the implementation of the Agenda 21 programme area on PGRFA.

IV. Other matters

25. The Working Group was informed that Mr. C. di Mottola Balestra has presented his resignation as Chairman of the Working Group. The Group expressed its truthful appreciation for the work accomplished by Mr. di Mottola during his two mandates in the chair of the Group and agreed that Mr. M. Worede, Chairman of Commission would chair the Working Group till the Commission accepts the resignation of Mr. di Mottola and designates a new Chairman.

26. The Group also discussed the current Terms of Reference and regulations and the possibility of amending and adapting them to the current needs, especially in view of the possible role it may have in the preparation process of the ICPGR. It was mentioned that the revision should cover elements such as interaction between the Working Group and the Chairman of the Commission as well as renewal of membership of the Working Group. Some members of the Working Group volunteered to send suggestions for a possible revision of the Terms of Reference.

Tema 3 del
Programa Provisional

COMISION DE RECURSOS FITOGENETICOS

Quinta reunión

Roma, 19 - 23 de abril de 1993

INFORME DEL PRESIDENTE DEL GRUPO DE TRABAJO DE LA COMISION DE RECURSOS FITOGENETICOS SOBRE SU OCTAVA REUNION

I. Introducción

1. A la octava reunión del Grupo de Trabajo asistieron representantes de Cabo Verde, Congo, Egipto, España, Estados Unidos, Filipinas, India, Indonesia, Italia, Madagascar, México, Países Bajos, Suecia, Tailandia, Túnez y Venezuela. En ausencia del presidente en funciones, Sr. M. Worede (Etiopia), el Grupo de Trabajo eligió al Sr. J.M. Bolívar (España) para presidir la reunión.

2. El Grupo de Trabajo seleccionó de la agenda provisional de la quinta reunión de la Comisión, aquellos temas en los que juzgó que podía facilitar los trabajos de la Comisión. El Grupo de Trabajo discutió con cierto detalle los siguientes documentos: Proyecto de Código Internacional de Conducta para la Recolección y Transferencia de Germoplasma Vegetal (CPGR/93/8); Hacia un Código de Conducta sobre la Biotecnología en cuanto afecta a los recursos fitogenéticos (CPGR/93/9); Red Internacional de colecciones base *ex-situ* bajo los auspicios o la jurisdicción de la FAO: modelo de acuerdo para los Centros Internacionales de investigación agrícola (CPGR/93/11); y Normas para bancos de genes (Anexo al doc. CPGR/93/5). El Grupo de Trabajo consideró también otros asuntos relativos a las colecciones *ex-situ* y al seguimiento de la CNUMAD (documentos CPGR/93/5 y CPGR/93/7) y discutió posibles cambios de los términos de referencia del Grupo de Trabajo y de los procedimientos de elección de sus miembros y presidente.

El Grupo de Trabajo observó que, dadas la densidad del programa de trabajo de la Comisión y la importancia de las materias a tratar, sería conveniente agilizar las discusiones de la Comisión a fin de que se disponga de tiempo suficiente para debatir todos los temas.

II. Código de conducta para la recolección y transferencia de germoplasma vegetal

3. El Grupo de Trabajo consideró muy importante que este Código quede finalizado durante la Quinta Reunión de la Comisión, de forma que pueda ser presentado a la Conferencia de la FAO en noviembre de 1993.

4. El Grupo de Trabajo estuvo de acuerdo en recomendar a la Comisión que apruebe el texto presentado por el Secretariado con los cambios que figuran en el Anexo a este informe. Dichos cambios, que no afectan a la sustancia del documento, podrían ser presentados en el tema 7 del orden del día. El Grupo de Trabajo consideró también que el Texto del proyecto de resolución (Apéndice 1 del documento CPGR/93/8) podía ser apropiado para preámbulo del Código.

III. Código de conducta sobre la biotecnología en cuanto que afecta a los recursos fitogenéticos

5. El Grupo de Trabajo observó que, dadas la complejidad e importancia de las materias cubiertas por este Código, sería conveniente que la agenda de la Comisión se desarrolle de modo que se disponga de tiempo suficiente para la discusión del tema 8.1.

6. Algunas Delegaciones manifestaron que, ante la llegada al mercado de productos de la biotecnología de plantas, era sumamente urgente disponer de un Código sobre biotecnología.

7. Hubo acuerdo general en que estas materias deberían tratarse de una forma pragmática, y en que podía ser mejor separarlas y no englobarlas en un solo Código. A este respecto, se sugirió que las más urgentes podrían tratarse inmediatamente, mientras que las menos urgentes podrían dejarse para ser discutidas en futuras sesiones de la Comisión y su Grupo de Trabajo. También hubo acuerdo en que el Código debería limitarse a aquellos aspectos que afectan directamente a la agricultura y a la alimentación. Pero no se llegó a definir ni cuáles son éstos, ni cuáles son las materias más urgentes.

8. Algunas delegaciones, teniendo en cuenta la complejidad de las materias objeto del Código, señalaron que algunos temas podrían ser tratados mejor en otros foros y que algunos elementos del proyecto de Código podrían pasarse a esos foros como contribución de la Comisión. Se sugirió específicamente que la sección de biodiversidad podría ser una contribución a los estudios sobre bioseguridad emprendidos en el contexto del Convenio sobre Diversidad Biológica. Pero el Grupo de Trabajo no discutió los mecanismos de interacción con estos otros foros.

9. El Grupo de Trabajo estuvo de acuerdo en que el Código debería dirigirse principalmente a los gobiernos y también a las organizaciones y asociaciones profesionales pertinentes, y que esto debería reflejarse en el Artículo 4.2.

IV. Disponibilidad de los recursos fitogenéticos, el status de las colecciones de germoplasma *ex-situ* existentes, y otras cuestiones derivadas de la CNUMAD

10. El Grupo de Trabajo recordó sus discusiones en su 7ª reunión sobre las consecuencias de la CNUMAD para el Sistema Mundial (CPGR/93/7).

El Grupo de Trabajo observó que el Convenio de Diversidad Biológica no contempla el acceso a las colecciones de germoplasma *ex-situ* existentes previamente a su entrada en vigor, y

que, aquéllos que aprobaron el texto del Convenio en el Acta Final de Nairobi, consideraron que esta cuestión debería resolverse dentro del Sistema Mundial.

11. Se tuvo en cuenta que, tanto el Convenio de Diversidad Biológica, en su Artículo 15, como el Compromiso Internacional de la FAO, en su Artículo 5, señalan que el intercambio de germoplasma deberá realizarse en las condiciones que se convengan mutuamente.

12. El Grupo de Trabajo reconoció el papel de los acuerdos bilaterales que se contemplan en el Convenio de Diversidad Biológica. No obstante, consideró que podía ser muy importante desarrollar más ampliamente un acuerdo multilateral en términos mutuamente acordados, con las compensaciones adecuadas, a fin de no restringir la accesibilidad al germoplasma. De otro modo, con la entrada en vigor del Convenio, pueden requerirse tal número de acuerdos bilaterales distintos, que la disponibilidad e intercambio de germoplasma pueden sufrir graves restricciones.

13. El Grupo de Trabajo coincidió en recomendar a la Comisión que dé consideración prioritaria al encuentro de caminos y medios para asegurar la complementariedad y estrechar la cooperación entre el Convenio de Diversidad Biológica y el Sistema Mundial.

14. El Grupo de Trabajo, recordando las discusiones que mantuvo en su 7ª reunión, coincidió también en recomendar a la Comisión que considere prioritario dar los pasos necesarios para revisar el Compromiso Internacional, incorporando sus tres anexos al cuerpo principal y armonizándolo en palabras y conceptos con el Convenio de Diversidad Biológica, así como desarrollando un acuerdo multilateral en términos equitativos, mutuamente convenidos, para el acceso al germoplasma, al que hemos aludido anteriormente.

15. En relación a los derechos de propiedad intelectual, varias delegaciones insistieron en que el germoplasma recolectado en un país no debería ser protegido por el país receptor de forma tal que restrinja su uso en el país donante.

**V. Propuesta de los CIIA para poner sus colecciones
de germoplasma en la red internacional de colecciones
base bajo los auspicios de la FAO**

16. El Grupo de Trabajo discutió la propuesta de colocar las colecciones de los CIIA en la red mundial bajo los auspicios de la FAO (Documento CPGR/93/11).

17. El Grupo de Trabajo se congratuló de esta decisión de los CIIA. Algunas delegaciones pidieron aclaración sobre algunos puntos específicos, en particular acerca de la "propiedad" de los recursos contenidos en las colecciones y sobre las implicaciones del concepto de "fideicomiso".

18. El Director del CIRF comentó algunos de estos puntos. Señaló que la cuestión de "propiedad" no está clara; que gran parte del material de las colecciones es el resultado de la colaboración internacional y, por consiguiente, debería considerarse de dominio público; que, en bastantes casos, el origen de los materiales no se conoce. Apuntó que los Centros mismos no se consideran propietarios del germoplasma, sino más bien custodios, con el deber de hacerlas accesibles. Esta última obligación incluiría, cuando fuese posible, mecanismos para evitar que

otra parte haga inaccesibles las colecciones, por ejemplo mediante derechos de propiedad intelectual. Aclaró que, si bien el material parental original formaría parte de la colección internacional, no todas las líneas de mejora formarían parte de ésta, únicamente aquéllas con características particularmente interesantes.

19. Se sugirió que el proyecto de modelo de acuerdo (Apéndice 1 del documento CPGR/93/11) debería incluir disposiciones sobre la duplicación del germoplasma designado en otros bancos de genes, y sobre la situación que se crearía por el cierre de un Centro. Se propuso también modificar el lenguaje del Artículo 5, de forma que los Centros serían los responsables de "desarrollar políticas" más que de "determinar políticas". Se solicitó también que se aclarasen más las implicaciones que sobre la propiedad del germoplasma tiene el concepto de "fideicomiso".

VI. Banco Internacional de Semillas de Svalbard

20. Se consideró que deberían continuar las gestiones de la FAO para asegurar la financiación sostenible del propuesto Banco Internacional de Semillas de Svalbard. Y que debería darse prioridad para colocar sus semillas a los países que no disponen de instalaciones adecuadas.

VII. Normas para bancos de genes

21. El grupo de Trabajo estuvo de acuerdo en recomendar a la Comisión que adopte el texto de Normas para bancos de genes (CPGR/93/5 anejo). Observó que las normas son aplicables sólo a plantas de semilla con semillas ortodoxas, y que una vez sean desarrolladas las tecnologías, deberán establecerse las normas para plantas con semillas no ortodoxas, plantas propagadas vegetativamente y otras plantas perennes no cubiertas por las presentes normas.

VIII. Términos de referencia y procedimientos para el Grupo de Trabajo

22. Se examinaron los Términos de Referencia del Grupo de Trabajo actuales. Estos son: "considerar el progreso realizado en la instrumentación del programa de trabajo de la Comisión y cualesquiera otras materias que le encomiende la Comisión" (CPGR/85/Rep Para 78). Hubo acuerdo general sobre que estos Términos de Referencia amplios eran apropiados para el Grupo de Trabajo.

23. Hubo acuerdo en que los procedimientos actuales para elegir el Grupo de Trabajo, cuya composición se basa en los grupos regionales, es satisfactoria, pero que debería clarificarse y prestarse atención al período de ejercicio del Grupo de Trabajo y al principio de rotación. Asimismo, se coincidió en la conveniencia de que el Grupo de Trabajo tenga un Presidente y un Vicepresidente. También hubo acuerdo en que el Grupo de Trabajo debería tener capacidad para invitar observadores a sus reuniones cuando fuese pertinente.

24. El Grupo de Trabajo discutió algunas opciones para la elección de su miembros y su período de ejercicio. El representante de la Oficina Legal de la FAO describió el sistema para la elección del Consejo. Pero el sentimiento general fue que éste era un procedimiento muy elaborado, pero quizás complicado, y que un sistema más "liviano" podía ser más apropiado para el Grupo de Trabajo. Algunas delegaciones manifestaron que sería útil un sistema mediante el cual sólo se reemplace en cada elección una parte de su miembros, de forma que se asegure la

continuidad y, al mismo tiempo, se facilite la rotación. Se pidió al Sr. Consejero Legal que redactase algunas opciones para posible consideración por la Comisión.

Appendix F

Diagram of the Global System*

COMMISSION ON PLANT
GENETIC RESOURCES

WORKING GROUP

INTERNATIONAL
UNDERTAKING C 8/83

Complementary Resolutions / Annexes

agreed interpretation
C 4/89

Farmers' Rights
C 5/89

National sovereignty &
international fund agreement C
3/91

OTHER INTERNATIONAL
AGREEMENTS

GLOBAL
MECHANISMS

GLOBAL
INSTRUMENTS

Code for PGR Collecting &
Transfer

World Information & Early
Warning System

State of the World**

Code for Biotechnology

Network of *ex situ* collections

Global Plan of Action**

Basic agreements on genebanks

Network of *in situ* and on-farm
areas

International Fund
(implementation of
Farmers' Rights)

* For illustrative purposes only

** The first State of the World and Global Plan of Action on Plant Genetic Resources will be produced during the preparatory process of the International Technical Conference.

PROVISIONAL AGENDA FOR THE SIXTH SESSION

1. Election of the Chairman and Vice-Chairmen.
2. Adoption of the agenda and time-table for the Session.
3. Reports of the Working Groups.
4. Revision of the terms of reference and procedures of the Working Group, and election of its officers.
5. Progress Reports on the Global System for the Conservation and Utilization of Plant Genetic Resources.
6. Reports, programmes and activities on Plant Genetic Resources.
7. Progress Report on the Fourth International Technical Conference, and Programme on Plant Genetic Resources:
 - 7.1 Report on The State of the World's Plant Genetic Resources;
 - 7.2 The Global Plan of Action.
8. Progress Report on the Revision of the International Undertaking.
9. Progress reports on the development of other international agreements:
 - 9.1 Codes of Conduct;
 - 9.2 The International Network of *Ex Situ* Base Collections under the Auspices and/or Jurisdiction of FAO.
10. The future work of the Commission.
11. Other business.
12. Date and place of the next session.
13. Adoption of the report.