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REPORT ON THE STATUS OF THE INTERNATIONAL CODE OF CONDUCT FOR PLANT GERMPLASM COLLECTING AND TRANSFER

TABLE OF CONTENTS

	<i>Para.</i>
I. Introduction	1- 3
II. Use of the Code of Conduct	4- 5
III. Recent developments of relevance to the Code of Conduct, and their possible implications	6-10
IV. Guidance requested from the Commission	11-13

REPORT ON THE STATUS OF THE INTERNATIONAL CODE OF CONDUCT FOR PLANT GERMPLASM COLLECTING AND TRANSFER

I. INTRODUCTION

1. The International Code of Conduct for Plant Germplasm Collecting and Transfer was negotiated by the Commission on Genetic Resources for Food and Agriculture,¹ and was adopted by Resolution 8/93 by the FAO Conference at its Twenty-seventh session in 1993. As a component of the FAO Global System on Plant Genetic Resources for Food and Agriculture, the Code aims to promote the rational collection and sustainable use of plant genetic resources, while preventing genetic erosion, and protecting the interests of both donors and collectors of germplasm.
2. According to Article 16.1 of the Code of Conduct, the Commission 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. At its Eighth Session, the Commission requested the Secretariat to provide at its Ninth Session, a report on the status of the Code ‘so that it could consider what action to take on the future of the Code in the light of the revision of the International Undertaking’.²
3. This Document briefly outlines the use of the Code of Conduct, recent developments and their implications, and areas where further guidance may be required from the Commission.

II. USE OF THE CODE OF CONDUCT

4. The Code of Conduct provides a set of general principles, which governments may use in developing national regulations, or in formulating bilateral agreements on the collection of germplasm. The Code, recommends: procedures for the requesting and granting of licences for collecting missions; responsibilities of collectors, including technical details, before, during and after collecting missions; and responsibilities of mission sponsors, genebank curators and users of genetic material. It calls for the active participation of farmers and local institutions in collecting missions and proposes that users of germplasm share the benefits derived from the use of plant genetic resources with the host country and its farmers.
5. FAO’s Seed and Plant Genetic Resources Service carried out a survey of laws and regulations relevant to plant genetic resources for food and agriculture (PGRFA) in various countries in 1999. Twenty-one countries specifically indicated that they had made use of the Code of Conduct,³ for example in providing guidance for collecting missions. Elements of the Code have also been used in drafting laws or model laws.⁴

¹ Then, the “Commission on Plant Genetic Resources”.

² CGRFA8/99/R, para 34.

³ These are Austria, Bangladesh, Barbados, Bolivia, Cameroon, Canada, Czech Republic, Denmark, Finland, France, Germany, Ghana, Ireland, Italy, Netherlands, Poland, Portugal, Senegal, Sweden, Switzerland, Zambia.

⁴ For example, see the Report of the “Crucible II” Group: Seeding Solutions, Volume II: Options for national laws governing control over genetic resources and biological innovations.

III. RECENT DEVELOPMENTS OF RELEVANCE TO THE CODE OF CONDUCT, AND THEIR POSSIBLE IMPLICATIONS

6. Since the Code of Conduct was adopted in 1993, there have been a number of developments relevant to the Code. Firstly, the negotiations for the revision of the International Undertaking in harmony with the Convention on Biological Diversity have been completed with the adoption by FAO Conference in November 2001, of the International Treaty on Plant Genetic Resources for Food and Agriculture. On its entry into force, the Treaty will establish a new and binding framework for cooperation in the area of plant genetic resources for food and agriculture.⁵ The Treaty includes a number of provisions, some mandatory, other voluntary, for access to plant genetic resources for food and agriculture, and the sharing of benefits derived from their use. Such provisions apply to Plant Genetic Resources for Food and Agriculture in the Multilateral System of Access and Benefit Sharing (Articles 12 and 13), and also to certain Plant Genetic Resources for Food and Agriculture held in international collections (Article 15). Among the other relevant provisions of the Treaty are those requiring Parties to take measures on Farmers' Rights (Article 9), including: (a) protection of traditional knowledge relevant to plant genetic resources for food and agriculture; (b) the right to equitably participate in sharing benefits arising from the utilization of plant genetic resources for food and agriculture; and (c) the right to participate in making decisions, at the national level, on matters related to the conservation and sustainable use of plant genetic resources for food and agriculture.

7. The Conference of the Parties to the Convention on Biological Diversity in 2002 adopted the Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization, and other guidance.⁶ The Bonn Guidelines are voluntary and intended to be used when drafting legislative, administrative or policy measures on access and benefit sharing, and contracts and other arrangements under mutually agreed terms for access and benefit-sharing. They provide guidance, *inter alia*, on the responsibilities of users and providers, the participation of stakeholders, prior informed consent procedures and mutually agreed terms. The Bonn guidelines were not specifically developed to meet the distinctive needs of plant genetic resources for food and agriculture, but the Conference of the Parties stated that the guidelines "should be applied in a manner that is coherent and mutually supportive of the work of relevant international agreements and institutions. The guidelines are without prejudice to the access and benefit-sharing provisions of the FAO International Treaty on Plant Genetic Resources for Food and Agriculture".

8. With the growing international awareness of the value of biodiversity, traditional knowledge, and the need to ensure their conservation and use in a more equitable manner, a number of countries have developed, and many more are developing legislation and/or regulations governing access to genetic resources.⁷ Finally, many countries and stakeholders now have experience in using the Code of Conduct.

9. Much of the Code of Conduct, such as its detailed guidance to collectors, sponsors and curators, has not been replicated or addressed in detail by other agreements, codes or guidelines, and thus the Code continues to be a useful and practical reference tool. However, in the light of

⁵ FAO Conference Resolution 3/2001, "Adoption of the International Treaty on Plant Genetic Resources for Food and Agriculture and interim arrangements for its implementation", para A4

⁶ CBD Decision VI/24 (The Hague, 2002).

⁷ Regional groups, national governments or state governments already regulating access to genetic resources include: the Andean Pact (Bolivia, Colombia, Ecuador, Peru, Venezuela); Australia (the States of Western Australia and Queensland); Brazil (at the Federal level and the States of Acre and Amapa); Cameroon; Costa Rica; the Republic of Korea; Malaysia (the State of Sarawak); Mexico; the United States of America (within Yellowstone and other national parks), and the Philippines.

the adoption of the International Treaty and other relevant developments, the Commission may wish, in due course, to consider the need to update certain elements of the Code, *inter alia*: references to the International Undertaking, now the Treaty (Articles 4.3, 5 and 15.1); references to Farmers' Rights (Article 4.3); provisions on the sharing of benefits (Article 14); and any additional elements that may need to be introduced to bring the Code fully in line with the new Treaty. Moreover the further development of the Code would make possible for it to play a role in relation to the Treaty, such as the Bonn Guidelines do for the CBD.

10. As referred to above, the International Treaty on Plant Genetic Resources for Food and Agriculture sets out a number of conditions for facilitated access to plant genetic resources for food and agriculture within the Multilateral System. Article 12.3h states that "Without prejudice" to [these provisions], the Contracting Parties agree that access to plant genetic resources for food and agriculture found in *in situ* conditions will be provided according to national legislation or, in the absence of such legislation, in accordance with such standards as may be set by the Governing Body"

IV. GUIDANCE REQUESTED FROM THE COMMISSION

11. The Commission may wish to provide guidance on whether the Code should be developed further in harmony with the Treaty, and taking into account other relevant international agreements, in particular the Convention on Biological Diversity and relevant decisions of its Conference of the Parties, so that it supports relevant provisions of the Treaty.

12. If the Commission decides on further development of the Code, guidance is sought as to whether the same provisions should apply to all plant genetic resources for food and agriculture within the scope of the Treaty, or whether separate provision should be made, as appropriate, for plant genetic resources for food and agriculture within the Multilateral System, and for plant genetic resources for food and agriculture not included in the Multilateral System.

13. In practical terms, how would the Commission wish to proceed, including the possible role that its Inter-governmental Technical Working Group on Plant Genetic Resources for Food and Agriculture could play in this work?