



Item 5 of the  
Provisional Agenda

COMMISSION ON PLANT GENETIC RESOURCES

Fourth Session

Rome, 15 - 19 April 1991

SECOND PROGRESS REPORT ON LEGAL ARRANGEMENTS WITH A VIEW  
TO THE ESTABLISHMENT OF AN INTERNATIONAL NETWORK  
OF BASE COLLECTIONS IN GENE BANKS UNDER  
THE AUSPICES OR JURISDICTION OF FAO

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## I. INTRODUCTION

1. Section I of this document reviews the progress since the Third Session of the Commission, in establishing a network of base collection in genebanks under the auspices or jurisdiction of FAO. Section II deals with progress in establishing technical standards for genebanks. Section III considers the possibility of merging the FAO and IBPGR networks. Sections II and III were prepared in close collaboration with IBPGR, as were Annexes 5 and 6.

## II. CURRENT LEGAL POSITION

2. The Commission, at its Third Session, in April 1989, had before it document CPGR/89/4, Progress Report on Legal Arrangements with a View to the Establishment of an International Network of Base Collections in Gene Banks under the Auspices or Jurisdiction of FAO. This document reported on the replies that had been received to the Director-General's Circular State Letter of 23 October 1987, which had requested comments on the Study on Legal Arrangements with a View to the Possible Establishment of an International Network of Base Collections in Gene Banks under the Auspices or Jurisdiction of FAO. The Study was contained in document CPGR/87/6 presented to the Second Session of the Commission. Document CPGR/89/4 included an analytical table of replies.

3. Since the Third Session in 1989, four additional replies have been received, making a current total of 31 replies received by the Secretariat. Two of these replies favoured Model C as set out in document CPGR/87/6 and two favoured Model D. The analytical table of replies has been updated accordingly and is attached as **Annex 1**.

4. As a result of the above, 25 governments and institutions have now stated that they would be prepared to bring their collection or collections within the international network. Three other governments have not stated specifically whether they would be prepared to do so, but, of these, two have stated a preference as to the model that they favoured. Three governments have made it known that they do not wish to participate in the network.

5. To date, 24 governments and institutions have expressed a preference for either Model C or Model D: 13 favour Model C and 8 favour Model D; two have not expressed a preference between Model C or Model D, and one is still studying both. One government has stated its preference for Model B. Three governments, while willing to participate, have expressed no preference with respect to the model.

6. Among the communications received, 8 governments have stipulated that their participation would be subject to certain conditions. The conditions specified by Costa Rica, Denmark, France, Germany and the United Kingdom have already been reported in paragraph 9 of document CPGR/89/4. Three of the governments that have replied since the Third Session of the Commission have stipulated the conditions that are summarized below.

- (a) India expressed its agreement, "in principle, to join the International Network of Base Collections subject to acceptance of Model D with a few slight modifications". India stated that "as far as possible [it] will make the resources in the base collection available for the purpose of scientific research, plant breeding or genetic resource conservation, either directly to users or through FAO, and either free of charge or on mutually agreed terms".
- (b) Norway confirmed that its official collections of plant genetic resources were held in the custody of the Nordic Gene Bank or were otherwise subject to the policies of the Nordic Gene Bank and that, consequently, it was not in a position to accept any cession of sovereignty from the Nordic Gene Bank to FAO. "Norway would, therefore, only be in a position to consider the proposed Model C, modified after consultations." However, having consulted the other Nordic countries, "Norway was prepared to cooperate internationally concerning the conservation of plant genetic resources and could support the principle of supplying samples of plant genetic resources from the active collection to interested parties".
- (c) Sweden stated the same, mutatis mutandis, as had been stated by Norway.

7. It is to be recalled that four Member Nations had spontaneously offered to provide space in their gene banks to FAO for the establishment of international collections: Argentina, Ethiopia, Kenya and Spain. A summary of these offers was set out in paragraph 13 of document CPGR/89/4, and paragraph 40 of the Report of the Third Session of the Commission. Since then, Norway has made a similar offer and discussions are underway with the Government of Norway regarding the establishment of an international seed bank in the permafrost conditions in Spitzbergen (Svalbard). The status of discussions on this matter is reported and the guidance of the Commission requested, in **Annex 5**.

8. At its Third Session, the Commission requested the Director-General "to initiate negotiations with governments and institutions which have stated that they are prepared to bring their collections within the network" and "to examine with the Member Nations concerned the feasibility and the means of accepting their offers to make space available to FAO in their gene

banks". Progress has been somewhat delayed because of the aggravation of the financial crisis of the Organization that occurred during the latter part of 1989 and extended into the year 1990 and the difficulties in committing the necessary staff and travel funds for the purpose of carrying out such negotiations. A large number of governments will be involved, and, to advance the work, it seems opportune to seek general approval for Basic Agreements which could serve as a starting point for negotiations in order to preserve, insofar as possible, a degree of homogeneity in the legal formats used. Given the fact that replies received have expressed interest in Models B, C and D, the Secretariat has prepared Basic Agreements B, C and D (**Annexes 2, 3 and 4** hereto) for review by the Commission.

### **III. STATE OF TECHNICAL STANDARDS FOR GENE BANKS**

9. The sixth session of the FAO Panel of Experts on Plant Exploration and Introduction, in 1974, recommended Preferred and Acceptable Standards for Seed Storage in Genetic Resource Centres, to minimize loss of genetic integrity in seed accessions during storage and regeneration. In 1984, the IBPGR Advisory Committee on Seed Storage was convened to consider and recommend revised standards which would be appropriate for gene banks operating within the international network. The recommended standards were then used by IBPGR to assess most of the gene banks maintaining base collections of specific crops under agreements with IBPGR. Of a total of 43 registered gene banks, 33 were assessed. It was found that 19 fully met the standards, while 14 needed some improvement. Indications have been received that several genebanks have subsequently improved their standards.

10. The Fourth Session of the Working Group stressed that "the methodologies and technical standards developed by IBPGR shall be ratified by FAO in order to acquire universal value and be more easily adopted by countries".

11. Advances in seed storage technology, for example, the storage of seeds at ultra-low moisture content, may necessitate a redefinition of storage standards. In addition, there has been a recent emphasis on collecting genetic resources of wild species. Some standards such as sample size, viability testing, and seed moisture content, cannot easily be met for seed of wild species. Standards may have to be relaxed for base collections holding wild materials. However, such modification should only be made after adequate information on the regeneration of wild species has been accumulated.

12. In view of these advances and needs, the Commission may wish to endorse the convening of a panel of technical experts, to work in collaboration with FAO and IBPGR to assess and, if necessary, redefine gene bank standards. This would be a joint FAO/IBPGR meeting and would lead to recommendations for standards for seed storage and management which can be endorsed by the Commission.

#### **IV. MERGING THE FAO AND IBPGR NETWORKS**

13. At its Third Session the Commission agreed that "priority should be given to strengthening the existing base collections, and bringing such collections under the auspices or jurisdiction of FAO within the FAO Global Network of Base Collections".

14. The Memorandum of Understanding on Programme Cooperation concluded between FAO and IBPGR on 21 September 1990 stated that, "both parties recognize the necessity of achieving maximum complementarity between the FAO network of base collections and the IBPGR register of base collections". They undertook "to cooperate with a view to merging these, to the extent possible, in accordance with the principle that IBPGR would provide scientific and technical advice on the establishment, maintenance and management of base collections and FAO, while keeping an overview of the scientific and technical aspects, would be mainly concerned with providing a policy and legal framework through which countries would make the necessary efforts for safe conservation and unrestricted exchange and monitoring the implementation the provisions of the International Undertaking".

15. As noted in paragraph 43 of the Report of the Third Session of the Commission, "FAO's and IBPGR's networks would be complementary, and [would] not give rise to additional expense or overlapping. Because of the non-governmental nature and lack of legal status of IBPGR, it had to rely on informal arrangements, whereas FAO was an inter-governmental body able to receive legal commitments from national governments." The merged network would provide a comprehensive and widely accepted mechanism for secure storage of important plant genetic resources.

16. The IBPGR register of gene banks now comprises agreements with 43 gene banks covering 117 crops. Crop networks, composed of gene bank managers, breeders and other germplasm users, are expected to identify further gene banks in which base collections of specific crops could be stored, leading to an expansion of the register.

17. The future activities of IBPGR will be carried out by the independent institute that will be the successor to IBPGR. This might require renegotiation between the new institute and the gene banks in the IBPGR Register of agreements on base collections. It could provide an opportunity to merge the FAO network and the IBPGR register, by appropriate modification of the agreements with respect to the legal and technical requirements for base collections, provisions for inspection and the inclusion of a requirement to report to the FAO Commission, so as to allow monitoring and adjustment of the system. In this connection, it will be important to bear in mind the definitions of "base collections" and "active collections" developed by IBPGR in cooperation with FAO (cf. **Annex 6**).

18. The agreements which IBPGR has reached with the different genebanks on its register include the following commitments:

- "(a) that the collection will continue to receive adequate operating funds and personnel and that if, at some future time, this is not possible, FAO/IBPGR will be notified promptly;
- "(b) that if the material stored is not available from an active collection, it will be made freely available from the base collection after multiplication to any professionally qualified institution or **bona fide** user;
- "(c) that authorized representatives of IBPGR will be given full access to the collection and data at all reasonable times;
- "(d) that arrangements will be made to duplicate the material for safety;

"(e) that for base storage, seeds will be dried to 5% moisture content, packaged and stored at temperatures lower than  $-5^{\circ}\text{C}$  (preferably between  $-10$  and  $-18^{\circ}\text{C}$ ) with a viability monitoring regime as recommended by IBPGR (Plant Genetic Resources Newsletter 41:3-18); and

"(f) that a suitable method of regeneration will be used to reconstitute the samples when seed viability begins to decline or quantity of seeds is reduced to a critical level."

19. These agreements can readily be made fully compatible with, and complementary to the FAO network. Basic Agreement "C", which stipulates the right of access by FAO to inspect activities, the right to recommend action for the proper conservation of stored resources, and the unrestricted availability of samples, is similar to the stipulations of the IBPGR agreements.

## V. CONCLUSIONS

20. In the light of the foregoing, the Commission on Plant Genetic Resources may wish:

### A. Legal Arrangements

- (i) to review the Basic Agreements and to ascertain whether they form a proper basis for negotiation; and
- (ii) to request the Director-General:
  - to initiate negotiations with governments and institutions which have stated that they are prepared to bring their collections within the network, on the basis of these drafts;
  - to examine with the Member Nations concerned the feasibility and the means of accepting their offers to make space available to FAO in their gene banks; and
  - to conclude the negotiations being carried out with the Government of Norway regarding the establishment of an international seed bank in Spitzbergen (Svalbard);

**B. Technical Standards**

- to endorse the convening of a panel of technical experts to collaborate with FAO and IBPGR in assessing and, as required, redefining standards for gene banks; and

**C. Collaboration with IBPGR**

- to undertake discussions with IBPGR with a view to merging the FAO Network of Base Collections and the IBPGR Register of Base Collections.

ANNEX 1

ANALYTICAL TABLE OF REPLIES, AS AT FEBRUARY 1991, TO THE  
DIRECTOR-GENERAL'S CIRCULAR STATE LETTER OF 23 OCTOBER 1987

Member Nation or Institution	Model				Participation	Comments
	A	B	C	D		
1. Argentina			X		Yes	Offer to provide space in a national base collection
2. Bangladesh					Yes	
3. Botswana					No	
4. Canada					No	
5. Chile			X		--	Participation not specified
6. International Centre for Tropical Agriculture (Colombia)				X	Yes	Duplicate collection
7. Costa Rica			X		Yes	Under auspices of FAO, with some amendments
8. Czechoslovakia			X		Yes	
9. Yemen P.D.R			X		Yes	
10. Denmark			X	X	Possible	Subject to consultation and modification
11. Ethiopia			X	X	Yes	Offer of 20m <sup>3</sup> space to be administered by FAO under Model A or B
12. France				X	Yes	For base collections held by public institutions
13. Germany, F.R.				X	Yes	For base collections held by Federal institutions and subject to restrictions
14. Indonesia				X	Yes	Subject to specified modifications
15. India				X	Yes	

Member Nation or Institution	Model				Participation	Comments
	A	B	C	D		
16. Istituto di Miglioramento Genetico Produzione delle Sementi (Italy)			X		Yes	
17. Iraq		X			Yes	
18. Madagascar			X		--	Participation not specified
19. Morocco					Yes	Model preference not stated
20. Norway			X		Yes	Modified after consultations
21. Philippines			X		Yes	
22. Senegal			X	X	--	Models C and D under study; participation not specified
23. Spain			X		Yes	Offer of 30m <sup>3</sup> space under jurisdiction of FAO under Model B
24. Sweden			X		Yes	Modified after consultations
25. Switzerland				X	Yes	
26. Syria					Yes	Model preference not stated
27. Togo			X		Yes	
28. Tunisia				X	Yes	
29. United Kingdom				X	Yes	In principle, with reservations and subject to availability
30. Uruguay			X		Yes	
31. Zimbabwe					No	

**BASIC AGREEMENT**

**TYPE B \*/**

**AGREEMENT PLACING A BASE COLLECTION UNDER THE JURISDICTION OF FAO**

**PREAMBLE**

The [Government of ..... /title of Government Institution] (hereinafter referred to as "X") and the Food and Agriculture Organization of the United Nations (hereinafter referred to as FAO);

**Considering** the importance to humanity of protecting and conserving germplasm for future generations;

**Considering** the International Undertaking on Plant Genetic Resources adopted by the FAO Conference at its Twenty-second Session in 1983 (Resolution 8/83) and in particular Article 7 thereof;

**Considering** that "X" has expressed the wish that [part of] the base collection[s] of plant germplasm for which it is responsible should be recognized as part of the international network of base collections in gene banks and should be placed under the jurisdiction of FAO;

**Have agreed as follows:**

**Article 1**

**BASIC UNDERTAKING**

"X" undertakes to place under the jurisdiction of FAO within the international network of base collections in gene banks [part of] the base collection[s] of plant genetic resources as described in the Appendix hereto (hereinafter referred to as "designated germplasm"), under the terms and conditions set forth in this Agreement.

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\*/ As this Agreement includes provisions which require undertakings on the part of the Government itself, if the other party to the Agreement is a Government Institution, the Government will also have to be party to the Agreement. These provisions are marked with an asterisk (\*).

**Article 2**

**CUSTODY**

"X" shall act as custodian of the designated germplasm on behalf of FAO and on behalf of the international community.

**Article 3**

**OWNERSHIP**

- (a) "X" hereby transfers unconditionally to FAO the designated germplasm.
- (b)\* "X" hereby renounces the right to subject the designated germplasm to national legislation.

**Article 4**

**PREMISES**

- (a)\* The premises in which the designated germplasm is conserved shall remain under the sovereignty of "X" and in its charge.
- (b) "X" agrees, however, that FAO shall have a right of access to the premises and the right to inspect all activities performed therein directly related to the conservation and exchange of the designated germplasm.

**Article 5**

**MANAGEMENT AND ADMINISTRATION**

- (a) "X" shall continue to manage and administer the designated germplasm but agrees that this shall be done in agreement with FAO.
- (b) FAO may recommend action and, when required, determine such action as it considers necessary in order to ensure the proper conservation of the designated germplasm.

**Article 6**

**POLICIES**

FAO shall, in consultation with "X", determine all policies in respect of activities related to the designated germplasm.

**Article 7**

**STAFF**

- (a) Staff assigned to manage and administer the designated germplasm shall be employed and remunerated by "X".
- (b) FAO shall furnish all necessary technical backstopping to the staff.
- (c) The work of the staff shall be subject to inspection by FAO in accordance with the provisions of Article 4(b) above.

**Article 8**

**FINANCES**

- (a) "X" shall remain entirely responsible for financing the maintenance of the designated germplasm.
- (b) "X" shall bring to the attention of FAO any difficulties regarding either the continued conservation of the designated germplasm or the implementation of measures recommended or determined by FAO pursuant to Article 5(b) above.

**Article 9**

**REALLOCATION OR TRANSFER OF DESIGNATED GERMPLOSM**

Should "X" decide to withdraw the designated germplasm from the FAO international network or to terminate in any other way its commitments under this Agreement, FAO may, after consultation with "X", reallocate or transfer the designated germplasm to other gene banks.

**Article 10**

**PRIVILEGES AND IMMUNITIES**

"X" shall grant to FAO, FAO staff and experts designated by FAO to take part in activities related to the designated germplasm, the privileges and immunities provided for under the Convention on the Privileges and Immunities of the Specialized Agencies (CPISA).

**Article 11**

**DURATION**

This Agreement is concluded for a period of ..... years and may be extended by mutual agreement.

**Article 12**

**SETTLEMENT OF DISPUTES**

- (a) Any dispute concerning the implementation of this Agreement shall be settled by mutual consent.
- (b) Failing mutual consent, such dispute may be submitted, at the request of either "X" or FAO to an arbitral tribunal composed of three members. Each party shall appoint one arbitrator. The two arbitrators thus appointed shall designate by mutual consent the third arbitrator, who will act as the presiding arbitrator of the tribunal.
- (c) If within two months after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator he has appointed, the first party may request the President of the International Court of Justice to appoint the second arbitrator.
- (d) If within two months after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, such presiding arbitrator shall be designated by the President of the International Court of Justice at the request of either party.

- (e) Unless the parties to the dispute decide otherwise, the tribunal shall determine its own procedure.
- (f) A majority vote of the arbitrators shall be sufficient to reach a decision which shall be final and binding for the parties to the dispute.

**Article 13**

**TERMINATION**

- (a) Either "X" or FAO may terminate this Agreement at any time by giving notice to the other, one year in advance of the termination date.
- (b) "X" and FAO shall, in such case, take all necessary measures to wind-up joint activities in an appropriate manner, subject to the provisions of Article 9 above.

**Article 14**

**AMENDMENT**

- (a) Either "X" or FAO may propose that the Agreement be amended by giving notice thereof.
- (b) If there is mutual agreement in respect of the amendment, the amendment shall enter into force on whatever date is set.

**Article 15**

**DEPOSITARY**

The Director-General of FAO shall be the Depositary of this Agreement. The Depositary shall:

- (a) send certified copies of this Agreement to the Member Nations of FAO and to any other Government which so requests;
- (b) arrange for the registration of this Agreement, upon its entry into force, with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations;
- (c) inform FAO Member Nations of:
  - (i) the signature of this Agreement in accordance with Article 16;
  - (ii) the termination of this Agreement in accordance with Article 13; and
  - (iii) the adoption of amendments to this Agreement in accordance with Article 14.

**Article 16**

**COMING INTO FORCE**

This Agreement shall come into force upon signature by the authorized representatives of "X" and FAO.

**BASIC AGREEMENT**

**TYPE C**

**AGREEMENT PLACING A BASE COLLECTION UNDER THE AUSPICES OF FAO**

**PREAMBLE**

The [Government of ..... /title of Government Institution] (hereinafter referred to as "X") and the Food and Agriculture Organization of the United Nations (hereinafter referred to as FAO);

**Considering** the importance to humanity of protecting and conserving germplasm for future generations;

**Considering** the International Undertaking on Plant Genetic Resources adopted by the FAO Conference at its Twenty-second Session in 1983 (Resolution 8/83) and in particular Article 7 thereof;

**Considering** that "X" has expressed the wish that [part of] the base collection[s] of plant germplasm for which it is responsible should be recognized as part of the international network of base collections in gene banks and should be placed under the auspices of FAO;

**Have agreed as follows:**

**Article 1**

**BASIC UNDERTAKING**

"X" undertakes to place under the auspices of FAO within the international network of base collections in gene banks [part of] the base collection[s] of plant genetic resources as described in the Appendix hereto (hereinafter referred to as the "designated germplasm"), under the terms and conditions set forth in this Agreement.

**Article 2**

**OWNERSHIP**

"X" shall retain ownership of the resources of the designated germplasm.

**Article 3**

**PREMISES**

- (a) The premises in which the designated germplasm is conserved shall remain in the charge of "X".
- (b) "X" agrees, however, that FAO shall have a right of access to the premises at any time and the right to inspect all activities performed therein directly related to the conservation and exchange of the designated germplasm.

**Article 4**

**MANAGEMENT AND ADMINISTRATION**

- (a) "X" shall continue to manage and administer the designated germplasm in conformity with national legislation but agrees that this shall be done in agreement with FAO.
- (b) FAO may recommend action, if it considers such action to be desirable in order to ensure the proper conservation of the designated germplasm.

**Article 5**

**POLICIES**

"X" shall continue to determine all policies in respect of activities related to the designated germplasm, subject to the provisions of Article 8 hereinafter, but undertakes to associate FAO with the policy making process.

**Article 6**

**STAFF**

- (a) Staff assigned to manage and administer the designated germplasm shall be employed and remunerated by "X".
- (b) FAO shall furnish technical backstopping to the staff on request.

**Article 7**

**FINANCES**

- (a) "X" shall remain entirely responsible for financing the maintenance of the designated germplasm.
- (b) "X" shall bring to the attention of FAO any difficulties regarding either the continued conservation of the designated germplasm or the implementation of measures recommended by FAO pursuant to Article 4(b) above.

**Article 8**

**PRIVILEGES AND IMMUNITIES**

"X" shall grant to FAO, FAO staff and experts designated by FAO to take part in activities related to the designated germplasm, the privileges and immunities provided for under the Convention on the Privileges and Immunities of the Specialized Agencies (CPISA).

**Article 9**

**AVAILABILITY OF DESIGNATED GERmplasm**

"X" undertakes to make the designated germplasm available when necessary for the purpose of scientific research, plant breeding or genetic resource conservation, without restriction, either directly to users or through FAO, either on mutually agreed terms or free of cost.

**Article 10**

**DURATION**

This Agreement is concluded for a period of years and may be extended by mutual agreement.

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\* As this provision requires an undertaking by the Government itself, if the other party to the Agreement is a Government Institution, the Government will also have to be a party to the Agreement or provide a formal instrument accepting this provision.

**Article 11**

**SETTLEMENT OF DISPUTES**

- (a) Any dispute concerning the implementation of this Agreement shall be settled by mutual consent.
- (b) Failing mutual consent, such dispute may be submitted, at the request of either "X" or FAO to an arbitral tribunal composed of three members. Each party shall appoint one arbitrator. The two arbitrators thus appointed shall designate by mutual consent the third arbitrator, who will act as the presiding arbitrator of the tribunal.
- (c) If within two months after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator he has appointed, the first party may request the President of the International Court of Justice to appoint the second arbitrator.
- (d) If within two months after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, such presiding arbitrator shall be designated by the President of the International Court of Justice at the request of either party.
- (e) Unless the parties to the dispute decide otherwise, the tribunal shall determine its own procedure.
- (f) A majority vote of the arbitrators shall be sufficient to reach a decision which shall be final and binding for the parties to the dispute.

**Article 12**

**TERMINATION**

- (a) Either "X" or FAO may terminate this Agreement at any time by giving notice to the other, one year in advance of the termination date.
- (b) "X" and FAO shall, in such case, take all necessary measures to wind-up joint activities in an appropriate manner.

**Article 13**

**AMENDMENT**

- (a) Either "X" or FAO may propose that the Agreement be amended by giving notice thereof.
- (b) If there is mutual agreement in respect of the amendment, the amendment shall enter into force on whatever date is set.

**Article 14**

**DEPOSITARY**

The Director-General of FAO shall be the Depositary of this Agreement. The Depositary shall:

- (a) send certified copies of this Agreement to the Member Nations of FAO and to any other Government which so requests;
- (b) arrange for the registration of this Agreement, upon its entry into force, with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations;
- (c) inform FAO Member Nations of:
  - (i) the signature of this Agreement in accordance with Article 15;
  - (ii) the termination of this Agreement in accordance with Article 12; and
  - (iii) the adoption of amendments to this Agreement in accordance with Article 13.

**Article 15**

**COMING INTO FORCE**

This Agreement shall come into force upon signature by the authorized representative of "X" and FAO.

**BASIC AGREEMENT**

**TYPE D**

**AGREEMENT PLACING A BASE COLLECTION UNDER THE AUSPICES OF FAO**

**PREAMBLE**

The [Government of ...../title of Government Institution] (hereinafter referred to as "X") and the Food and Agriculture Organization of the United Nations (hereinafter referred to as FAO);

**Considering** the importance to humanity of protecting and conserving germplasm for future generations;

**Considering** the International Undertaking on Plant Genetic Resources adopted by the FAO Conference at its Twenty-second Session in 1983 (Resolution 8/83) and in particular Article 7 thereof;

**Considering** that "X" has expressed the wish that [part of] the base collection[s] of plant germplasm for which it is responsible should be recognized as part of the international network of base collections in gene banks and should be placed under the auspices of FAO;

**Have agreed as follows:**

**Article 1**

**BASIC UNDERTAKING**

"X" undertakes to place under the auspices of FAO within the international network of base collections in gene banks [part of] the base collection[s] of plant genetic resources as described in the Appendix hereto (hereinafter referred to as the "designated germplasm"), under the terms and conditions set forth in this Agreement.

**Article 2**

**OWNERSHIP**

"X" shall retain ownership of the resources of the designated germplasm.

**Article 3**

**PREMISES**

The premises in which the designated germplasm is conserved shall remain in the charge of "X".

**Article 4**

**MANAGEMENT AND ADMINISTRATION**

"X" shall continue to be responsible exclusively for the management and administration of the designated germplasm.

**Article 5**

**POLICIES**

"X" shall continue to be responsible exclusively for determining policies related to the designated germplasm, subject, however, to the provisions of Article 8 hereinafter.

**Article 6**

**STAFF**

- (a) Staff assigned to manage and administer the designated germplasm shall be employed and remunerated by "X".
- (b) FAO shall furnish technical backstopping to the staff on request.

**Article 7**

**FINANCES**

"X" shall remain entirely responsible for financing the maintenance of the designated germplasm.

**Article 8**

**AVAILABILITY OF DESIGNATED GERmplasm**

"X" undertakes to make the designated germplasm available when necessary for the purpose of scientific research, plant breeding or genetic resource conservation, without restriction, either directly to users or through FAO, either on mutually agreed terms or free of cost.

**Article 9**

**DURATION**

This Agreement is concluded for a period of .....years and may be extended by mutual agreement.

**Article 10**

**SETTLEMENT OF DISPUTES**

- (a) Any dispute concerning the implementation of this Agreement shall be settled by mutual consent.
- (b) Failing mutual consent, such dispute may be submitted, at the request of either "X" or FAO to an arbitral tribunal composed of three members. Each party shall appoint one arbitrator. The two arbitrators thus appointed shall designate by mutual consent the third arbitrator, who will act as the presiding arbitrator of the tribunal.

- (c) If within two months after the receipt of a party's notification of the appointment of an arbitrator the other party has not notified the first party of the arbitrator he has appointed, the first party may request the President of the International Court of Justice to appoint the second arbitrator.
- (d) If within two months after the appointment of the second arbitrator the two arbitrators have not agreed on the choice of the presiding arbitrator, such presiding arbitrator shall be designated by the President of the International Court of Justice at the request of either party.
- (e) Unless the parties to the dispute decide otherwise, the tribunal shall determine its own procedure.
- (f) A majority vote of the arbitrators shall be sufficient to reach a decision which shall be final and binding for the parties to the dispute.

#### **Article 11**

##### **TERMINATION**

- (a) Either "X" or FAO may terminate this Agreement at any time by giving notice to the other, one year in advance of the termination date.
- (b) "X" and FAO shall, in such case, take all necessary measures to wind-up joint activities in an appropriate manner.

#### **Article 12**

##### **AMENDMENT**

- (a) Either "X" or FAO may propose that the Agreement be amended by giving notice thereof.
- (b) If there is mutual agreement in respect of the amendment, the amendment shall enter into force on whatever date is set.

**Article 13**

**DEPOSITARY**

The Director-General of FAO shall be the Depositary of this Agreement. The Depositary shall:

- (a) send certified copies of this Agreement to the Member Nations of FAO and to any other Government which so requests;
- (b) arrange for the registration of this Agreement, upon its entry into force, with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations;
- (c) inform FAO Member Nations of:
  - (i) the signature of this Agreement in accordance with Article 14; and
  - (ii) the adoption of amendments to this Agreement in accordance with Article 12.

**Article 14**

**COMING INTO FORCE**

This Agreement shall come into force upon signature by the authorized representative of "X" and FAO.

**PROGRESS REPORT ON NEGOTIATIONS WITH NORWAY**

1. The Working Group of the Commission, at its meeting in October 1989, discussed initiatives for international seedbanks as foreseen in Article 7.1(a) of the International Undertaking on Plant Genetic Resources.
2. The Working Group considered several initiatives to be highly interesting and worthy of support. Detailed consideration was given to the possible establishment of a truly international seed bank storage facility in Svalbard (Spitzbergen), under permafrost conditions.
3. This discussion arose from the need to develop seed storage facilities that can maintain seed at low temperatures independent of power supply. The Nordic Gene Bank had developed such storage in a coal mine in Svalbard for its duplicate base collection. The CGIAR had requested IBPGR to investigate the potential of the Svalbard store for duplicate collections from the gene banks of the IARCs. It was thought by IBPGR that FAO had the correct inter-governmental status to broaden the investigation to conclude a worldwide agreement on security storage in permafrost.
4. The Working Group recommended that discussions be held with the Government of Norway regarding negotiation of a framework agreement between the Government of Norway and FAO regarding the establishment of the gene bank storage facility. The Working Group considered that legal cover for this project should not result in any economic burden for FAO, and that the seed bank should be established in line with the four models proposed by FAO, and should store both national and truly international collections.
5. A questionnaire has been circulated by FAO and IBPGR to establish the extent of international interest in the Svalbard seedbank facility. Sixty-five percent of respondents preferred the Svalbard facility to the establishment of a conventional international base genebank.
6. In March 1990, the FAO Legal Counsel held informal discussions with representatives of the various Norwegian Ministries concerned. In general, it appears that the Government of Norway would have problems in concluding a formal and comprehensive agreement with FAO for the establishment of an international seed bank in Svalbard, due to its special treaty status

and, in particular, treaty provisions requiring the Government of Norway to give equal access for mining to nationals of all treaty parties, and prohibiting the establishment of monopolies.<sup>1/</sup> It was agreed however, that the following arrangements would be satisfactory:

- a) A framework agreement between the government of Norway and FAO dealing with the general concept of the seedbank, setting out any commitments by the Norwegian Government regarding the financing of the seedbank, and providing for Government commitments regarding exemptions from phytosanitary regulations and the Norwegian Seed Act;
- b) Working agreements between the owner of the property and mining rights (a publicly owned Norwegian mining company) and FAO (on its behalf and on behalf of IBPGR) providing for the leasing of the premises with perpetual renewal options.
- c) Working arrangements between FAO and IBPGR, as appropriate, regarding the management of the seed bank.

It will be necessary to engage a Norwegian mining lawyer to look further into the protection that can be obtained under Norwegian law in respect of such leases. Negotiations can then be held with the mining company concerned, with a view to the establishment of the seed bank.

7. At that stage standard agreements will also need to be worked out for the deposit of germplasm in the Svalbard seed bank.

8. In December 1990, an FAO/IBPGR Expert Consultation of Security Conservation in permafrost was held. This investigated the nature of the site, access arrangements, storage facilities (including appropriate ways of further lowering the storage temperature), and details of seed packing. The Consultation also agreed that, in addition to space available to store national collections, the provision of an estimated extra 100m<sup>3</sup> would provide useful storage for truly international collections. The Expert Consultation reported that the facility will:

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1/ Article 3 of the Treaty of 9 February 1920, relating to Svalbard (Spitzbergen) among the USA, Great Britain, Denmark, France, Italy, Japan, Norway, the Netherlands and Sweden.

- offer low temperature storage (-3°C to -4°C) independent of power supply;
- guarantee the physical security of any sample deposited;
- guarantee unrestricted access of depositors to their material;
- guarantee the sovereignty of depositors over their material;
- offer facilities for clearly defined fixed-term periods;
- repack any seed lots damaged in transit.

The facility will not offer seed drying, germination, or other testing facilities. The depositor will be responsible for the seed quality and seed moisture content necessary to achieve the duration of storage required by the depositor. A range of options for seed packing and subsequent storage and transport was considered by the Expert Consultation. Normally only "orthodox" (desiccation tolerant) seeds with initial high germination percentage and low moisture content will remain viable in storage for satisfactory lengths of time.

9. In view of the extensive legal and technical preparatory investigations and discussions, and the apparent suitability of the site as an additional security store for germplasm, under the auspices of PAO, with 100 m for the storage of truly international collections, under the jurisdiction of FAO, guidance is sought from the Commission on how to proceed.

## DEFINITIONS OF BASE COLLECTIONS AND ACTIVE COLLECTIONS

The following definitions have been developed by IBPGR in cooperation with FACS, They are widely accepted in the scientific community.

### Base Collection

the purpose of base collections is long-term secure storage of plant genetic resources. They are not to be used as a routine source for distribution. Material is only infrequently removed from base collections for regeneration, when seed viability has started to decline below an acceptable regeneration standard, or then stocks of any accession are no longer available from an active collection. Currently, base collections only maintain orthodox seed, which is dried, packed in airtight containers and stored at low temperatures (usually between -1°C to -20°C).

### Active Collection

The purpose of Active collections is medium-term storage, regeneration, multiplication and distribution, characterisation and evaluation, and documentation. Currently, active collections maintain orthodox seed, which is dried and stored at temperatures above 0°C but below 15°C.