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	FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS	
	ORGANISATION DES NATIONS UNIES POUR L'ALIMENTATION ET L'AGRICULTURE	
	ORGANIZACION DE LAS NACIONES UNIDAS PARA LA AGRICULTURA Y LA ALIMENTACION	

Item 3 of the
Provisional
Agenda

COMMISSION ON PLANT GENETIC RESOURCES

Second Session

Rome, 16-20 March 1987

REPORT OF THE WORKING GROUP OF THE FAO COMMISSION ON
PLANT GENETIC RESOURCES, 2-3 JUNE 1986

REPORT OF THE

Rome,
2-3 June 1986

**WORKING GROUP
OF THE FAO COMMISSION
ON PLANT GENETIC RESOURCES**



FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS

REPORT OF THE WORKING GROUP OF THE
FAO COMMISSION ON PLANT GENETIC RESOURCES

First Meeting

Rome, 2-3 June 1986

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INTRODUCTION

1. The Working Group of the FAO Commission on Plant Genetic Resources held its first meeting in Rome, 2-3 June 1986. It was presided over by the Chairman of the FAO Commission on Plant Genetic Resources, Ambassador Carlos di Mottola Balestra (Costa Rica). The list of participants in the meeting is given in Appendix A.
2. On behalf of the Director-General, Mr. D.J. Walton, Deputy Director-General, welcomed the participants. He drew attention to the terms of reference of the Working Group as given in paragraph 78 of the report of the First Session of the Commission: "To consider the progress made in implementing the Commission's programme of work and any other matters referred to it by the Commission. The present meeting also had to take into account the discussions on plant genetic resources during the Twenty-third Session of the FAO Conference.
3. Mr. Walton noted that the Working Group would review a number of matters related to the International Undertaking on Plant Genetic Resources. The aim of this review was to achieve the widest possible support for the Undertaking. The relationship between IBPGR and FAO was another important item on the Agenda. It was the view of the Director-General that the adoption of the Undertaking and the establishment of the Commission offered an opportunity for FAO to mobilize greater support for the technical work of the IBPGR. Current problems between IBPGR and FAO were to be approached in terms of specific instances. For this the Director-General had established a Senior Review Committee, under the Deputy Director-General's chairmanship, to deal with such problems and this interim arrangement had been accepted by CGIAR.
4. The Working Group adopted the Agenda as given in Appendix B, and noted that its Report should be adopted by the meeting before the Group dispersed. The Group further noted that its Report would be submitted to the Commission for review.

LEGAL MATTERS

Analysis of country reservations to the International Undertaking on Plant Genetic Resources

5. The Working Group was informed that reservations expressed by Member Nations in their response to the Director-General had to be considered against the background of the nature of the International Undertaking itself. It had been made clear at the Twenty-second Session of the Conference, held in November 1983, that the International Undertaking was not a legally binding international agreement. This had been stressed, subsequently, by a number of countries in their replies to the Director-General.
6. As a consequence thereof, the reservations, interpretations and understandings expressed by Member Nations could obviously not be considered to be "reservations" within the meaning given to that term under international law. They ought more properly to be considered as unilateral statements of the position of the countries concerned, which were not binding on the other countries which had adhered to the Undertaking. This emerged clearly from the terms of the Undertaking itself, Article 11 of which provided that "at the time of adhering, Governments and institutions will advise the Director-General of FAO of the extent to which they are in a position 'to give effect to the principles contained in the Undertaking'".
7. Consequently, whilst the term "reservation" was used to describe the observations which Member Nations had communicated to the Director-General, the term had to be considered in its context and although the qualification might not always be entirely proper, it seemed to be the most convenient expression to describe the position and was generally accepted as such. Ultimately, whatever the term used, the fundamental objective was to analyze the practical effect of these reservations and the way in which they might influence the carrying-out of the principles embodied in the International Undertaking.
8. It was recalled that most of the reservations had been reproduced in a document (CPGR/85/3-Add. 1) which had been distributed at the **First Session** of the Commission on Plant Genetic Resources in connection with Item 3 of its Agenda. Thus, the complete text

of the reservations was at the disposal of all the members of the Working Group. A few additional reservations had been received by the Director-General since that time, but they did not alter the general position, as they were. along the same lines as those which had been expressed earlier.

9. An analysis of the various reservations had shown that they could be divided into two main categories:

- i. specific reservations which were limited to particular problems or items of limited scope; and
- ii. general reservations of a broad scope which concerned the non-application of certain basic provisions of the Undertaking.

The latter category could, in turn, be sub-divided into two types, i.e., reservations concerning plant breeders' rights (Article 2.1 (a)(v)), and those which related to the principle of unrestricted availability of plant genetic resources (Articles 5 and 7).

10. With respect to the first category of reservations, (i.e., specific and limited reservations), these were not numerous and did not affect the general application of the International Undertaking. They took account of specific preoccupations of a few Member Nations, for example, the fact that certain types of seed were subject to strict regulations in a given country and could not, at least at this stage, be made available to other countries. These reservations did not present a major obstacle to the success of the International Undertaking and could be considered on an individual basis with the countries concerned with a view to the possibility of withdrawing the reservations at a future date.

11. On the other hand, the second main category of reservations (i.e. those of a general scope), had a more far-reaching effect on the International Undertaking. The first of the two subdivisions which came under this heading dealt with plant breeders' rights. A total of some 20 countries had expressed general reservations on the subject, either when communicating to the Director-General their adherence to the Undertaking or, in a few instances, when countries had informed the Director-General that plant breeders' rights were such an obstacle that they could either not adhere to the Undertaking or could not adhere thereto until there had been a further review of the problems which were raised by Article 2.1 (a)(v). The Working Group considered that this was an important issue requiring careful consideration.

12. The second subdivision of general reservations dealt with the principle of free exchange of plant genetic resources. A number of countries which had lent strong support to the Undertaking had, nevertheless, made it clear that their ability to make available plant genetic resources would have to be restricted in accordance with their national laws or regulations.

13. The Working Group emphasized that every effort should be made to reach a negotiated solution to the problems raised, in particular, by the reservations of a general scope. The ultimate objective was to achieve the widest possible adherence to the International Undertaking whilst reducing to an absolute minimum the reservations thereto. Negotiations might lead, for example, either to an agreed interpretation of the most sensitive provisions of the Undertaking or to the eventual revision of certain provisions thereof. The Commission should establish the machinery for these negotiations.

14. *The* Working Group emphasized that, in addition to the recognition of plant breeders' rights, specific mention should be made of the rights of the farmers of the countries where the materials used by the breeders originated. These materials were the result of the work of many generations *and* were a basic part of the national wealth. FAO should study this subject with a view to formulating a constructive solution.

Investigation of ways and means for active participation of non-member States in the Commission

15. The Working Group recalled that since the Commission had been established under Article VI.1 of the Constitution, non-member States of the Organization could not become members of the Commission. However, recognizing that participation by non-member States would broaden the scope of the Commission, the latter had urged the Secretariat to explore ways in which such participation could be brought about.

16. The Working Group was informed that, from a legal point of view, there were three possible courses of action. First, a constitutional amendment to Article VI-1 could specifically provide that commissions created by the Conference or Council would be open to non-member States, or that the Conference or Council could make such commissions open to non-member States in exceptional circumstances. A second course of action was to establish an intergovernmental body open to non-member States under a convention or agreement adopted by the Conference pursuant to Article XIV of the Constitution. Once such a convention or agreement entered into force, the body established thereunder would replace the present Commission. A third course of action was to abolish the Commission in its present form and for the Committee on Agriculture (COAG) to establish a subsidiary body to deal with the matters covered by the Commission's terms of reference. In the latter connection the Secretariat noted that, pursuant to Rule XXXII.13(b) of the General Rules of the Organization, the Council could admit non-member States to membership of subsidiary bodies of COAG.

17. The Working Group considered that none of the three courses of action would guarantee that non-member States - in particular those that might perhaps be in a position to make a significant contribution to the Commission's work - would actually participate actively in an FAO intergovernmental body dealing with plant genetic resources. In this connection the Working Group noted that non-member States could already, on request and with the approval of the Council, participate at the Commission's sessions in an observer capacity. Moreover, although non-member States had been informed of the Undertaking and a few had in fact indicated whether or not they could adhere to it, none had expressed its wish to participate at the Commission's first Session in an observer capacity.

18. The Working Group considered that it would serve no useful purpose to embark on the complex procedures to modify the present structure or composition of the Commission or FAO's Constitution, unless it were certain that non-member States wished to participate actively in the Commission's work. In any event, the Working Group considered that the amendment of Article VI.1 of the Constitution was undesirable in that it would entail a major departure from the Organization's policy relating to the membership of bodies established under that provision. Furthermore, the Working Group expressed the view that the establishment of a sub-committee of COAG would be tantamount to down-grading the current status of the Commission.

19. The Working Group concluded its consideration of this item by emphasizing the desirability of obtaining the widest participation and the necessary institutional arrangements for negotiations in order to reconcile views so as to allow global adherence to the Undertaking and the widest possible involvement of all nations in the work of the Commission. As far as non-member States were concerned, for the time being pragmatic solutions should be sought if and when they manifested their interest in taking part in the Commission's deliberations. The Working Group recommended that meanwhile FAO should invite non-member States to attend the Commission in an observer capacity.

Current legal position concerning ex situ base collections of plant genetic resources and on improvement of access to, and utilization of such resources

20. The Working Group recalled that the Commission, at its First Session in March 1985, had requested the Director-General to prepare a study on the current legal position concerning ex situ base collections and on improvement of access to, and utilization of, plant genetic resources. It noted that the necessary legal data on the subject were being assembled. Letters had been sent to 90 genebanks or institutions holding germplasm which were associated with the IBPGR network and over 50 of these had replied

and provided useful information or documentation. Further, a Circular State Letter from the Director-General on the same subject had been addressed to all Member Nations of FAO: so far there had been 25 replies.

21. The Working Group noted that sufficient material had been received for a start to be made on the study and that, in fact, work had already begun. The more material received by the Secretariat from Member Nations, the more complete and useful the study would be. It was noted that the study would cover, inter alia, relevant aspects of seed legislation and plant breeders' rights legislation, as well as the different systems in operation regarding ownership of plant genetic resources maintained in genebanks. Further, it was noted that the study would contain indications as to the provisions of national legislation which were found to be inconsistent with the Undertaking, and also recommendations as to the furtherance of the Undertaking, as appropriate. The Working Group requested that the study also include consideration of the rights of the owners of the source material used by plant breeders, especially the rights of farmers in the countries where collections have been made.

22. The Working Group noted that this legal study would be ready in good time for the Commission's next session.

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

23. The Working Group was informed that the study of this subject could best be undertaken only after completion of the study on the legal position of ex situ base collections. It nevertheless requested that every effort be made immediately to initiate work on this study without waiting for the conclusion of the ex situ study. The Working Group considered that it was necessary to speed up the preparation of the legal arrangements which were necessary to permit the base collections in government institutions to be placed under FAO jurisdiction by those governments which wished to do so in accordance with Article 7 of the Undertaking.

24. The Working Group raised questions concerning the ownership and rights over seed collections held by the institutes supported by the Consultative Group on International Agricultural Research (CGIAR). It requested the Organization to collect relevant information on this matter.

Relationship between IBPGR and FAO

25. The Working Group was informed about the exchange of correspondence between the Director-General of FAO and the Chairman of CGIAR on the relationship between IBPGR and FAO. The Director-General had proposed that this matter be approached in a pragmatic manner. For this, he had established a Senior Review Committee under the Chairmanship of the Deputy Director-General. The Committee would seek practical solutions to the issues raised either by the CGIAR or by the IBPGR. The results of these arrangements would be reviewed by all the parties concerned after a period of about two years.

26. These proposals were well received by the CGIAR at its meeting in Ottawa at the end of May, 1986. The CGIAR decided that the IBPGR activities should be normalized as soon as possible. It therefore agreed to the nomination of new Board Members and the filling of vacant staff positions. It also requested the provision of adequate working space. A copy of the CGIAR Information Note on the subject was made available to the Working Group.

27. The Working Group stressed the importance of close collaboration between FAO and IBPGR and welcomed the Director-General's proposals. It emphasized that the nomination of new Board Members offered an excellent opportunity to strengthen cooperation between the Commission and IBPGR. The Secretariat should investigate the possibility that the Chairman of the Commission should be ex officio a full member of the Board of IBPGR; reciprocally, it might be possible for the Board to be invited by FAO to participate as an observer in the work of the Commission.

28. The Working Group noted again the quality of the work of IBPGR. It stressed, however, that FAO had originally started the activities in this field. This was later supplemented by IBPGR resources and had since then been implemented as a single programme on plant genetic resources. FAO was requested that the priorities as established by the Commission be given full consideration in future work in this important field.

TECHNICAL MATTERS

Research

29. The Working Group took note of FAO's on-going activities in research on plant genetic resources, which included work on aspects of both in situ and ex situ conservation. It stressed the need for reinforcing such efforts in collaboration with national institutes.

30. The Working Group expressed concern over financial constraints, lack of infrastructure and trained personnel in the developing countries, which often constituted a bottleneck in research efforts. Due to this, research and development of valuable germplasm was often transferred to developed countries outside of the natural range of the species concerned, thus decisively influencing research priorities as well as de facto control over this resource. The Working Group stressed the necessity of guaranteeing free access to ex situ collections. It also emphasized the need for an in-depth review of the current status of research and to consider research needs and priorities for the future. Furthermore, information was required on private and public collections, duplications, and the state of evaluation of the collected material. Possible conflicting interests between the commercial sector and the overall interests of present and future generations were noted.

31. The Working Group recommended that FAO and IBPGR coordinate action in support of national institutions in research in which both organizations have an important role to play; and that priorities for future action be clearly defined in view of existing knowledge and identifiable gaps in information.

In situ conservation

32. The Working Group noted that FAO's work on in situ conservation of plant genetic resources was closely coordinated with other international agencies involved, viz. UNESCO, UNEP, IUCN and IBPGR. It acknowledged the complementarity of in situ and ex situ conservation and concluded that due attention should be given not only to the in situ conservation of crop relatives but also to other plants providing important goods and services, e.g., medicinal plants, food and fruit bearing species, etc.

33. The Working Group stressed that an essential step in in situ conservation consisted in evaluation of existing plant resources, their variation and conservation status, and commended the efforts to incorporate existing reserves and protected areas into in situ conservation networks.

Information systems

34. The Working Group noted that the Commission on Plant Genetic Resources had stressed the importance of the FAO Seed Information System (SIS) and recommended the speeding up of its development as an important part of an International Information System on Plant Genetic Resources.

35. As a first step, a computer programme had been developed within the framework of SIS to summarize the information on base and active collections. This work had been done on the basis of the different Directories of Germplasm Collections and other documentation published by IBPGR.

36. As a second step, a review had been made of the IBPGR activities on the development of standardized Descriptor Lists on a crop basis and of the FAO activities, especially the newly installed cultivar sub-system. This review had revealed that the FAO and IBPGR activities in this field had different purposes. The FAO cultivar sub-system

concentrated on information on the agricultural value of released cultivars. The IBPGR descriptor lists had as the first objective the description of the sample from botanical, chemical and other points of view.

37. As a third step, it was envisaged requesting an Expert Group, as agreed by the Commission at its First Session, to consider a possible technical link between the FAO cultivar sub-system and the IBPGR crop specific data base. This study would further include a discussion of the efforts undertaken by FAO and IBPGR, related to the evaluation and use of plant genetic resources, and the security duplication of genetic resources samples held in genebanks.

38. The Working Group noted these developments and stressed the need to establish links between the FAO and IBPGR systems as the two approaches were complementary. The Group felt that available information should be collected, even if it were not complete, and shared as widely as possible. It stressed the importance of historical information on landraces and obsolete varieties. As much information as possible should come from plant breeders and other scientists who made samples available. It was noted that evaluation data should be obtained on the same sample from as many locations as possible. Further research was needed to determine how much duplication was required.

Training and strengthening of national capabilities

39. In line with the request of the First Session of the Commission on Plant Genetic Resources to perform a manpower assessment in the seed field, FAO had expanded its questionnaire for the Seed Review 1984/85 (which was started in early 1986) to cover both training activities and manpower resources on plant genetic resources, plant breeding, seed production, marketing and quality control. To date, responses from about 100 countries had been received, which were being analyzed. It was expected that the compilation of the Seed Review and the analysis on manpower resources would be completed by the end of this year. On the basis of this analysis, it would be determined which further steps would have to be taken to arrive at a reasonable assessment of training needs on plant genetic resources, plant breeding and seed production.

40. The Working Group noted with appreciation the activities of FAO and IBPGR in training, but it stressed the importance of further support to enable many countries to meet their requirements.

FEASIBILITY STUDY ON THE ESTABLISHMENT OF AN INTERNATIONAL FUND FOR PLANT GENETIC RESOURCES

41. The Working Group welcomed the procedures outlined by the Secretariat to study the possibility of establishing an international fund for plant genetic resources. It stressed that special attention should be paid to a clear definition of the objectives of the fund, in line with the provisions of the International Undertaking on Plant Genetic Resources. The fund could be supported by various sources such as traditional donor agencies, non-governmental agencies and private industry. The possibility of payments from plant breeders' rights was mentioned and should be investigated by the Secretariat in consultation with UPOV. The fund should be clearly identified to be supplementary to IBPGR resources as a special activity to assist developing countries, in particular to allow farmers the full benefits of work on plant genetic resources. The fund could possibly also be used to assist developing countries in mobilizing public opinion in their own countries on the dangers of the erosion of their plant genetic material.

42. The Working Group considered that a Circular State Letter (CSL) should be prepared setting out the objectives of the fund in support of the purposes of the International Undertaking on Plant Genetic Resources. The CSL should outline existing Trust Fund arrangements in FAO. A draft of the CSL and a list of potential addressees would be sent to members of the Working Group for comments before being finalized.

43. The Working Group agreed that such a Circular State Letter should be sent to possible donors asking them to express their interest in plant genetic resources activities and their possibilities of supporting the fund. Attention was drawn to a recent discussion in the European Parliament; the recommendation adopted in this respect might serve to identify support for the fund.

FUTURE WORK PROGRAMME OF THE COMMISSION

44. The Working Group discussed the proposed outline for the Agenda of the next meeting A' of the Commission as given in Appendix C. It noted that the final agenda would be prepared by the Director-General in consultation with the Chairman of the Commission.

45. The Working Group made suggestions for additional agenda items, drawing attention to the recommendations in the report (paragraphs 82 and 83) of the First Session of the Commission on Plant Genetic Resources. The suggestions included, among others:

- a review of all the legal studies discussed by the Working Group at its present meeting;
- the legal implications of protecting plant genes;
- a review of training needs including identification of possibilities for organizing training courses;
- deletion of the topic on the relationship between FAO and IBPGR, which had been covered by the Working Group.

OTHER MATTERS

46. The Working Group discussed the possibility of having another meeting before the Second Session of the Commission. Possible dates were either a few days before the Second Session of the Commission or in combination with the next Council Session in November 1986. The Chairman of the Working Group would discuss an appropriate date with the Director-General of FAO, taking into account the views of the members of the Working Group.

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LISTE DES PARTICIPANTS
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AGENDA

Document

1. Opening
2. Adoption of Agenda AGPS/PGR/86/1 Rev. 1
AGPS/PGR/86/2 Rev. 1
3. Legal Matters
 - Analysis of country reservations to the International Undertaking on Plant Genetic Resources AGPS/PGR/86/3 Rev. 1
 - Investigation of ways and means for active participation of non-member States in the Commission ''
 - Current legal position concerning ex situ base collections on plant genetic resources and on improvement of access to and utilization of such resources ''
 - Legal arrangements with a view to the possible establishment of an international network of base collections in genebanks, under the auspices or jurisdiction of FAO ''
 - Relationship between IBPGR and FAO AGPS/PGR/86/7
AGPS/PGR/86/Inf. 2
4. Technical Matters
 - Research AGPS/PGR/86//4
 - In situ Conservation ''
 - Information Systems ''
 - Training and strengthening of national capabilities ''
5. Feasibility Study on the Establishment of an International Fund for Plant Genetic Resources AGPS/PGR/86/5
6. Future Work Programme of the Commission: Proposed Draft Agenda AGPS/PGR/86/6 Rev. 1
7. Other Matters

**PROPOSED DRAFT AGENDA FOR THE SECOND SESSION
OF THE FAO COMMISSION ON PLANT GENETIC RESOURCES**

Proposed dates: 16-20 March 1987

1. Election of Chairman and Vice-Chairmen
2. Adoption of Agenda and Timetable
3. Report of Working Group Meeting, 2-3 June 1986
4. Progress Report on the International Undertaking on Plant Genetic Resources
5. Status of Base and Active Collections of Plant Genetic Resources
6. Study on Legal Arrangements with a View to the Possible Establishment of an International Network of Base Collections in Genebanks, Under the Auspices or Jurisdiction of FAO
7. Status of In Situ Conservation of Plant Genetic Resources
8. Review of Training Needs
9. The FAO Information System on Plant Genetic Resources
10. Feasibility Study on the Establishment of an International Fund for Plant Genetic Resources
11. Future Work Programme of the Commission
12. Other Business
13. Date and Place of Next Session
14. Adoption of Report