

	منظمة الأغذية والزراعة للأمم المتحدة	CPGR/93/11 March 1993
	联合国粮食及农业组织	
	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 8.2 of the
Provisional Agenda

COMMISSION ON PLANT GENETIC RESOURCES

E

Fifth Session

Rome, 19- 23rd April 1993

THE INTERNATIONAL NETWORK OF *EX SITU* BASE COLLECTIONS UNDER THE AUSPICES OR JURISDICTION OF FAO: MODEL AGREEMENT FOR THE INTERNATIONAL AGRICULTURAL RESEARCH CENTRES

Table of Contents

	Paras.
A. BACKGROUND	1 - 3
B. INTERNATIONAL AGRICULTURAL RESEARCH CENTRES PROPOSAL	4
C. ACTION EXPECTED FROM THE COMMISSION	5 - 6
ANNEX IBPGR REPORT ON "THE PLANT GENETIC RESOURCES COLLECTIONS OF THE INTERNATIONAL AGRICULTURAL RESEARCH CENTRES; LEGAL STATUS AND THE CONCEPT OF TRUSTEESHIP"	
Appendix: International Agricultural Research Centres Proposal: "Modified Basic Agreement for International Agricultural Research Centres"	

THE INTERNATIONAL NETWORK OF *EX SITU* BASE COLLECTIONS UNDER THE AUSPICES OR JURISDICTION OF FAO: MODEL AGREEMENT FOR THE INTERNATIONAL AGRICULTURAL RESEARCH CENTRES

A. Background

1. For more than a decade Member Countries have discussed access to and legal status of *ex situ* base collections including those in the International Agricultural Research Centres (IARCs) of the Consultative Group on International Agricultural Research (CGIAR). At its Second Session the Commission considered a study on the legal status of base and active collections of plant genetic resources (CPGR/87/5) and also considered possible legal arrangements to establish an international network of base collections in genebanks under the auspices and/or the jurisdiction of FAO in line with the International Undertaking on Plant Genetic Resources¹ (CPGR/87/6). At its subsequent sessions, the Commission considered progress reports on the establishment of this network (CPGR/89/4; CPGR/91/13).

2. Following the recommendation of the Commission at its Second Session, the Director General approached governments, the international Agricultural Research Centres and other bodies, through a Circular State Letter, with a view to ascertaining their readiness to bring their base collections under the auspices or jurisdiction of FAO, and to indicate the arrangement they favoured. At its Fourth Session, the Commission agreed on three model basic agreements which they considered might serve as a starting point for negotiations with governments and international institutions. The state of negotiations with governments is discussed in document CPGR/93/5 (section V, paragraphs 18-32); this document addresses the issue of the International Agricultural Research Centres.

3. The Convention on Biological Diversity deals in its Article 15 with access to genetic resources, but excludes *ex situ* collections acquired before the Convention enters into force, and, therefore, those currently in the international centres or in countries other

1. The Undertaking states in Article 7.1 that international agreements will be developed and complemented in order that, *inter alia* "(a) there develops an internationally coordinated network of national, regional and international centres, including an international network of base collections in gene banks, under the auspices or jurisdiction of FAO, that have assumed the responsibility to hold, for the benefit of the international community and on the principle of unrestricted exchange, base or active collections of the plant genetic resources of particular plant species".

Article 7.2 of the Undertaking further states that: "Within the context of the global system any Governments or institutions that agree to participate in the Undertaking, may, furthermore, notify the Director-General of FAO that they wish the base collection or collections for which they are responsible to be recognized as part of the international network of base collections in gene banks, under the auspices or jurisdiction of FAO. The centre concerned will, whenever requested by FAO, make material in the base collection available to participants in the Undertaking, for the purposes of scientific research, plant breeding or genetic resources conservation, free of charge, on the basis of mutual exchange, or on mutually agreed terms."

than their country of origin. Resolution 3 on the "Interrelationship between the Convention on Biological Diversity and the Promotion of Sustainable Agriculture", which was approved by the Conference for the Adoption of the Agreed Text of the Convention as part of the Nairobi Final Act on 22 May 1992, recognizes the need to seek solutions to this problem within the FAO Global System on Plant Genetic Resources. This situation applies to the collections stored in the international centres, for many of which countries of origin cannot even be identified (see more detailed discussions in CPGR/93/7).

B. International Agricultural Research Centres Proposal

4. As a follow up to the FAO Circular State Letter referred to in paragraph 2 above, the International Board on Plant Genetic Resources (IBPGR) has presented to FAO, on behalf of the other International Agricultural Research Centres of the CGIAR, the attached Annex. It includes as an Appendix a proposal for a "Modified Basic Agreement for International Agricultural Research Centres" based on the three model basic agreements prepared by FAO (see paragraph 2 above). The proposed "modified basic agreement" incorporates the concept of trusteeship and is intended to provide the basis for negotiations between individual IARCs and FAO.

C. Action Expected from the Commission

5. The Commission is invited to:

- (i) comment on and/or endorse the concept of trusteeship for the collections of the IARCs;
- (ii) comment on the draft modified model agreement presented in the Appendix.

6. In reviewing the concept of trusteeship and the modified model, the Commission may note that the concept of trusteeship implies certain rights and obligations. Legal trusteeship or trust is an Anglo-Saxon concept in origin that is now broadly used, though with various meanings. In its legal sense, trusteeship may be said to be a fiduciary relation where a person (the trustee) has, normally, the legal title of ownership of property held for the benefit of another person (beneficiary). The trustee, who is normally the legal owner, is under a duty to the beneficiary to take reasonable steps to take and keep control of the trust property and to use reasonable care and skill to preserve it in favour of the beneficiary. Traditional trust law greatly restricts self-dealing on the part of the trustee in order to prevent the trustee placing his or her interest ahead of that of the beneficiary. On the other hand, the trustee is required to follow the terms of the trust, even over the objections of the beneficiary.

Annex

THE PLANT GENETIC RESOURCES COLLECTIONS OF THE INTERNATIONAL AGRICULTURAL RESEARCH CENTERS: LEGAL STATUS AND THE CONCEPT OF TRUSTEESHIP¹

Introduction

1. In line with the International Undertaking and following recommendations of the Commission on Plant Genetic Resources, the Director-General of the FAO, by Circular State Letter G/LE-48 of 23 October 1987, requested comments on document CPGR/87/6, Study 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. In particular, the Director-General requested in that letter that indications should be given as to "whether the Government (Institution) is prepared to bring its collection or collections within this network". Several International Agricultural Research Centers (IARCs) did respond to this request, indicating their preference or asking for further clarification.
2. The signing of the Convention on Biological Diversity by more than 150 countries at the United Nations Conference on Environment and Development held in Rio de Janeiro in June 1992 has further stimulated the discussions on the legal status of *ex situ* conserved germplasm collections. Resolution 3 of the Nairobi Final Act is especially relevant to *ex situ* base collections held in the centers.
3. The foregoing has led to this paper which has been prepared by the International Board for Plant Genetic Resources (IBPGR) on behalf of the other IARCs as decided by the Center Directors' Committee on Plant Genetic Resources of the Consultative Group on International Agricultural Research (CGIAR) during its meeting at International Centers Week 1992 in Washington, D.C., with the aim of clarifying the legal status of the international germplasm collections held by the IARCs, as a follow-up to the FAO Circular State Letter referred to in paragraph 1 above.

The legal status of germplasm collections at the IARCs

4. Recent studies on the legal status of germplasm collections held by the International Agricultural Research Centers have shown that only in a few cases had the question of ownership of the genetic material been addressed in the headquarters agreement with the respective host country. Furthermore, several of the CGIAR Centers have not been created by a formal treaty concluded among States and thus cannot be considered "international" in the strict legal sense. The Second Session of the FAO Commission considered a study: "The Legal status of base and active collections of plant genetic resources" (CPGR/87/5) and concluded that "the legal title to the plant genetic resources

1. This report has been prepared by the International Board for Plant Genetic Resources on behalf of the other International Agricultural Research Centers.

held by them [the International Agricultural Research Centers] was unclear" (CL91/14).

5. The CGIAR has developed a Policy on Plant Genetic Resources which was been adopted by the CGIAR System, including NARS, IARCs and Donors present at its annual meeting held in October 1988. This policy is based on the principle of trusteeship and the unrestricted availability of germplasm to *bona fide* users form the basis of the CGIAR Policy on Plant Genetic Resources. Many of the germplasm accessions have been donated by individual countries or institutions to the IARCs, or collected in agreement with the countries concerned on the general understanding that these accessions would remain freely available and that they would be conserved and used in research on behalf of the international community, in particular the developing countries. The Centers' consider that their germplasm collections cannot be considered as part of their assets and, therefore, would not pass over automatically to the host country in case of cessation of any Center.

6. According to the CGIAR Policy on Plant Genetic Resources, the concept of trusteeship implies that the germplasm collections are being held and managed by the Centers on behalf of the beneficiaries, i.e. the international community, in particular developing countries. This management responsibility includes the adequate maintenance of the genetic materials held in trust and their defense against physical destruction and misappropriation. Adequate maintenance also entails an obligation by the Centers as trustees to duplicate these collections systematically for safety reasons.

7. The CGIAR Centers express an interest to place the international germplasm collections they maintain, under the auspices of FAO using a model agreement that is based on the concept of trusteeship.

The International Network of *Ex situ* Base Collections in Genebanks; modified model agreement for IARCs

8. The established "International Network of *Ex Situ* Base Collections in Genebanks (CGPR/87/6) and the existing basic agreements (Models "B", "C" & "D") provide a useful basis for negotiations between FAO and the IARCs with a goal to place their collections under the jurisdiction or auspices of FAO.

9. Considering the fact that the IARCs are not the "owners" of the collections, basic agreement Model B does not apply. Based on Models C and D and incorporating the concept of trusteeship, a modified model agreement for IARCs, is being proposed. The latter (see Appendix) will be a basis for negotiations between individual IARCs and FAO.

Appendix

International Agricultural Research Centers Proposal

MODIFIED BASIC AGREEMENT FOR
INTERNATIONAL AGRICULTURAL RESEARCH CENTERS

PREAMBLE

The [Name of Center] (hereinafter referred to as the "Center"), supported by the Consultative Group on International Agricultural Research (hereinafter referred to as "CGIAR"), and the Food and Agriculture Organization of the United Nations (hereinafter referred to as FAO);

Considering the importance to humanity of protecting and conserving plant 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; and the Annexes of the Undertaking adopted by the FAO Conference in 1989 and 1991;

Considering the Memorandum of Understanding Between the Food and Agriculture Organization of the United Nations and the International Board for Plant Genetic Resources (IBPGR) dated September 21, 1991, on the respective roles of the two organizations in establishing, maintaining and managing base collections and setting standards for these collections;

Considering the strong support FAO, as one of the co-sponsors, has provided and continues to provide to the CGIAR;

Considering the growing importance of the plant germplasm collections held by the International Centers supported by the CGIAR as part of the global germplasm conservation strategy sponsored by FAO;

Considering the decision by the CGIAR of encouraging the International Centers supported by it to place their germplasm collections under the auspices of FAO;

Considering that the Center has expressed the wish that its collection of plant germplasm should be recognized as part of the international network of base collections in genebanks under the auspices of FAO;

Have agreed as follows:

Article 1 BASIC UNDERTAKING

- (a) The Center undertakes to place under the auspices of FAO within the international network of base collections its collection of plant genetic resources listed in the Appendix hereto (hereinafter referred to as the "designated germplasm"), and catalogued and published by the Center in print or machine-readable form from time to time, under the terms and conditions set forth in this Agreement.
- (b) The Center maintains its collection of plant genetic resources under long-term storage conditions (hereinafter referred to as "the Center's base collection") and under medium-term storage conditions (hereinafter referred to as "the Center's active collection").

Article 2 TRUSTEESHIP

Subject to any applicable bilateral or multilateral international agreement, the Center shall hold the designated germplasm as trustee for the benefit of the international community, in particular developing countries, in accordance with the International Undertaking on Plant Genetic Resources.

Article 3 PREMISES

- (a) The premises in which the designated germplasm is conserved shall remain in charge of the Center.
- (b) 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) The Center shall continue to be responsible for the management and administration of the designated germplasm in compliance with internationally accepted standards.
- (b) FAO may recommend action, if it considers such action to be desirable in order to ensure the proper conservation of the designated germplasm.
- (c) If the orderly maintenance of the germplasm collection of the Center is impeded or threatened by whatever event, including *force majeure*, FAO, shall assist in the evacuation and/or disposal of the collections, to the extent possible. The cost of such an operation will be covered by the Center concerned.

Article 5 POLICIES

The Center 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 responsible to manage and administer the designated germplasm shall be employed and remunerated by the Centers.
- (b) As and when deemed appropriate, FAO shall furnish technical backstopping to the staff on request by the Center.

Article 7 FINANCES

The Center shall remain entirely responsible for financing the maintenance of the designated germplasm.

Article 8 AVAILABILITY OF DESIGNATED GERmplasm

The Center undertakes to make the designated germplasm available, directly to users or through FAO, from its active collection for the purpose of scientific research, plant breeding or genetic resource conservation, without restriction on mutually agreed terms.

Article 9 DURATION

This Agreement is concluded for a period of ten years and shall be automatically renewed for a further period of ten years unless notice of non-renewal is given in writing by either party not less than one hundred and eighty (180) days before the end of any ten-year period.

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

Article 12 AMENDMENT

- (a) FAO or the Center 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, and be reported to the next session of the Commission on Plant Genetic Resources.

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 Members 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 FAO and the Center.

[Name of Center]

**United Nations Food and Agriculture
Organization**

By.....
(signature)

by:.....
(signature)

Date.....

Date:.....

APPENDIX

DESIGNATED GERMPLOSM

Collections held under long-term storage conditions (Center Base Collection), and medium-term storage conditions (Center Active Collection):

- list species
- give location of storage facilities