

	منظمة الامم المتحدة والزراعة للأمم المتحدة	CPGR/93/4 April 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	

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Item 3 of the  
Provisional Agenda

## COMMISSION ON PLANT GENETIC RESOURCES

Fifth Session

Rome, 19 - 23 April 1993

### REPORT OF THE CHAIRMAN OF THE EIGHTH SESSION OF THE WORKING GROUP OF THE COMMISSION ON PLANT GENETIC RESOURCES

#### I. Introduction

1. The Eighth Session of the Working Group was attended by representatives of Cape Verde, Congo, Egypt, India, Indonesia, Italy, Madagascar, Mexico, the Netherlands, the Philippines, Spain, Sweden, Thailand, Tunisia, the United States and Venezuela. In the absence of the acting Chairman, Mr M. Worede (Ethiopia), the Working Group elected Mr J.M. Bolivar (Spain) to chair the meeting.

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

The Working Group observed that, in view of the heavy programme of work of the Commission and the importance of the material to be discussed, it would be advisable to speed up the Commission's discussions to allow enough time for each item to be discussed.

## **II. Code of Conduct for Plant Germplasm Collecting and Transfer**

3. The Working Group considered it highly important that the Fifth Session of the Commission finalize this document for presentation to the Conference of FAO in November 1993.
4. The Working Group agreed to recommend that the Commission approve the text presented by the Secretariat with the changes appearing in the Annex to this report. These changes, which do not affect the substance of the document, could be presented under Agenda Item 7. The Working Group also considered that the Text of the Draft Resolution (Appendix 1 of document CPGR/93/8) might be an appropriate preamble to the Code.

## **III. Code of Conduct on Biotechnology as it Affects Plant Genetic Resources**

5. Given the complexity and importance of the matters covered by this Code, the Working Group observed that it would be advisable for the agenda of the Commission to proceed so as to allow sufficient time for discussion of Item 8.1.
6. Some Delegations expressed the view that it was extremely urgent to have a Code on Biotechnology prior to the appearance on the market of plant biotechnology products.
7. There was general agreement that these questions should be approached pragmatically, and that it might be better to deal with them separately rather than to lump them all together under a single Code. In this respect, it was suggested that the most urgent could be dealt with immediately, whereas the less urgent could be left for discussion at future sessions of the Commission and its Working Group. It was also agreed that the Code should be limited to those aspects directly affecting food and agriculture, although which aspects these were and which were the most urgent was not defined.
8. Some delegations, in consideration of the complexity of the matters covered by the Code, pointed out that some matters might be better handled by other fora, and that some components of the Draft Code might be shifted to them as a contribution of the Commission. It was specifically suggested that the section on biodiversity could contribute to the studies on biosecurity undertaken in the context of the Convention on Biological Diversity. However, the Working Group did not discuss the mechanisms for interacting with these other fora.
9. The Working Group agreed that the Code should be addressed primarily to governments, and also to the relevant organizations and professional associations, and that this should be reflected in Article 4.2.

## **IV. Availability of Plant Genetic Resources, Status of Existing *ex situ* Germplasm Collections, and Other Matters Derived from UNCED**

10. The Working Group recalled its discussions at the Seventh Session concerning the implications of UNCED for the Global System (CPGR/93/7).

The Working Group observed that the Convention on Biological Diversity did not cover access to *ex situ* germplasm collections existing prior to the entry in force of the Convention, and that

those approving the Text of the Convention as part of the Final Act of the Conference in Nairobi considered that this matter should be resolved within the Global System.

11. Consideration was given to the fact that both Article 15 of the Convention on Biological Diversity, and Article 5 of the International Undertaking of FAO, stated that the sharing of germplasm should be upon mutually agreed terms.

12. The Working Group acknowledged the role of bilateral agreements under the Convention on Biological Diversity. Nonetheless, it thought it might be highly important to develop a broader multilateral agreement under mutually agreed terms, with adequate compensations, in order not to restrict access to germplasm. Otherwise, with the entry in force of the Convention, so many different bilateral agreements might be required that the availability and sharing of germplasm would be seriously restricted.

13. The Working Group agreed to recommend that the Commission give priority consideration to finding ways and means to ensure complementarity and closer cooperation between the Convention on Biological Diversity and the Global System.

14. The Working Group, recalling the debate during its Seventh Session, also agreed to recommend that the Commission give priority to taking the necessary steps to revise the International Undertaking, incorporate its three annexes into the main body of the text and harmonize its wording and concepts with the Convention on Biological Diversity, as well as to develop a multilateral agreement in mutually agreed, equitable terms concerning germplasm (as mentioned).

15. With reference to intellectual property rights, some delegations insisted that germplasm collected in one country should not be protected by the recipient country in such a way as to restrict its use in the donor country.

**V. The Proposal of the IARC to Place its Germplasm Collections  
within the International Network of Base Collections  
under the Auspices of FAO**

16. The Working Group discussed the proposal of the IARC to place its collections within the international network under the auspices of FAO (Document CPGR/93/11).

17. The Working Group expressed satisfaction with this decision of the IARC. Some delegations asked for clarification of certain specific points, particularly concerning the "ownership" of the resources held in the collections, and the implications of the concept of "trusteeship".

18. The Director of the IBPGR commented on some of these points. He noted that the question of "ownership" is unclear; that much of the material in the collections is the result of international cooperation and, therefore, should be considered public property; and that, often enough, the origin of the materials is unknown. He made the point that the Centres consider themselves to be the custodians of the germplasm and not the owners, and that they have the obligation to make the materials accessible. This obligation would include, where possible, mechanisms to avoid another party making the collections inaccessible, for example through intellectual property rights. He explained that although the original parent material would be part of the international collection, not all breeding lines would; only those with characteristics of particular interest.

19. It was suggested that the draft model agreement (Appendix 1 of document CPGR/93/11) should include provisions on the duplication of the germplasm designated in other genebanks, and on the situation which would arise should a Centre close. It was also proposed that the wording of Article 5 be modified to make the Centres responsible for "developing" rather than "determining" policies. Further clarification of the implications of the concept of "trusteeship" for the ownership of germplasm was also requested.

#### **VI. The Svalbard International Seedbank**

20. It was considered that FAO negotiations to ensure the long-term funding of the proposed Svalbard International Seedbank should be continued. It was also considered that priority for the placing of seeds should be given to those countries which lack the appropriate facilities.

#### **VII. Genebank Standards**

21. The Working Group agreed to recommend that the Commission adopt the text of the set of standards for genebanks (CPGR/93/5/Annex). It observed that the standards were applicable only to plants which produced orthodox seeds, and that once the technologies had been developed, standards should also be established for plants with non-orthodox seeds, vegetatively propagated plants and other perennials not covered by the present standards.

#### **VIII. Procedures and Terms of Reference for the Working Group**

22. The current terms of reference of the Working Group were reviewed. These were: "to consider the progress made in implementing the Commission's Programme of Work and any other matters referred to by the Commission" (CPGR/85/Rep paragraph 78). There was general agreement that these broad terms of reference were appropriate for the Working Group.

23. It was agreed that the current procedures for electing the Working Group, whose composition is based on the regional groups, was satisfactory, but that the tenure of the Working Group and the principle of rotation did require attention and clarification. It likewise agreed that the Working Group should have a Chairman and a Vice-Chairman. There was also agreement that the Working Group should be empowered to invite observers to its meetings where relevant.

24. The Working Group discussed some options for the election of its members and its period of tenure. The representative of the FAO Legal Office described the system for the election of the Council. The general feeling, however, was that this was a very elaborate procedure, and perhaps a complicated one, and that a "lighter" system might be more appropriate for the Working Group. Some delegations expressed the view that it would be useful to have a system whereby only a portion of its members were replaced at each election, so as to ensure continuity and at the same time to facilitate rotation. The Legal Counsel was asked to present some options for possible consideration by the Commission.

**Proposed changes to the draft Code of Conduct  
for Plant Germplasm Collection and Transfer (CPGR/93/8)**

The following should be added to the definitions (Article 2):

**"Donors"** means a country or a legal or natural person that makes available plant genetic resources for collection and/or exchange.

The following definitions (Article 2) should be amended to read:

**"Plant genetic resources"** means germplasm or genetic material of actual or potential value.

**"Plant germplasm"** or **"genetic material"** means the reproductive or vegetative propagating material of plants.

The phrases in Article 3.2 to be inverted, and amended to read:

The code recognizes that nations have sovereign rights over their plant genetic resources in their territories and it is based on the principle according to which the conservation and continued availability of plant genetic resources is a common concern of humankind;

Addition of "pharmaceutical plants" to the list in Article 3.3, the second sentence of which to read (changes underlined):

All relevant legal and natural persons are also invited to observe its provisions, in particular those dealing with plant exploration and plant collection, agricultural and botanical activities and research on endangered species or habitat conservation, research institutes, botanical gardens, harvesting of wild plant resources, agro-industry, including pharmaceutical plants and the seed trade.

The word "full" in Article 3.5 to be deleted to read:

FAO and other competent organizations, are invited to promote observance of the Code.

The words "the evolution of" in Article 4.1 to be deleted, the first sentence of which to read:

The Code describes the shared responsibilities of collectors, donors, sponsors, curators and users of germplasm so as to ensure that the collection, transfer and use of plant germplasm is carried out with the maximum benefit to the international community, and with minimal adverse effects on crop plant diversity and the environment.

Article 10.2 to be amended to read:

The acquisition of germplasm from farmers' planting stocks or wild species should not increase the risk of genetic erosion.

Addition of the following paragraph to Article 13 (after 13.2):

Curators should provide to their counterparts in the donor country information resulting from the characterization and evaluation of germplasm acquired from that country;