



Item 5.1(d) of the Draft Provisional Agenda

**COMMISSION ON GENETIC RESOURCES
FOR FOOD AND AGRICULTURE**

**First Meeting of the Commission on Genetic Resources for Food and
Agriculture acting as the Interim Committee for the International Treaty
on Plant Genetic Resources for Food and Agriculture**

Rome, 9–11 October 2002

**CONSULTATIONS WITH THE INTERNATIONAL
AGRICULTURAL RESEARCH CENTRES OF THE CGIAR
AND OTHER RELEVANT INTERNATIONAL INSTITUTIONS
ON THE AGREEMENTS TO BE SIGNED
WITH THE GOVERNING BODY OF
THE INTERNATIONAL TREATY ON PLANT GENETIC
RESOURCES FOR FOOD AND AGRICULTURE**

TABLE OF CONTENTS

	<i>Para.</i>
1. Introduction	1
2. Draft Agreement	2-3
3. Conclusions and suggested action by the Interim Committee for the Treaty	4

Annex: Draft Agreement between [Name Of Centre] and the Food and Agriculture Organization of the United Nations (FAO), acting on behalf of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture

**CONSULTATIONS WITH THE INTERNATIONAL AGRICULTURAL
RESEARCH CENTRES OF THE CGIAR AND OTHER RELEVANT
INTERNATIONAL INSTITUTIONS ON THE AGREEMENTS TO BE SIGNED
WITH THE GOVERNING BODY OF THE INTERNATIONAL TREATY ON
PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE**

I. INTRODUCTION

1. The Conference at its Thirty-first Session in November 2001 adopted Resolution 3/2001 adopting the International Treaty on Plant Genetic Resources for Food and Agriculture, and mandating interim arrangements for the implementation of the Treaty. As part of these interim arrangements, the Conference requested the Commission acting as Interim Committee for the Treaty to consult with the International Agricultural Research Centres and other relevant international institutions on the agreements to be signed with the Governing Body, in accordance with Article 15 of the Treaty, and to prepare draft agreements for consideration at the first session of the Governing Body.

II. DRAFT AGREEMENT

2. Consultations have been held with the International Agricultural Research Centres of the Consultative Group on International Agricultural Research, and a broad measure of agreement has been reached on the elements to be included in draft agreements with the Governing Body.

3. A draft model agreement for signature between the Centres and the Governing Body of the Treaty based on those consultations is set out in the Annex to this document. It is to be noted that while the draft model agreement has been discussed by the Directors-General of the Centres and has received their initial approval, it has not yet been formally approved. Any agreement would of course eventually need to be formally approved by the individual Boards of Trustees of the Centres.

**III. CONCLUSIONS AND SUGGESTED ACTION BY THE
INTERIM COMMITTEE FOR THE TREATY**

4. The Interim Committee for the Treaty is invited to review the attached draft model Agreement with a view to recommending its consideration by the Governing Body at its first session as requested by the Conference.

*ANNEX***DRAFT****AGREEMENT BETWEEN [name of Centre] AND THE FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO), ACTING ON BEHALF OF THE GOVERNING BODY OF THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE****PREAMBLE**

1. The [Name of Centre] (hereinafter referred to as the “Centre”), 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”) acting on behalf of the Governing Body for the International Treaty on Plant Genetic Resources for Food and Agriculture (hereinafter referred to as the “Governing Body”);
2. *Considering* the importance to humanity of protecting and conserving plant genetic resources for food and agriculture for future generations;
3. *Recalling* the Agreement between [name of centre] and the Food and Agriculture Organization of the United Nations (FAO) placing collections of plant germplasm under the auspices of the FAO signed on 26 October 1994;
4. *Considering* the International Treaty on Plant Genetic Resources for Food and Agriculture adopted by the FAO Conference at its Thirty-first Session in 2001, which entered into force on ***** (hereinafter referred to as the “Treaty”);
5. *Noting* that in Article 15 of the Treaty, the Contracting Parties to the Treaty recognize the importance to the Treaty of the *ex situ* collections of plant genetic resources for food and agriculture held in trust by the International Agricultural Research Centres of the Consultative Group on International Agricultural Research (CGIAR) and call upon the Centres to sign agreements with the Governing Body with regard to such *ex situ* collections;
6. *Reaffirming* the commitment of the Parties to this Agreement to the conservation, sustainable use and equitable sharing of benefits arising from the utilization of plant genetic resources for food and agriculture;
7. *Noting* that both the Centre, in its decision no... of, and the Governing Body, in its decision no. .. of, have approved the terms of the present Agreement;

Have agreed as follows:

Article 1**Application and interpretation of this Agreement**

- 1.1 This Agreement shall be construed and applied in a manner consistent with the provisions of the Treaty.

1.2 The terms used in this Agreement that are also used in the Treaty shall have the same meanings assigned to them as in the Treaty.

1.3 Any reference in this Agreement to the Centre shall include its successors in title.

Article 2 **Basic Undertaking**

The Centre hereby agrees to place the *ex situ* collection held by it in trust within the purview of the Treaty in accordance with the following terms and conditions:

- (a) Plant genetic resources for food and agriculture listed in Annex I of the Treaty and held by the Centre shall be made available in accordance with the provisions set out in Part IV of the Treaty.
- (b) Plant genetic resources for food and agriculture other than those listed in Annex I of the Treaty and collected before its entry into force that are held by Centre shall be made available in accordance with the provisions of the Material Transfer Agreement (hereinafter referred to as the MTA) currently in use pursuant to agreements between the Centre and the FAO. This MTA shall be amended by the Governing Body no later than its second regular session, in consultation with the Centre, in accordance with the relevant provisions of the Treaty, especially Articles 12 and 13, and under the following conditions:
 - (i) The Centre shall periodically inform the Governing Body about the MTAs entered into, according to a schedule to be established by the Governing Body;
 - (ii) The Contracting Parties in whose territory the plant genetic resources for food and agriculture were collected from *in situ* conditions shall be provided with samples of such plant genetic resources for food and agriculture on demand, without any MTA;
 - (iii) Benefits arising under the above MTA that accrue to the mechanism mentioned in Article 19.3f of the Treaty shall be applied, in particular, to the conservation and sustainable use of the plant genetic resources for food and agriculture in question, particularly in national and regional programmes in developing countries and countries with economies in transition, especially in centres of diversity and the least developed countries; and
 - (iv) The Centre shall take appropriate measures, in accordance with its capacity, to maintain effective compliance with the conditions of the MTAs, and shall promptly inform the Governing Body of cases of non-compliance.
- (c) The Centre recognizes the authority of the Governing Body to provide policy guidance relating to *ex situ* collections held by it and subject to the provisions of the Treaty.
- (d) The scientific and technical facilities in which such *ex situ* collections are conserved shall remain under the authority of the Centre, which undertake to manage and administer these *ex situ* collections in accordance with internationally accepted standards, in particular the Genesbank Standards as endorsed by the FAO Commission on Genetic Resources for Food and Agriculture.

- (e) Upon request by the Centre, the Secretary of the Governing Body of the Treaty (hereinafter referred to as the “Secretary”) shall endeavour to provide appropriate technical support.
- (f) The Secretary shall have, at any time, right of access to the facilities, as well as right to inspect all activities performed therein directly related to the conservation and exchange of the material covered by this Article.
- (g) If the orderly maintenance of these *ex situ* collections held by the Centre is impeded or threatened by whatever event, including force majeure, the Secretary, with the approval of the host country, shall assist in its evacuation or transfer, to the extent possible.

Article 3
Plant genetic resources for food and agriculture received
after the coming into force of the Treaty

Plant genetic resources for food and agriculture other than that listed in Annex I of the Treaty, which is received and conserved by the Centre after the coming into force of the Treaty, shall be available for access on terms consistent with those mutually agreed between the Centre that receives the material and the country of origin of such resources or the country that has acquired those resources in accordance with the Convention on Biological Diversity or other applicable law.

Article 4
Rights of the Centre

1. The Governing Body agrees that the Centre shall be included in the list of International Agricultural Research Centres to which the Contracting Parties have agreed to provide facilitated access to plant genetic resources for food and agriculture in Annex I under the Multilateral System.
2. The Governing Body shall encourage Contracting Parties to provide the Centre with access, on mutually agreed terms, to plant genetic resources for food and agriculture not listed in Annex I that are important to the programmes and activities of the Centre.
3. The Governing Body agrees to invite the Centre to attend sessions of the Governing Body as an observer.

Article 5
Consultations regarding implementation

The Centre shall consult periodically with the Secretary or such other person or entity as the Governing Body may designate regarding the effective implementation of this Agreement. The results of such consultations shall be reported to the Governing Body.

Article 6
Amendment

1. The Governing Body or the Centre may propose that this Agreement be amended by giving notice thereof.

2. Should the Treaty be amended in such a way as to significantly change the rights or obligations of the Parties to this Agreement, the Parties hereto shall consult regarding any amendments to the provisions of this Agreement that may be required or such other measures as may be required.

3. If there is a mutual agreement in respect of the amendment, the amendment shall enter into force on whatever date is set.

Article 7 **Duration of the Agreement**

1. It is the intention of the Parties that this Agreement should remain in force in perpetuity. However, should circumstances beyond its control make it impossible for either Party to fulfil its obligations under this Agreement or fulfil them in a manner compatible with its mandate, either Party may, after a period of two years from the entry into force of this Agreement, give notice to the other Party of its withdrawal from this Agreement. Such withdrawal shall take effect one year from the date of receipt of such notice. In the event of such a withdrawal, the Parties hereto shall consult with a view to ensuring that the in-trust collections are maintained consistently with the Treaty through other arrangements, where possible by other Centres of the CGIAR.

2. This Agreement may be terminated by mutual agreement between the Parties hereto.

Article 8 **Settlement of disputes**

Any dispute concerning the implementation of this Agreement shall be settled in accordance with the provisions of Article 22 of the Treaty.

Article 9 **Depositary**

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

- (a) send certified copies of this Agreement to the Contracting Parties to the Treaty, to all the Members of the 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 the Contracting Parties to the Treaty, and FAO Members of:
 - (i) the signature of this Agreement in accordance with Article 10; and
 - (ii) the adoption of amendments to this Agreement in accordance with Article 6.

Article 10
Coming into Force

This Agreement shall come into force on the ninetieth day after its signature by the authorized representative of the FAO acting on behalf of the Governing Body and by the authorized representative of the Centre.

**Food and Agriculture Organization of the
United Nations, acting on behalf of the
Governing Body of the International
Treaty on Plant Genetic Resources for
Food and Agriculture**

[Name of Centre]

by: _____
(signature)

by: _____
(signature)

Date: _____

Date: _____