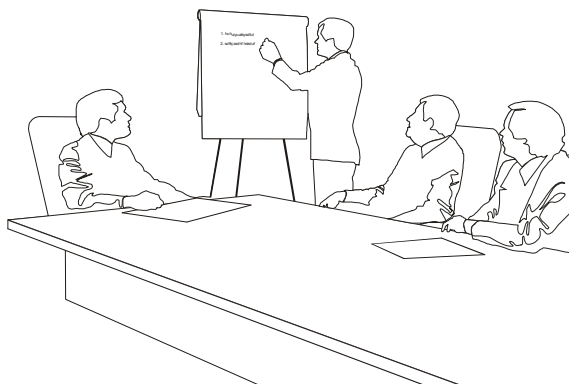


## Exercise 2. History and Development (plenary session)



*The aim of this exercise is to identify and discuss the factors that have shaped the development of international law and policy relating to plant genetic resources for food and agriculture. At the end of this session, the trainer will distribute handout 1.2.5 and invite participants to discuss the main issues related to the 'practical considerations' for this exercise.*

### **Phase 1. Plenary discussion (45 minutes)**

1. While the trainer makes the presentation, think about responding to the following questions:
  - What set of access and benefit sharing (ABS) laws and policies existed during particular periods?
  - What kinds of policies made sense during each phase?
  - On the basis of the time line development, what were the advantages and disadvantages of each phase?
  - What are the main contributions of the FAO Global System to the conservation and sustainable use of plant genetic resources for food and agriculture?

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## Practical Considerations for Exercise 2

**(to be distributed after the exercise has been completed)**

*After doing this exercise, participants will have a better understanding of the factors and interplay of interests that have shaped the development of international law and policy relating to plant genetic resources for food and agriculture, and the role that has been played and is being played by the FAO Global System. The exercise allows participants to describe the forces at play in their own words, and thus reinforce their own understanding.*

### General Issues

The following broad periods can be identified:

1. A period in which no restrictions were placed on access and exchange of PGRFA, subject to international law. Where there were restrictions, they were subject to resolution through normal channels, e.g., diplomacy or force. This made sense at the time, in that free exchange of PGRFA was viewed by farmers as being necessary to maintain productivity, and there were no particular interests that would push countries to restrict this exchange. Some national-level legal restrictions may have been applied on certain crops or PGR, particularly those prized for their medicinal, cultural or religious significance, such as the cinchona tree, the bark of which was used to produce quinine. The advantages of such a laissez-faire system was that it allowed for free exchange of PGRFA. On the other hand, it did nothing to protect traditional knowledge or to reward formal or informal innovations.
2. A period of technological innovation, in which there were pressures to protect and reward formal innovations, particularly in the area of medicines but also in the area of PGRFA, through intellectual property rights. This in turn led to a countervailing tendency on the part of holders of genetic resources, to restrict access to genetic resources through the notion of national sovereignty and to protect and reward traditional knowledge and informal innovations. The advantages of such a more restrictive system are that it protects the interests of both holders of genetic resources and developers of technology and rewards both formal and informal innovations. In this sense it is more equitable in its benefit sharing. However, it has the effect of restricting the exchange of PGRFA and thus slowing the rate of crop improvement and having potential impacts on food security. The controls introduced are typified in national, bilaterally neutral laws regulating access and benefit sharing, pursuant to the CBD and TRIPS agreements.
3. A period in which the special nature of PGRFA is recognized and an attempt is made to balance the need for equitable benefit sharing with the need to ensure that PGRFA continue to be exchanged widely. This is the era of the International Treaty that we are now entering, with the Multilateral System of Access and Benefit Sharing for the crops that are most important to food security and on which countries are most interdependent.

### Specific Observations

The main contributions of the FAO Global System may be summarized as follows:

1. The provision of a focal point for international policy discussions and formulation through the FAO Commission on Genetic Resources for Food and Agriculture and, subsequently, also the Governing Body of the International Treaty;
2. The provision of an international legal framework and rules, through the International Undertaking, and subsequently the International Treaty, and the various Codes of Conduct and guidelines;
3. The provision of a globally agreed-upon technical framework for action on PGRFA through the Report on the State of the World's PGRFA and the Global Plan of Action;
4. The provision of technical and institutional tools to carry out the policy and technical work, through the international networks of *ex situ* collections and the World Information and Early Warning System;
5. The provision of the necessary financial means for carrying out the technical work through the new Funding Strategy to be adopted under the International Treaty.