



## SUMMARY OF THE FIFTH SESSION OF THE GOVERNING BODY OF THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE: 24-28 SEPTEMBER 2013

The fifth session of the Governing Body (GB) of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR) convened from 24-28 September 2013 in Muscat, Oman. More than 450 participants from parties and other governments, international, non-governmental and farmers' organizations, and industry attended the session, which was preceded by a High-Level Ministerial Conference, organized by the Government of Oman on 21 September, and two days of regional consultations on 22-23 September.

The meeting launched an intersessional *Ad Hoc* Working Group to Enhance the Functioning of the Multilateral System (MLS) of Access and Benefit-sharing (ABS), which is mandated to develop measures to increase user-based payments and contributions to the Benefit-sharing Fund, as a priority, as well as additional measures to enhance the functioning of the MLS. Delegates described this outcome as pivotal for the future development of the Treaty, noting that the process will provide much needed direction towards enhanced implementation, in view of the Convention on Biological Diversity's Nagoya Protocol on ABS. In addition, the meeting adopted a work programme on sustainable use and a resolution of farmers' rights that was welcomed as significant progress towards implementation. ITPGR GB 5 also resolved outstanding issues on compliance, thus rendering the Treaty's compliance mechanism fully operational.

### A BRIEF HISTORY OF THE ITPGR

Concluded under the auspices of the UN Food and Agriculture Organization (FAO), the ITPGR is a legally binding instrument that targets the conservation and sustainable use of plant genetic resources for food and agriculture (PGRFA) and equitable benefit-sharing, in harmony with the 1992 Convention on Biological Diversity (CBD), for sustainable agriculture and food security. The Treaty contains sections on general provisions, farmers' rights, supporting components, and financial

and institutional provisions. It establishes an MLS for facilitated access to a specified list of PGRFA including 35 crop genera and 29 forage species (Annex I), balanced by benefit-sharing in the areas of information exchange, technology transfer, capacity building and commercial development. The Treaty entered into force on 29 June 2004, and currently has 129 parties.

**NEGOTIATION PROCESS:** The Treaty's negotiations were based on the revision of the non-binding International Undertaking on PGRFA (IU). The IU was originally based on the principle that PGRFA should be "preserved ... and freely available for use" as part of the common heritage of mankind. This was subsequently subjected to "the sovereignty of States over their plant genetic resources," according to FAO Resolution 3/91. In April 1993, the FAO Commission on Genetic Resources for Food and Agriculture (CGRFA) decided that the IU should be revised to be in harmony with the CBD.

Negotiations spanned seven years. From 1994 to 1998, the CGRFA met in five extraordinary and two regular sessions to develop the structure of, and refine, a draft negotiating text.

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This issue of the *Earth Negotiations Bulletin* © <enb@iisd.org> is written and edited by Stefan Jungcurt, Ph.D., Elisa Morgera, Ph.D., Eugenia Recio, and Elsa Tsioumani, LL.M. The Editor is Pamela S. Chasek, Ph.D. <pam@iisd.org>. The Director of IISD Reporting Services is Langston James "Kimo" Goree VI <kimo@iisd.org>. The Sustaining Donor of the *Bulletin* is the European Commission (DG-ENV). General Support for the *Bulletin* during 2013 is provided by the German Federal Ministry for the Environment, Nature Conservation and Nuclear Safety (BMU), the Ministry of Environment of Sweden, the New Zealand Ministry of Foreign Affairs and Trade, SWAN International, the Swiss Federal Office for the Environment (FOEN), the Finnish Ministry for Foreign Affairs, the Japanese Ministry of Environment (through the Institute for Global Environmental Strategies - IGES), and the United Nations Environment Programme (UNEP). Specific funding for the coverage of this meeting has been provided by the ITPGR Secretariat, the Swiss Federal Office of Agriculture, and the German Plant Breeders' Association (BDP). Funding for translation of the *Bulletin* into French has been provided by the Government of France, the Belgium Walloon Region, Québec, and the International Organization of the Francophone (OIF and IEPF). The opinions expressed in the *Bulletin* are those of the authors and do not necessarily reflect the views of IISD or other donors. Excerpts from the *Bulletin* may be used in non-commercial publications with appropriate academic citation. For information on the *Bulletin*, including requests to provide reporting services, contact the Director of IISD Reporting Services at <kimo@iisd.org>, +1-646-536-7556 or 300 East 56th St., 11D, New York, NY 10022 USA.



From 1999-2001, a contact group consisting of 41 countries, chaired by Amb. Fernando Gerbasi (Venezuela), held six sessions to address contentious issues, including the list of crops to be included in the MLS, benefit-sharing, intellectual property rights to materials in the MLS, financial resources, genetic materials held by the International Agricultural Research Centers (IARCs) of the Consultative Group on International Agricultural Research (CGIAR) and definition of key terms. The 121st FAO Council and an Open-ended Working Group held under its auspices (October-November 2001, Rome, Italy) resolved outstanding issues and on 3 November 2001, the 31st FAO Conference adopted the ITPGR by a vote of 116 in favor, zero against and two abstentions.

**ITPGR INTERIM COMMITTEE:** The CGRFA, acting as the ITPGR Interim Committee, held two meetings (October 2002 and November 2004, Rome, Italy), where it adopted its rules of procedure, and set the terms of reference for intersessional consideration of the rules of procedure and financial rules for the GB, procedures for compliance, and the terms of the standard material transfer agreement (SMTA). An open-ended intersessional working group (December 2005, Rome, Italy) revised the rules of procedure and financial rules of the GB, the funding strategy and procedures for compliance, and prepared a draft resolution on compliance for consideration by the first meeting of the GB. An expert group on the SMTA (October 2004, Brussels, Belgium) considered options for the SMTA terms and draft structure, and recommended establishment of an intersessional contact group to draft its elements.

This contact group held two meetings. At its first meeting (July 2005, Hammamet, Tunisia), it set out the basic structure of the SMTA. A number of controversial issues remained outstanding, such as: dispute settlement, including whether arbitration would be binding or not; the benefit-sharing mechanism and payment; and an African proposal to add a Third Party Beneficiary representing the GB to monitor execution of the SMTA. The second meeting (April 2006, Alnarp, Sweden) agreed on a draft SMTA but left a number of issues unresolved, including: the Third Party Beneficiary's rights; the definitions of "product" and "sales," and the formula for benefit-sharing; obligations of the recipient in the case of subsequent transfers of material; dispute settlement; and applicable law. Contact Group Chair Eng Siang Lim (Malaysia) established an intersessional Friends of the Chair group to resolve pending issues prior to the first session of the GB.

**ITPGR GB 1:** The first session of the ITPGR GB (June 2006, Madrid, Spain) adopted the SMTA and the Funding Strategy. The SMTA includes provisions on a fixed percentage of 1.1% that a recipient shall pay when a product is commercialized but not available without restriction to others for further research and breeding; and 0.5% for an alternative payments scheme. The GB further adopted: its rules of procedure, including decision making by consensus; financial rules with bracketed options on an indicative scale of voluntary contributions or voluntary contributions in general; a resolution establishing a Compliance Committee; the relationship agreement with the Global Crop

Diversity Trust; and a model agreement with the IARCs of the CGIAR and other international institutions.

**ITPGR GB 2:** The second session of the GB (October-November 2007, Rome, Italy) addressed a series of items, including implementation of the Funding Strategy, the material transfer agreement (MTA) for non-Annex I crops, cooperation with the CGRFA, and sustainable use of PGRFA. Following challenging budget negotiations, the meeting adopted the work programme and budget for 2008-09. It also adopted a resolution on farmers' rights, as well as a joint statement of intent for cooperation with the CGRFA.

**ITPGR GB 3:** The third session of the GB (June 2009, Tunis, Tunisia) agreed to: a set of outcomes for implementation of the Funding Strategy, including a financial target of US\$116 million for the period July 2009 - December 2014; a resolution on implementation of the MLS, including setting up an intersessional advisory committee on implementation issues; procedures for the Third Party Beneficiary; and a resolution on farmers' rights. The meeting also adopted the work programme and budget for 2010-11; agreed to finalize the outstanding financial rules at GB 4; and established intersessional processes to finalize compliance procedures by GB 4 and review the SMTA.

**ITPGR GB 4:** The fourth session of the GB (March 2011, Bali, Indonesia) adopted procedures and mechanisms on compliance, and reached consensus on the long-standing item of the financial rules of the GB. It also adopted a work programme and budget for the 2012-2013 biennium, including a moderate budget increase, and resolutions on a number of items, including farmers' rights, sustainable use and implementation of the Funding Strategy. The GB also outlined the intersessional process, including meetings of the Compliance Committee and *ad hoc* committees on MLS implementation, the Funding Strategy and sustainable use.

## ITPGR GB 5 REPORT

On Tuesday morning, 24 September, an opening ceremony took place under the patronage of H.H. Sayyid Shihab bin Tariq al Said, adviser to H.M. Qaboos bin Said al Said, the Sultan of Oman. Following a recitation from the Quran, H.E. Fuad bin Jaafar bin Mohammed al Sajwani, Oman's Minister of Agriculture and Fisheries, highlighted the importance of strengthening capacities for genetic resource exchange and creating an environment conducive for investment by the private sector. Ir Haryono Indonesia, delivered a statement on behalf of Indonesia's Minister of Agriculture, noting countries' interdependence with regard to achieving food security in the face of climate change and the Treaty's role in that regard. He further drew attention to intersessional developments, including the third high-level roundtable on the Treaty, held from 2-4 July 2013 in Bandung, Indonesia, and the development of the platform for the co-development and transfer of technologies.

In a video message, FAO Director-General José Graziano da Silva highlighted the Treaty's crucial role for food security as the international framework for PGRFA management, and recalled the support expressed in the Rio Six-Point Action Plan

to expand the list of crops in Annex I and improve the benefit-sharing mechanism. Ren Wang, Assistant Director-General, FAO, welcomed this proposal and said the time is ripe to enhance benefit-sharing in the context of a well-balanced package.

GB 5 Chair Javad Mozafari (Iran) said the Treaty should lead discussions on PGRFA in a global framework and its scope should be systematically recognized at the national and international levels. He called for coherence and synergies with other genetic resources- and environment-related instruments. ITPGR Secretary Shakeel Bhatti stressed that parties' decisions at GB 5 will determine if the Treaty continues to "flourish" or "wither away," as a crucial pillar of the governance of PGRFA at the global level.

**ORGANIZATIONAL MATTERS:** On Tuesday, Chair Mozafari welcomed the recent ratification of the Treaty by Serbia and Swaziland, adding that Japan and Sri Lanka have submitted their instruments of ratification and will soon become parties. Delegates adopted the agenda and proposed organization of work (IT/GB-5/13/1 and 2) without amendment. Plenary elected Johanna Binder (Germany) as the meeting's rapporteur. A credentials committee was established, which reported to plenary on Friday.

**GENERAL STATEMENTS:** On Tuesday, Australia, for the South-West Pacific, emphasized the role of the Treaty in relation to food security and climate adaptability in the region and globally. Indonesia, for the Group of 77 and China (G-77/China), underlined agenda items on the Treaty's MLS, farmers' rights, sustainable use of PGRFA and technology transfer. Costa Rica, for the Latin American and Caribbean Group (GRULAC), pointed to the need to tackle resource mobilization, the appropriate functioning of the MLS, and farmers' rights.

India, for Asia, called for attention to farmers' rights and stressed the need for more effective information exchange on the availability and use of PGRFA and benefits accruing from their use. Kenya, for Africa, supported expanding the benefit-sharing system, and seeking new and innovative methods to increase the flow of funding for Treaty implementation. Egypt, for the Near East, called for addressing MLS implementation as a package facilitating both access and equitable benefit-sharing.

Norway pledged NOK40 million (US\$6.7 million) to the Treaty's Benefit-sharing Fund and NOK100 million (US\$17 million) to the endowment fund of the Global Crop Diversity Trust, and called for collaboration between the two funds, in particular for climate change adaptation. She stressed the need to agree on a process to strengthen the sustainable flow of income to the Benefit-sharing Fund.

Japan said it will become a party on 28 October 2013. Noting Japan will be providing access to its PGRFA through the MLS, he invited other parties to register their PGRFA with the Secretariat. Drawing attention to its recent ratification, Sri Lanka described progress at the national level in incorporating the Treaty's priorities.

Greenpeace International highlighted the Treaty's contribution to awareness on PGRFA and food security, and called for improvements on sustainable use, benefit-sharing and farmers' rights. Via Campesina called for work on ways to integrate

farmers and civil society into the GB debates and decisions regarding PGRFA. He drew attention to UN General Assembly considerations on how UN bodies can better engage civil society organizations in decision-making processes. The Plant Genetic Resources Centre of the Southern African Development Community emphasized the need for innovative funding, capacity building and technology transfer.

The CBD recalled references in the Nagoya Protocol on ABS to the interdependence of all countries in PGRFA, the fundamental role of the ITPGR and CGRFA, and the need for mutually supportive implementation of the Nagoya Protocol and the ITPGR. The World Intellectual Property Organization (WIPO) reported on negotiations under its Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore. She highlighted negotiations on preventing patents granted in error on inventions using genetic resources and on ensuring consistency in key definitions common to ABS and intellectual property systems related to genetic resources. She described three possible solutions under discussion: the creation of databases as a defensive approach; a disclosure requirement; and contracts, noting possible complementarity among the three.

On Friday, the US expressed hope to become an ITPGR party by GB 6; outlined examples of its long-term commitment to the Treaty's objectives; and called for taking into account all elements affecting the functioning of the MLS and for raising realistic expectations.

**REPORTS:** On Tuesday, Chair Mozafari presented his report on Bureau activities during the intersessional period (IT/GB-5/13/3), including guidance on the second project cycle of the Benefit-sharing Fund, discussions on the functional autonomy of the Treaty within relevant FAO bodies, expansion of membership, and the relationship of the Treaty with relevant instruments.

ITPGR Secretary Shakeel Bhatti presented his report (IT/GB-5/13/4), highlighting current trends affecting Treaty operations, challenges arising from the changing international environment, and possible solutions. He stressed the need to widen the Treaty's focus to address the increasing exchange of genetic information and knowledge detached from the physical exchange of genetic resources. He explained that the resulting de-materialization of genetic resource use could be addressed under Article 17 (Global Information System on PGRFA).

Bhatti said the upcoming entry into force of the Nagoya Protocol on ABS calls for close collaboration with the CBD and pro-active engagement with the Protocol for harmonious implementation, particularly since the Treaty is explicitly acknowledged as part of the international regime on ABS.

Bhatti underlined the need for immediate replenishment of the Trust Fund for agreed purposes and the fund to support developing country participation. He then highlighted large contributions to the Benefit-sharing Fund amounting to US\$14 million, in particular from Norway and the European Commission, allowing the launch of the third project cycle.

Bhatti appealed to parties to continue to include materials in the MLS as a priority and to anticipate emerging challenges in the work programme and the budget, promote capacity building for harmonious implementation of ABS systems, and develop a package of innovative approaches for income generation for adoption by GB 6.

The European Regional Group (ERG) suggested that: the Secretariat should be governed only by GB decisions; intersessional activities not previously agreed should be discussed with the Bureau; and country-led activities do not impose additional costs for the Secretariat.

Australia said the adaptation of the Treaty to changes in the legal and financial environments requires cooperation. The League of Arab States welcomed collaboration with the ITPGR Secretariat, including on capacity-building activities. Indonesia reported on the third High-level Roundtable on the International Treaty, calling it a milestone for the current GB session. Brazil reported on the second High-Level Roundtable organized in Rio de Janeiro, Brazil, in June 2012. Hoping that some of the six points of the Rio Action Plan will be taken on board by the GB, he underscored that the Plan considers, *inter alia*, the promotion of public-private partnerships for pre-breeding; raising awareness of the potential value of underutilized species; and the possible expansion of the crops listed in Annex I.

#### **IMPLEMENTATION OF THE MLS AND THE FUNDING STRATEGY**

These issues were initially discussed as one agenda item in plenary on Tuesday. The Secretariat introduced the report on the implementation of the MLS and a draft resolution (IT/GB-5/13/5 and Add.1), noting:

- relevant international developments, such as the impending entry into force of the Nagoya Protocol;
- limited information on materials that natural and legal persons under the jurisdiction of parties have put into the MLS and national measures to encourage such practice;
- lack of national measures to provide facilitated access to PGRFA within the MLS; and
- the outcome of a study supported by Australia suggesting that although income to the Benefit-sharing Fund from the current SMTA could be substantial, it is likely to take longer than expected to materialize.

GRULAC requested a contact group to draft terms of reference (TORs) for a proposed intersessional committee on benefit sharing and the MLS, including a proposal for the efficient functioning of the Benefit-sharing Fund in the context of the MLS. ERG supported addressing issues on the MLS, the SMTA and benefit-sharing simultaneously. GRULAC opposed considering an expansion of Annex I as part of the intersessional process. Indonesia, for the G-77/China, supported an intersessional process aiming to review the funding strategy and the Benefit-sharing Fund, and explore innovative approaches for resource mobilization, stressing that the expansion of Annex I should not be considered a precondition or main focus. Africa

further stressed the need for harmonious implementation of the Treaty and other international instruments such as the Nagoya Protocol.

Australia supported resuming and expanding the committee on the Funding Strategy to review innovative approaches and ensure the Treaty's viability. Canada cautioned against renegotiating the Treaty or precipitating actions that undermine intentions to use PGRFA under the MLS. Highlighting that the MLS is an agreed package deal and that current benefits are not attractive enough, Malaysia recommended focusing either on improving the efficiency and effectiveness of the current MLS or negotiating a new package that is more attractive to both users and suppliers of PGRFA.

USC Canada, for peasant groups and civil society, called for a new benefit-sharing system that: is more functional and efficient in reaching small farmers; includes mandatory contributions from the seed industry producing protected varieties; and provides income to the Benefit-sharing Fund in a sustainable and predictable manner. The Community Technology Development Trust underlined the need to review the Benefit-sharing Fund operations and assess whether the projects funded support farmers, as mandated. He suggested the Benefit-sharing Fund be outsourced and the Secretariat monitor the funding.

The International Seed Federation and the European Seed Association emphasized that the Treaty is the preferred ABS system for the seed industry, as it takes into account the specificities of plant breeding. As an example of benefit-sharing, she referred to the "breeding exemption," whereby varieties protected under the International Union for the Protection of New Varieties of Plants (UPOV) can be used for research and development, suggesting that it should form the baseline for future discussions.

**TORS FOR THE INTERSESSIONAL WORKING GROUP:** On Tuesday evening, delegates met in an open-ended group for an informal exchange of views, where many expressed interest in expanding the mandate and composition of the intersessional committee on the MLS and SMTA. On Wednesday, a contact group was established consisting of four spokespersons per region, co-chaired by Modesto Fernández (Cuba) and Grethe Evjen (Norway). The contact group met from Wednesday through Friday to: develop TORs for an intersessional group, and discuss the draft resolution on implementation of the Funding Strategy (IT/GB-5/13/7 Add.3, Part IV). Revised draft resolutions on both issues were discussed in plenary on Friday.

On Wednesday evening, the contact group addressed the goals of the intersessional process, proposed in the draft resolution. Arguing that access under the MLS is working well while benefit-sharing is insufficient, Africa urged focus on benefit-sharing, and consideration of an expansion of Annex I only after the approval of measures on benefit-sharing. Following late-evening discussions, delegates agreed to the establishment of an intersessional working group with a broad mandate, the goal of which is to develop measures to increase user-based payments

and contributions to the Benefit-sharing Fund, and enhance the functioning of the MLS by additional measures, to be addressed in subsequent meetings, respectively.

On Thursday morning, the contact group addressed the mandate of the working group and agreed to simplified text proposed by ERG stating that the working group will: analyze options to enhance the functioning of the MLS; consult with relevant stakeholder groups; and draft and prepare for consideration and decision by the GB a range of measures. Africa opposed deleting reference to the review of the benefit-sharing provisions of the SMTA. Asia proposed that the options to be developed enhance the functioning not only of the MLS but also of the SMTA, with particular reference to its benefit-sharing provisions. Delegates agreed to place language on achieving enhanced access and increased fair and equitable sharing of benefits in the chapeau, as proposed by the South-West Pacific.

The contact group then addressed a sub-section of the draft resolution on preliminary studies to be undertaken by the Secretariat. The South-West Pacific called for making full use of existing studies. ERG called for: a study estimating income to be expected from possible changes in the provisions governing the functioning of the MLS; a policy and legal study on the effects of such changes; a study on how to enhance mechanisms for capacity building, technology transfer and information exchange; and an analysis of the factors that influence the willingness of stakeholder groups to make contributions to the Benefit-sharing Fund, with no specific reference to the plant breeding industry or to “voluntary” contributions.

All regions accepted to work on the basis of the ERG proposal. The South-West Pacific drew attention to the Australia-funded study on the potential monetary and non-monetary benefits arising from the ITPGR. ERG noted this study contains predictions on the basis of the current SMTA, while the effect of possible amendments needs to be addressed. With regard to the policy and legal study, North America requested addressing the “feasibility” of such amendments. All other language was agreed.

With regard to other tasks of the intersessional working group, the contact group agreed to delete paragraphs on: advising the GB on the operations of the Benefit-sharing Fund; and on resource mobilization efforts for voluntary contributions; consulting other intersessional committees; advising the Bureau on the early receipt of any income by the Benefit-sharing Fund; and developing an agenda on the relationship with the seed industry.

The contact group also agreed on language: recognizing that the task of the working group will require intense and sustained efforts and provision of support and financial resources; and appealing to stakeholders to develop innovative user-based approaches to realize monetary benefit-sharing.

The contact group then addressed the composition, structure and functioning of the working group, on the basis of arrangements drafted by the Committee on the Funding Strategy (IT/GB-5/13/7 Add.4). Delegates favored establishing a regionally-balanced working group in accordance with the practice of the FAO Intergovernmental Technical Working Groups. The South-West Pacific noted that the

two representatives provided for her region are not a fair representation of its 16 states, and requested exploring additional models of representation.

On Friday, the contact group continued, with ERG proposing four representatives per region, which was retained as a second option, pending agreement on whether representatives should be from parties only, or whether parties may nominate representatives from non-parties. North America preferred the latter option.

The Near East suggested that regions nominate two representatives from each of the Committees on MLS implementation and the Funding Strategy. The contact group further agreed that: the working group would elect two Co-Chairs; and each region nominate, by the end of GB 5 or at the latest by December 2013, the parties that will be members of the working group, with the precise number of representatives per region remaining outstanding.

The group discussed at length the number and duration of working group sessions, with most regions favoring three meetings of three days each, preceded by a day of regional consultations. North America and the South-West Pacific called for flexibility to take into account needs and budgetary considerations. Delegates agreed that the working group should aim to have two sessions in the 2014/2015 biennium covered by the core budget, each of which would normally be three days, preceded by a day of regional consultations.

Delegates then discussed issues related to the modalities of participation of experts and observers. ERG proposed, and it was agreed, that civil society, the seed industry, farmers’ organization and CGIAR centers participate as observers with two representatives each; and that all observers speak at the invitation of the Co-Chairs. Following a request from GRULAC, it was agreed that regional balance will be taken into account in inviting observers. The South-West Pacific proposed that the working group may also choose to meet in a format comprising party representatives only. On Friday night, in plenary, the contact group Co-Chairs reported on agreement on the TORs.

**Final Outcome:** The TORs for the *Ad Hoc* Working Group to Enhance the Functioning of the MLS are annexed to the resolution on the implementation of the Funding Strategy. According to these terms of reference, the GB:

- tasks the working group to develop a range of measures for consideration and decision by GB 6 that will increase user-based payments and contributions to the Benefit-sharing Fund in a sustainable and predictable long-term manner, and enhance the functioning of the MLS by additional measures; and
- recognizes the importance and magnitude of the task, which will require intense and sustainable efforts in the coming biennium.

The TORs then address the composition, structure and functioning of the working group, specifying that:

- the Near East will be represented by three members, North America and the Southwest Pacific by two each, and all other regions by five members;

- the working group shall hold two sessions of three days each in the next biennium, with any additional sessions to be covered by extra-budgetary funds;
- the Bureau may invite up to two representatives each from civil society, the seed industry, farmers' organizations and CGIAR centers as observers who will speak at the Co-Chairs' invitation, taking into account regional balance; and
- the working group may choose to meet in a format of party representatives only to make decisions of a governance nature.

**FUNDING STRATEGY:** On Thursday, the contact group addressed parts of the draft resolution on the Funding Strategy on: resource mobilization for the Benefit-sharing Fund; operations of the Benefit-sharing Fund; and monitoring the implementation of the Funding Strategy with regard to resources not under the direct control of the GB.

On resource mobilization, delegates discussed proposals by the South-West Pacific to insert language on: maintaining a working relationship with segments of the seed industry as a means to promote general voluntary contributions to the Benefit-sharing Fund; and welcoming the organization of a dialogue to enhance the functioning of the MLS and increase contributions to the Benefit-sharing Fund, which may provide input to the working group, which remained bracketed.

On operations of the Benefit-sharing Fund, ERG recommended the independent evaluation under consideration should also examine the effectiveness and efficiency of the development and management of the project cycle. Delegates discussed reference to the mid-term plan for the Benefit-sharing Fund (IT/GB-5/13/7 Add.2) and, following a proposal by the South-West Pacific, they agreed to "take note" of it but to delete a request to the working group to take it into account. Acknowledging that the Secretariat is increasingly overloaded with projects, they agreed to request the Secretariat to explore new approaches to improve the operations of the Benefit-sharing Fund, including by possibly using the support of project implementation agencies.

The group also addressed minor outstanding issues in the draft reviewed operational procedures for the use of resources under the direct control of the GB.

**Final Outcome:** The resolution on the implementation of the Funding Strategy contains sections on resource mobilization, operations of the Benefit-sharing Fund, and monitoring the implementation of the Funding Strategy.

On resource mobilization, the GB:

- notes with concern that a large shortfall of funding has accumulated in relation to the targets established in the Strategic Plan for the Implementation of the Benefit-sharing Fund;
- urges governments, the private sector and foundations to give the highest priority to support the Benefit-sharing Fund;
- requests the Secretariat to continue existing efforts and plans for mobilization of voluntary contributions to sustain, as a priority, immediate income in the Benefit-sharing Fund; and
- emphasizes that various innovative approaches are interlinked and interdependent, and need to be addressed together, as a range of different innovative approaches that could provide

a part of an adequate and sustainable flow of income to the Benefit-sharing Fund.

On operations of the Benefit-sharing Fund, the GB requests the Secretariat to:

- initiate the planning of an independent evaluation to address effectiveness and efficiency issues and prepare a summary report on the implementation of the second project portfolio;
- continue providing assistance so that Annex-I PGRFA resulting from projects funded are made available under the MLS, and information generated by these projects is made publicly available within one year of project completion;
- further advance partnerships with international bodies to enable a full discussion of the partnership architecture for the Benefit-sharing Fund at GB 6; and
- explore new approaches to improving the operations of the Benefit-sharing Fund, including by possibly using the support of project implementation agencies for GB 6 consideration.

The GB also decides to launch the third call for proposals under the Benefit-sharing Fund; and adopts the annexed reviewed operational procedures for the use of resources under the direct control of the GB, and the annexed policy on conflicts of interest and related standards of conduct for the Benefit-sharing Fund. The reviewed operational procedures cover principles, the phases of the project cycle, and selection criteria for the appraisal of project proposals. The policy on conflict of interest contains sections on: coverage; general procedures, including a general procedure for managing conflicts and a policy for funding in relation to members of intergovernmental or expert bodies; and a code of conduct, covering advice on pre-proposals and proposals, discussions outside meetings, and confidentiality of (pre)proposals and decision-making.

On monitoring, the GB:

- requests the Secretariat to continue efforts to compile information on resources mobilized within the Funding Strategy with respect to the strategic priorities of the second Global Plan of Action on the Conservation and Sustainable Use of Plant Genetic Resources for Food and Agriculture (GPA) and to provide this information, together with information resources under the direct control of the GB; and
- encourages parties and stakeholder groups undertaking initiatives in the context of the Funding Strategy to put them on long-term footing.

**MLS IMPLEMENTATION:** On Friday, plenary considered a revised draft resolution containing sections on: international developments of importance for MLS implementation; MLS coverage; measures to provide access to MLS materials; the role of information in the MLS; benefit-sharing; support to parties and users; and the work of the *Ad hoc* Technical Advisory Committee on the MLS and the SMTA.

On coverage of the MLS, ERG recommended: urging parties not only to notify the Secretariat of inclusion of PGRFA into the MLS, but also of information on how such material is made available; and requesting the Secretariat to compile and publish online this information so that it can be a tool for users. Canada cautioned against an interpretation of the Treaty whereby material cannot be considered part of the MLS if its inclusion is

not notified to the Secretariat; and preferred “inviting” parties to notify the Secretariat of inclusion. ERG emphasized the need for a user-friendly information tool to be hosted by the Secretariat. Africa opposed a reference suggesting that making more resources available to the MLS would lead to build-up of user-based income to the Benefit-sharing Fund.

On the role of information in the MLS, ERG cautioned against committing Secretariat resources before a vision paper is produced, and limiting parties’ flexibility to comply with their reporting obligations in different formats. Canada recommended that providers “consider voluntary reporting” on the SMTAs they conclude. ERG noted that reporting on SMTAs is mandatory according to the Treaty. The Third World Network expressed concern about decreasing quality and breadth of information available in the Treaty information system, stressing its essential role to ensure trust in the Treaty and prevent misappropriation. Canada, opposed by Malaysia, proposed deleting text on benefit-sharing in the MLS.

On requesting the Secretariat to provide assistance to parties, Brazil requested that such assistance be provided particularly to developing-country parties, and opposed deleting a paragraph stressing the need to further enhance cooperation with the CBD Secretariat to ensure coherent implementation with the Nagoya Protocol.

Regarding opinions and advice developed by the *Ad hoc* Technical Advisory Committee on the MLS and the SMTA, delegates discussed whether these could be approved by the GB, with Brazil and Africa opposing that such opinions be approved, and ERG and Canada suggesting developing a process through which the GB can endorse the opinions and advice as guidance for MLS users. Delegates eventually agreed that the GB “notes the opinions and advice provided by the Committee as helpful guidance” to users of the MLS.

Regarding a set of amendments to the SMTA developed by the Committee, the CGIAR noted that some of these could restrict the use of the SMTA for distributing materials under development. GRULAC and ERG suggested that the amendments be further discussed by the intersessional working group to enhance the functioning of the MLS. Cautioning against parallel negotiations, ERG opposed reconvening the *Ad hoc* Technical Advisory Committee on the MLS and the SMTA. Africa favored reconvening the MLS/SMTA Committee, insisting that the work be carried out through a face-to-face meeting rather than electronic consultations. Delegates eventually agreed to retain the reference in brackets. On Friday night, plenary agreed to reconvene the Committee if necessary, subject to available financial resources, but not during the upcoming biennium.

On reviewing the use of the SMTA by the IARCs of the CGIAR for non-Annex I crops, delegates decided that future review of such use should take into account and be in harmony with the CBD and the Nagoya Protocol.

**Reviews and Assessments:** On Tuesday, in plenary, the Secretariat introduced a document on the reviews and assessments under the MLS and of the implementation and operation of the SMTA (IT/GB-5/13/6), noting that the GB may

consider further postponing these reviews and assessments due to continuing lack of information.

On Friday afternoon, parties agreed that the reviews and assessments will be respectively postponed for the next GB session.

**Final Outcome:** The resolution, “Report on the implementation of the MLS of ABS” is divided into nine sections. On developments in the international environment of importance for the implementation of the MLS, the GB, *inter alia*:

- requests the Secretary to continue to follow processes of relevance to the Treaty and the MLS in other international organizations, and to continue enhancing cooperation and coordination with relevant international organizations;
- recalls that the ITPGR and the MLS are a constituent element of the international regime on ABS along with the CBD and its Nagoya Protocol;
- requests the Secretary to expand cooperation with the CBD Secretariat, in particular in relation to the mutually supportive implementation of the International Regime on ABS, the Nagoya Protocol, and the Treaty at the international and national levels; and
- requests the IARCs of the CGIAR to prepare reports for GB sessions and, to the extent possible, prepare a collective or integrated report.

On coverage of the MLS, the GB:

- requests parties that have not yet done so to urgently notify the Secretary of their PGRFA that are in the MLS, including information on how such resources are available;
- requests the Secretary to take necessary steps to encourage further inclusion of PGRFA in the MLS by relevant international institutions;
- urges natural and legal persons to take steps to include PGRFA in the MLS and inform the Secretary accordingly; and
- urges parties to encourage natural and legal persons within their jurisdictions to include their PGRFA in the MLS and inform the Secretary.

On legal and other appropriate measures to provide access to PGRFA within the MLS, the GB urges parties:

- to take such measures and inform the Secretary; and
- to ensure that access to PGRFA covered by the Treaty and benefit-sharing are subject only to the conditions set out in the Treaty.

In the section on the role of information in the MLS, the GB:

- appeals to parties to make available information publicly accessible using the FAO/International Plant Genetic Resources Institute Multicrop Passport List;
- recommends that providers, including the IARCs, report on SMTAs they have concluded through means such as direct ftp transfer, XML or the Easy-SMTA online SMTA Formation and Reporting System; and
- appeals to relevant institutions and donors to make available resources to strengthen information systems and expand their coverage.

On benefit-sharing in the MLS, the GB reiterates its request to parties and relevant stakeholders to explore and implement

non-monetary benefit-sharing mechanisms and requests the Secretariat to facilitate such mechanisms.

On support to parties and users of the MLS, the GB, *inter alia*:

- requests the Secretariat to continue to promote partnerships and coordinate with other international organizations and institutions on ABS capacity building, and subject to availability of financial resources, to convene a meeting of the Capacity-Building Coordination Mechanism; and
- urges parties, donors and regional organizations to contribute financial resource to assist parties seeking support in fulfilling the requirements of the MLS.

On the work of the *Ad Hoc* Technical Advisory Committee on the MLS and the SMTA, the GB:

- takes note of the opinions and advice produced by the Committee as helpful guidance for parties; and
- requests the Secretariat to make the opinions and advice easily available, including through its website.

On the review of the SMTA used by the IARCs of the CGIAR and other relevant international institutions for non-Annex I PGRFA, the GB decides to further review the use of the SMTA for non-Annex I crops at GB 6.

In the section on reviews and assessments under the MLS and of the implementation of the SMTA, the GB decides to postpone to GB 6 the review foreseen under Treaty Article 11.4.

### **SUSTAINABLE USE**

On Wednesday afternoon, the Secretariat introduced documentation on the implementation of Article 6 of the Treaty on sustainable use (IT/GB-5/13/9), drawing attention to the proposed programme of work. Brad Fraleigh (Canada) presented the report of the *Ad Hoc* Technical Committee on Sustainable Use of PGRFA (IT/GB-5/13/Inf.5).

Africa supported the programme of work's vision, mission and goals, but identified issues to be considered before adopting the plan for implementation, including addressing both monetary and non-monetary benefits when considering benefit-sharing, and emphasizing that the Secretariat work with parties in promoting, *inter alia*, the use of local and locally adapted varieties. Canada emphasized that the elements of the programme of work should be considered as a package and opposed inclusion of a goal on benefit-sharing.

Brazil, with Indonesia, supported the defined supporting initiatives. Canada suggested ensuring that the initiatives are voluntary and undertaken by parties and other stakeholders.

ERG supported, among other things: the programme's mission, vision and goals; the integration of the toolbox for the sustainable use of PGRFA in the programme of work; and implementation of the programme of work on the basis of national priorities. GRULAC supported the toolbox, while Brazil requested clarification on when it would be considered by the GB. The Secretariat clarified that it would be addressed at GB 6. The Philippines said the discussion should not be limited to the toolbox, but rather focus on drafting policies that are beneficial to all stakeholders, especially farmers.

GRULAC supported reconvening the *Ad Hoc* Technical Committee on Sustainable Use of PGRFA. ERG proposed taking this decision after discussing farmers' rights. Canada said the Committee's continuation should be subject to availability of financial resources, which should be addressed by the Budget Committee.

Drawing attention to the CGRFA's agreed strategy for monitoring activities implemented in the context of the second GPA, the CGRFA Secretariat emphasized the need to avoid duplication of activities with FAO and across organizations.

Andes, for peasant groups and civil society, highlighted the importance of ensuring farmer participation, and supported developing a set of policies and guidance for implementation and organizing a multi-stakeholder dialogue.

On Thursday, delegates considered a revised draft resolution. On the preamble, Canada preferred reference to the pivotal role of PGRFA sustainable use for poverty alleviation for "all farmers," rather than "smallholder farmers." Brazil, opposed by ERG and India, suggested referring to poverty eradication rather than alleviation. Following informal consultations, ERG announced compromise language referring to the pivotal role to "fight against poverty, especially for smallholder farmers".

Delegates discussed, and eventually decided against, differentiating in the text of the resolution between activities agreed by the GB and supporting initiatives undertaken by parties and other stakeholders of their own initiative. Delegates also discussed whether to refer to specific units within FAO among implementing partners, such as the Right to Food Unit, and eventually decided to refer to "all relevant entities within FAO." The International Seed Federation suggested, and delegates agreed to, adding "the private sector" among implementing partners.

ERG proposed to use indicators for monitoring implementation of the second GPA under the relevant reporting format, in reporting to GB 6 and 7 on the implementation of the work programme.

Ethiopia proposed promoting the "conservation and use," rather than the "expanded use," of local and locally adapted varieties and underutilized crops, with Brazil also suggesting to strengthen *in-situ* and on-farm conservation and sustainable use of PGRFA. Brazil further proposed new language requesting parties to promote access by family farmers to genetic resources in the MLS and widening the genetic diversity of crops in use, with ERG preferring "all farmers" to "family farmers," and "appropriate" access. Delegates agreed to these amendments.

An informal group met on Friday evening and Saturday morning to develop the TORs for the *Ad Hoc* Technical Committee on Sustainable Use of PGRFA and finalize the negotiations on farmers' rights.

On Saturday afternoon, delegates adopted the resolution without amendment. During adoption of the report, ERG shared their understanding that the procedure for the nomination and selection of the technical experts to participate in the intersessional committee on sustainable use will follow the process extensively discussed and adopted for the intersessional Working Group to enhance the MLS.

**Final Outcome:** In the resolution on the implementation of Article 6 (Sustainable Use of PGRFA), the GB:

- reaffirms the pivotal role of sustainable use in addressing global challenges, including food security, biodiversity loss, climate change adaptation and the fight against poverty, especially for smallholder farmers;
- takes notes of the events raising awareness of the actual or potential value of underutilized species, such as the Cordoba Declaration on Promising Crops for the XXI Century;
- endorses the vision, mission and goals of the programme of work on sustainable use in Appendix I to the resolution;
- welcomes the supporting activities included in the work programme, and encourages their future development;
- requests parties and stakeholders to report on their implementation activities to GB 6 and 7, using the indicators for monitoring the implementation of the second GPA and relevant reporting formats;
- requests parties to: implement measures and activities that promote sustainable use, as contained in the work programme; and promote, as appropriate, access of all farmers to genetic resources in the MLS and the widening of genetic diversity of crops in use;
- requests the Secretariat to: continue to develop a toolkit in collaboration with FAO technical units and stakeholders, for consideration by the GB; cooperate with all relevant entities within the FAO, CBD, CGIAR, private sector and non-governmental organizations, under the framework of the Treaty, for the effective implementation of the activities in support of the work programme; monitor relevant activities by governments, stakeholders and international organizations; and work with parties, networks and partners to promote the conservation and use of local and locally adapted varieties, underutilized crops and their knowledge systems, crop cultures and associated landscapes, to better meet sustainable development objectives and strengthen *in situ* and *ex situ* conservation and sustainable use; and
- decides to reconvene twice the *Ad Hoc* Technical Committee on Sustainable Use of PGRFA, to: provide advice to the Secretariat on coordination of the work programme, cooperation with other international organizations, and the development of the toolbox; prepare a set of options for parties' consideration in national implementation of farmers' rights; and report to GB 6.

In the appendix, the table on the work programme includes programmes agreed by the GB, detailing expected results by GB 6 and 7 and implementing partners; and supportive initiatives undertaken by parties and other stakeholders voluntarily.

According to the appendix, the vision states that PGRFA are used sustainably in farming systems in accordance with Article 6 to enable more inclusive, sustainable and efficient agricultural and food systems at the local, national and international levels. The mission is to enhance the sustainable use of PGRFA through effective measures that translate Article 6 into impact at the national level. The tentative goals concern: monitoring, implementing and ensuring technical support; and cooperating and improving partnerships

## FARMERS' RIGHTS

On Wednesday afternoon, the Secretariat introduced the document summarizing developments and submissions on implementation of Article 9 on farmers' rights (IT/GB-5/13/10 and Inf.8).

Indonesia, for the G-77/China, stressed the need to monitor progress at the national level. Africa said farmers' rights should be considered as part of a package also including the MLS, sustainable use and the Funding Strategy; and called for capacity building for all stakeholders, including national governments, for the realization of farmers' rights. The Near East urged earmarking budgetary funds for farmer workshops, and requested that the Secretariat assist countries in drafting legislation on farmers' rights.

GRULAC supported mandating the Secretariat, in cooperation with FAO, to promote organization of workshops on farmers' rights and related items, such as ABS and intellectual property rights (IPRs). He supported exchanging experiences on implementation, and noted that additional actions are needed for farmers' contribution to translate into benefits for them.

ERG suggested that: the GB facilitate implementation at the national level through dissemination of information and best practices; the Secretariat present examples systematically as options for national implementation; and FAO provide technical and financial support to governments. In view of linkages with IPRs and seed legislation, she suggested a joint consultation on areas of interface between the Treaty and UPOV. Australia emphasized that implementation of farmers' rights is a matter for national governments, expressing a preference for voluntary reporting to the GB, and subjecting work by the Secretariat in this area to availability of funding. Canada opposed that the GB offer advice or assistance on implementing Article 9; and preferred supporting work on Article 9 from a specialized fund. The Philippines opined that farmers' rights need to be implemented at the national and the global level, calling for the establishment of a permanent reporting mechanism on national efforts under the aegis of the GB.

Via Campesina emphasized that the Treaty provisions on farmers' rights are mandatory, parties should account for their implementation, and an *ad hoc* technical committee should develop an inventory of obstacles to the realization of these rights and of national and regional legal innovations in that regard.

Chair Mozafari remarked that the fact that the obligations arising from Article 9 concern national governments does not exclude activities in this area by the GB. GRULAC lamented the documentation on this item did not contain a draft resolution, and proposed that the Secretariat develop one for GB 5 consideration.

On Friday evening, delegates considered a draft resolution on farmers' rights. On a request to the Secretariat to review views and best practices, GRULAC, supported by Africa, recommended including submissions from farmers' organizations.

Canada, opposed by Brazil and Zimbabwe, called for deleting text on presenting these views "as options for national implementation of Article 9." ERG proposed, and delegates eventually agreed, to: retain the text, adding "as appropriate and

in accordance with national legislation"; and keep as a timeframe the request to present the options to GB 6.

On requesting the Secretariat to report on discussions relevant to farmers' rights within FAO fora, Canada and Australia opposed specific reference to the Committee on Food Security, noting that farmers' rights are not on the agenda of that body. GRULAC and Brazil opposed, remarking that decisions of the Committee on Food Security may directly affect farmers' rights. Delegates eventually agreed to retain the reference.

On requesting the Secretariat to organize side events on farmers' rights during UPOV Council meetings, Brazil suggested ensuring participation of farmers and farmers' organizations. ERG proposed instead to request the Secretariat to invite UPOV to jointly identify areas of interface. Africa preferred to request the Secretariat to organize open roundtables on farmers' rights with UPOV and WIPO, ensuring the participation of farmers and farmers' organizations. The Near East drew attention to possible incompatibility between the Treaty provisions on farmers' rights and UPOV, with GRULAC suggesting a request to the Secretariat to prepare studies on harmonization between ITPGR provisions on farmers' rights and UPOV '91. Australia opposed all of these proposals, which remained bracketed.

On encouraging parties to secure the engagement of farmers' organizations in matters related to PGRFA conservation and sustainable use, delegates agreed to amended text "inviting" parties to "engage" farmers' organizations.

Australia and Canada, opposed by GRULAC, Asia and Africa, proposed deleting a reference encouraging parties to develop national action plans for the implementation of Article 9. Delegates eventually agreed to "invite" parties "to consider" developing such plans.

On inviting parties to consider reviewing and, if necessary, adjusting national measures to realize farmers' rights, delegates agreed to reiterate previously agreed language inviting parties to "consider adjusting" national measures.

Delegates debated at length whether regional workshops on farmers' rights should be convened by the Secretary and funded by the ITPGR budget, as requested by GRULAC, Africa, the Near East and Asia, or as national initiatives, as suggested by ERG, Canada and Australia. ERG argued that work under the Treaty should prioritize implementing the MLS, whereas GRULAC, Africa, the Near East and Asia emphasized that the workshops have already been postponed twice.

GRULAC objected to subjecting the decision to convene an *ad hoc* technical committee on farmers' rights to the availability of financial resources; and supported convening this committee, and ensuring farmers' organizations' participation in developing voluntary guidelines on possible definitions of farmers' rights under the Treaty to assist parties in the development of national legislation. ERG, supported by Australia and Canada, suggested deletion. ERG also suggested removing a paragraph inviting parties and organizations to provide financial support for farmers' participation in ITPGR meetings.

Africa, opposed by Canada, proposed requesting the Secretariat to present to GB 6 and future sessions a global report

on the status of the implementation of farmers' rights, verified by farmers and with the participation of farmers' organizations.

Civil society organizations called for means of implementation to realize farmers' rights. He supported increasing interaction with UPOV and emphasized the need to ensure farmers' participation in relevant PGRFA debates. ERG supported welcoming the offer of farmers' organizations to present a global report on the status of farmers' rights.

An informal group met on Friday night and Saturday morning to resolve outstanding issues, including the proposal to mandate the *Ad hoc* technical committee on sustainable use of PGRFA to prepare options for parties' consideration on national implementation of farmers' rights. The group revised the resolution and agreed on the TORs for the *Ad hoc* technical committee on sustainable use, including this mandate.

On Saturday, plenary adopted the resolution without further amendments.

**Final Outcome:** In the resolution on the implementation of Article 9 (farmers' rights), the GB requests the Secretariat to:

- review knowledge, views and best practices, including from farmers' organizations, to systematically derive examples as options for national implementation, as appropriate and according to national legislation, for GB 6 consideration;
- report on discussions related to farmers' rights within FAO fora, including the Committee on Food Security;
- invite UPOV and WIPO to jointly identify possible areas of interrelations among their respective international instruments;
- facilitate support to parties in building capacity for the implementation of farmers' rights, upon their request; and
- report to GB 6 on the implementation of the resolution.

The GB further invites parties to:

- engage farmers' organizations and stakeholders in matters related to the conservation and sustainable use of PGRFA, and consider their contributions to awareness raising and capacity building towards this aim;
- consider developing national action plans for the implementation of Article 9, as appropriate and subject to national legislation, in line with the implementation of Articles 5 (Conservation, Exploration, Collection, Characterization, Evaluation and Documentation of PGRFA) and 6;
- consider reviewing and, if necessary, adjusting national measures affecting the realization of farmers' rights, to protect and promote these rights;
- consider providing financial and technical support for the implementation of farmers' rights in developing countries, and enable farmers and representatives of farmers' organizations to attend meetings under the Treaty; and
- take the initiative to convene regional workshops and other consultations, including with farmers' organizations, for the exchange of knowledge, views and experiences to promote farmers' rights, and present the results to GB 6.

## RELATIONSHIP AND COOPERATION WITH OTHER BODIES AND CONVENTIONS

**RELATIONSHIP WITH THE CBD:** On Wednesday afternoon, Kathryn Garforth, CBD Secretariat, reported on

developments regarding the Nagoya Protocol on ABS and joint activities with the Treaty Secretariat, including the Secretariats' Joint Initiative aiming to promote complementarity in the implementation of the Treaty, the CBD and the Protocol (IT/GB-5/13/14).

Many delegates welcomed ongoing cooperation and encouraged strengthening it, particularly on ABS. The Near East supported collaboration not only at the Secretariat level but also at the national level. Africa called for promoting linkages through national focal points. ERG underscored that cooperation between respective focal points is pivotal, particularly as countries draft ABS legislation under the Nagoya Protocol. Brazil supported placement of a joint liaison officer at the Treaty Secretariat. Roberto Cavalcanti, Brazil's National Secretary of Biodiversity and Forests, further highlighted the strategic importance of close collaboration, noting that the Treaty can serve as a model for many areas of CBD work. Canada suggested reaffirming that the Treaty is a specialized ABS instrument.

On Saturday afternoon, delegates considered a revised draft resolution. Canada reiterated proposals for the preamble of the resolution to: recall that Article 3 provides that the Treaty relates to all PGRFA; recall that in adopting the Nagoya Protocol, the CBD Conference of the Parties (COP) recognized the ITPGR as one of the complementary instruments that constitute the international regime on ABS; and note that ITPGR is a specialized international ABS instrument that is consistent with, and does not run counter to, the objectives of the CBD and the Nagoya Protocol. Ethiopia expressed concern about interpreting the relationship between the Nagoya Protocol and the ITPGR. Following informal consultations, delegates agreed to accept the first two proposals from Canada and to replace the third with a reference to Article 4 of the Nagoya Protocol (Relationships with other International Agreements and Instruments).

Canada also proposed, and eventually renounced, deleting references to "on-farm and *in situ* conservation" regarding a request to the Secretariat to strengthen collaboration with the CBD in relation to its work programme on agricultural biodiversity. ERG proposed, and delegates agreed, to make reference to the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) in a request to the Secretariat to continue to participate in the relevant meetings of biodiversity-related international processes. Delegates adopted the resolution with these amendments.

During the adoption of the report, ERG and Canada proposed deleting specific reference to Article 10 of the Nagoya Protocol (Global Multilateral Benefit-sharing Mechanism) with regard to the Treaty Secretariat's contribution in the intersessional processes under the Protocol, which was part of the statement by Kathryn Garforth, CBD Secretariat.

**Final Outcome:** In the resolution on cooperation with other bodies and international organizations, the GB:

- recalls ITPGR Article 3 clarifying that the Treaty relates to all PGRFA, and Article 4 of the Nagoya Protocol (Relationships with Other International Agreements and Instruments);
- recalls that in adopting the Nagoya Protocol, the CBD COP recognized the ITPGR as one of the complementary instruments constituting the international regime on ABS;
- looks forward to the entry into force of the Nagoya Protocol and its full implementation in harmony with the Treaty, in the interest of the conservation and sustainable use of biodiversity;
- calls on parties to ensure that any legislative, administrative or policy measures taken for implementing both the Treaty and the Nagoya Protocol are consistent and mutually supportive;
- requests the Secretariat to continue strengthening collaboration with the CBD in the implementation of its work programme on agricultural biodiversity, on-farm and *in situ* conservation and sustainable use of biodiversity, as well as the CBD Strategic Plan and Aichi Targets, in harmony with the work of the Treaty; and
- requests the Secretariat to continue to participate in relevant meetings of the CBD and the Intergovernmental Committee for the Nagoya Protocol, including the work on the development of the ABS Clearing House.

#### RELATIONSHIP WITH THE GLOBAL CROP

**DIVERSITY TRUST:** On Wednesday, Åslaug Marie Haga, Executive Director of Global Crop Diversity Trust, presented the Trust's report (IT/GB-5/13/15) focusing on: activities for Treaty implementation, including projects for conservation and regeneration of Annex I crops; close collaboration between the Trust and the Treaty Secretariat, and possible secondment of a liaison officer in the ITPGR Secretariat, following the relocation of the Trust to Bonn; and efforts to highlight the importance of plant genetic diversity and of the Treaty at the highest political levels.

Delegates expressed support for the Trust activities. ERG encouraged further strengthening of the Trust's relationship with national genebanks and recommended a cautious approach in further extending its research activities. GRULAC stressed that enhancing transparency will ensure the Trust as a fundamental pillar of the Funding Strategy. Brazil suggested considering joint projects for the Treaty and the Trust, and encouraged the Trust to avoid collaborating with non-parties, so that it serves as an incentive for non-parties to ratify the Treaty. Malaysia urged the Trust to use its influence to promote production of global public goods with direct benefits to developing-country farmers, rather than promoting public-private partnerships. Brazil, Africa and others supported placing the liaison officer in the Treaty Secretariat.

Norway provided an update on the Svalbard Global Seed Vault, acknowledging the Trust's support and noting that it offers safe duplication of accessions already stored in genebanks, free of charge. The ETC Group inquired about uncertainty in interpreting the Svalbard deposit agreement so as to require that all materials deposited in it are treated as Annex I materials. Norway reported that the deposit agreement has been revised to clarify that the agreement does not require a change in legal status of deposited material that is not listed in Annex I.

Delegates also considered draft simplified procedures for the selection and appointment of the Trust's Executive Board members (IT/GB-5/13/16). Chair Mozafari stressed the need to nominate Board members to secure the Trust's operations. Australia, ERG, Brazil and Africa supported the draft procedures. Delegates adopted the simplified procedures, subject to minor amendments, and the proposal for a liaison officer, pending relevant discussions in the budget committee.

**Final Outcome:** In the resolution on the relationship between the GB and the Global Crop Diversity Trust, the GB adopts the Procedures for Selection and Appointment of Members of the Executive Board of the Global Crop Diversity Trust by the GB, as contained in the annex, which supersedes the normal selection and appointment procedures adopted at GB 1; and requests the Secretary to forward these Procedures to the Trust's Donors' Council for approval.

The annexed procedures consist of four sections addressing: identification and notification of vacancies on the Executive Board; selection and appointment by the GB; selection and appointment by the Donors' Council; consultations among the appointing entities; and factors common to selection and appointments by the GB and the Donors' Council.

**RELATIONSHIP WITH THE CGRFA:** On Wednesday afternoon, the Secretariat introduced documents on cooperation with the Commission on Genetic Resources for Food and Agriculture (CGRFA) (IT/GB-5/13/11) and on transfer of activities or tasks from the Commission to the ITPGR GB and their legal, administrative and financial implications (IT/GB-5/13/12). Linda Collette, CGRFA Secretary, reported on the past two sessions of the Commission. Highlighting that the Commission did not reach consensus on the transfer of tasks to the Treaty, she said it agreed to keep the matter under review, while it continues addressing PGRFA.

Canada said that the transfer of tasks would imply a realignment of budget allocation from the Commission to the Treaty. He further suggested that the Treaty would have to be amended in the long term to recognize the competence of the GB on genebank standards. ERG supported requesting the Secretariat to provide information on the financial and administrative implications of the transfer of tasks, and suggested further exploration of areas for mutual cooperation. Africa called for more support for capacity building and technology transfer.

GRULAC proposed exploring options for ensuring coherence of policies and activities under both bodies and, supported by the ETC Group, suggested that the CGRFA and ITPGR Secretariats could be hosted by FAO under the same Assistant Director-General, taking into account that the Treaty is an independent convention, as a means to facilitate coordination and promote synergy and efficiency among both bodies. The US supported strengthening collaboration, but opposed the transfer of CGRFA functions to the Treaty without having prior clarity on the administrative and financial implications.

On Saturday evening, delegates considered a revised draft resolution. ERG, supported by Brazil and Morocco, proposed to keep under review "the matter of a functional divisions of tasks and activities between the Commission and the GB within their

respective mandates," rather than reiterating reference to close cooperation that "may gradually lead to" an agreed functional division of tasks and activities.

Delegates adopted the resolution with this and other minor amendments.

**Final Outcome:** In the resolution on cooperation with other bodies and international organizations, the GB welcomes relevant outcomes of CGRFA 14 and requests the Secretariat to:

- coordinate with the CGRFA on the preparation of a global network in the area of on-farm management of PGRFA;
- continue providing information to the CGRFA on the importance of the GB's ongoing work that is supportive of the Commission's work, and strengthening collaboration with the CGRFA to promote coherence in the development and implementation of the respective programmes of work of the two bodies; and
- provide, in collaboration with the CGRFA, additional information on cooperation between the Commission and the Treaty Secretariat that may gradually lead to an agreed functional division of tasks and activities, particularly with respect to financial and administrative implications.

In addition, the GB agrees to keep under review the matter of a functional division of tasks and activities between the Commission and the GB within their respective mandates; and requests the respective Bureaus to continue exploring options for closer cooperation between the CGRFA and the GB.

**COOPERATION WITH OTHER ORGANIZATIONS:** On Wednesday afternoon, the Secretariat introduced the document on cooperation with CGIAR centers and other bodies that signed agreements under Article 15 of the Treaty (IT/GB-5/13/21) and the report on partnerships, synergies and cooperation with other organizations (IT/GB-5/13/22 and Add.1). The ETC Group expressed concern about limited information on CGIAR centers' germplasm exchange in the last biennium. The CGIAR reported that, following its reform process, a mechanism to gather such information is under discussion.

ERG noted resource constraints for cooperation activities, suggesting deletion of a request to the Secretariat to continue participation in relevant meetings of UPOV, the World Health Organization, WIPO and the World Trade Organization. Brazil objected to limiting the discretion of the Secretariat in this regard, noting the relevance of developments under UPOV for the Treaty.

On Saturday evening, plenary adopted a draft resolution without amendments.

**Final Outcome:** In the resolution on cooperation with other bodies and international organizations, the GB requests the Secretariat to:

- continue to explore areas of cooperation with other relevant international organizations to further develop synergies and mutual supportiveness in the overall Treaty implementation and ensure that the Treaty is taken into account in their processes;
- seek guidance from the Bureau on prioritization of major work;

- consider participation in UPOV, and other relevant international organizations;
- explore with the UN Environment Programme practical means and activities to give effect to their cooperation in light of their Memorandum of Understanding;
- continue pursuing initiatives for coordination and cooperation with the IARCs and other international institutions that are signatories of Article 15 agreements on relevant activities to the work programme of the ITPGR, including through the CGIAR Consortium Office, as appropriate; and
- in collaboration with the CBD, explore areas of closer working relationships with the Global Environment Facility (GEF) to address elements to which the Treaty could contribute within the context of the GEF Biodiversity Strategy.

The GB further requests the IARCs and other international institutions that are signatories to Article 15 agreements to manage and administer the *ex situ* collections within the purview of these agreements in accordance with relevant internationally accepted standards, in particular the revised Genebank Standards for PGRFA, and report on a regular basis to the GB on any matter relevant to the implementation of the agreements arising from the use of those and other standards in the management of the collections.

#### GLOBAL INFORMATION SYSTEM

On Thursday morning, the Secretariat introduced document IT/GB-5/13/17, “Vision Paper for the Further Development of Article 17, Global Information System.” ERG, Canada and Australia remarked that the document does not contain a vision paper and requested further refinement of a previous vision paper for consideration by GB 6. ERG noted that the vision paper should provide a conceptual basis for the development of a work programme. Canada recommended that it focus on how to integrate all information management systems in a global way. GRULAC and India supported the proposed global expert consultation, with GRULAC noting the need to strengthen cooperation with the CGRFA. ERG suggested focusing on users’ information needs.

The CBD reported on progress in the pilot phase of the ABS Clearing House and welcomed the opportunity to contribute to the proposed consultation process.

On Friday afternoon, parties endorsed a draft resolution, with Canada suggesting deleting reference to: the consultation serving as an “*ad hoc* coordination mechanism”; and the Global Information System to facilitate the exchange of “services” on scientific, technical and environmental PGRFA-related matters.

**Final Outcome:** In the resolution on development of the global information system on plant genetic resources in the context of the international Treaty, the GB requests the Secretary to:

- subject to availability of resources, make the tools of the CAP-FITOGEN initiative of the Government of Spain accessible in other languages and regions;
- continue strengthening collaboration with relevant FAO departments and all other stakeholders to facilitate their

- contribution to the development of the global information system and increase efforts for better access to relevant information systems by parties and stakeholders;
- explore cooperation with the CBD Secretariat on information sharing and studying new ways to promote free and open access to data and information for conservation;
- subject to availability of resources, prepare a call for an expert consultation on the global information system and report to the next GB session; and
- subject to availability of resources, prepare, based on an expert consultation, a vision paper as the basis for a global information system in line with Treaty Article 17.

The GB also encourages parties, non-parties, stakeholders and funding mechanisms to provide financial support for the development of the global information system on PGRFA.

The annex describes the composition, scope and objectives of the expert consultation.

#### COMPLIANCE

Delegates discussed compliance in plenary on Thursday and Friday. On Thursday, René Lefeber, interim Chair of the Compliance Committee, introduced the report of the Compliance Committee (IT/GB-5/13/18) and the draft standard voluntary reporting format (IT/GB-5/13/18 Add.1). Discussions mainly focused on issues considered in both documents, including: the rules of procedure of the Committee, comprising provisions on confidentiality, conflict of interest, decision-making, replacement of Committee members and the format for submissions by the GB; and the voluntary reporting format. On Friday, parties discussed a draft resolution and, following discussions, some parties met in a drafting group.

**Rules of Procedure:** GRULAC suggested taking decisions by consensus only, suggesting deletion of a reference that consensus “is the absence of a formal objection by any of its members.” ERG and others preferred that, if reasonable efforts to reach consensus have been exhausted and no consensus has been achieved, decisions should be, as a last resort, adopted by a two-thirds majority. During Saturday’s plenary, ERG explained that the Committee’s procedures are facilitative, non-confrontational, and advisory in nature, highlighting that voting as a last resort would contribute to provide the Committee’s advice in a more expeditious manner. Noting that all decisions in the Treaty are taken by consensus, GRULAC objected. Eventually, Brazil offered compromise text based on Treaty language, which states that all decisions of the Committee shall be “taken by consensus unless another method of arriving at a decision is reached.” Parties agreed to this proposal.

**Representation:** Canada, opposed by Brazil, suggested that North America be represented by two members as an interim measure until there is more than one party in that region. During Saturday’s final plenary, Canada expressed disappointment over the lack of support for her proposal and agreed to withdraw it.

**Conflict of interest:** The US suggested narrowing the concept of conflict of interest. North America, opposed by ERG, Brazil and Lebanon, supported limiting the definition of conflict of interest to any current “financial” interest that could significantly

impair the individual's impartiality. Eventually, parties decided to avoid restricting it only to financial interests.

Australia, Brazil, the US and others opposed that the Secretariat deal directly with a conflict of interest concerning a Committee member, noting that the Committee should be the body to deal with its members' conflicts of interest. North America supported deleting a paragraph on how the Secretariat should act when it becomes aware of a situation of a conflict of interest. ERG, supported by Australia, Brazil and others, proposed that the Secretary inform the Committee of a conflict of interest it becomes aware of and, if the Committee is unable to agree that the member concerned faces no conflict of interest or if the issue is not resolved, the Secretary shall refer the issue to the Bureau. North America, supported by Australia and Sudan, opposed that pending resolution of the conflict of interest, the member in question should not be allowed to participate in the discussions nor in the elaboration and adoption of any decision regarding that matter. ERG and India objected to this proposal. Supporting incentivizing disclosure of a conflict by the member in question, ERG suggested letting a member participate in discussions when the conflict has been brought up by the member himself but not by others.

During Saturday's plenary, Brazil, as the Chair of the drafting group, reported that parties had agreed that: the Committee may decide whether the member concerned may participate in the discussion of the matter before the Committee; and whether the member concerned may not participate in the elaboration and adoption of any decision of the Committee regarding the conflict of interest before the Committee. Due to concerns expressed by Ethiopia over creating "possible loopholes," parties eventually agreed that the Committee "shall" decide whether the member concerned may participate in the discussion of the matter. North America also proposed, and parties agreed, that views of the individual concerned should be reflected in the record of the meeting.

**Voluntary reporting format:** On Friday, a civil society representative expressed concern about the reference to "voluntary" reporting format, saying that compliance and reporting are mandatory. He suggested that when making reports, parties should include civil society organizations' views. He added that the reporting format and the rules of procedure should not be adopted before opening them for consultation by civil society and farmers' organizations.

On Saturday, parties addressed outstanding questions about the reporting format. Australia suggested deletion of two questions on farmers' rights aimed to report on: the "recognition of the enormous contribution of local and indigenous communities and farmers of all regions of the world to the conservation, development and use of PGRFA"; and on "the right to save, use, exchange, and sell farm-saved seed/propagating material." GRULAC, India, Africa, the Near East and others objected to these deletions. As an alternative, Canada suggested stating that "this voluntary format includes reporting beyond the scope of the international legal obligations beyond the Treaty." Parties eventually agreed to a compromise solution including: accepting an Australian proposal to report on

whether the country has taken any measures to protect farmers rights "subject to national law, as appropriate"; recognizing, as proposed by ERG, the contribution that local and indigenous communities and farmers of all regions of the world "have made and will continue to make for" the conservation and development of plant genetic resources; and referring to, as suggested by ERG, "any rights that farmers have."

**Final Outcome:** The adopted resolution has three annexes containing: the procedures and operational mechanisms to promote compliance and address issues of non-compliance, comprising the Committee's rules of procedures, the standard voluntary reporting format, and the elected members of the Committee.

In the resolution, the GB approves these rules of procedure and the standard voluntary reporting format; and elects the members of the Committee in accordance with the chart in the relevant annex. The GB also decides that the costs of the Committee's meetings, including those for participation of members, shall be included in the core administrative budget adopted by the GB, and requests the Secretariat to include such costs into the core budget presented to the GB's regular sessions for approval. It also reiterates the recommendation that funds be made available through the Special Fund to Support the Participation of Developing Countries to facilitate participation in relevant meetings of representatives of developing parties or countries with economies in transition in cases a non-compliance submission has been made against them.

The adopted procedures and operational mechanisms to promote compliance and address issues of non-compliance consist of 21 rules for the Compliance Committee on: scope, use of terms, members, bureau, observers, meetings, confidentiality, decision-making, use of electronic means, publication of documents, format of submissions by a party with respect to itself, format of submissions by a party with respect to another party, format of submissions by the GB, format for consideration of statements and questions concerning the implementation of a party's obligations under the Treaty, decisions of the Committee, records and reports, languages, expenses, amendments, overriding authority of the compliance procedures, and entry into force.

The rules on members provide that where a member finds himself or herself faced with a conflict of interest on a matter before the Committee, the member concerned shall bring it to the attention of the Secretariat, who shall inform the Committee. The concerned member may participate in the discussions but not in the elaboration and adoption of any decision of the Committee regarding such matter.

The rules also state that:

- where the Secretariat becomes aware of a situation of conflict of interest with respect to a member, the Secretariat shall inform the Committee, and the member concerned can express a view on whether there is a conflict of interest or not;
- if the Committee is unable to agree that the member faces no conflict of interest, or if the issue is not resolved, the Committee shall inform the Secretariat and it shall refer the issue to the Bureau;

- pending resolution, the Committee shall decide whether the member concerned may participate in the discussion of the matter before the Committee;
- the member concerned may not participate in the elaboration and adoption of any decision of the Committee regarding the conflict of interest before the Committee; and
- views of the individual concerned should be reflected in the record of the meeting.

The rules on decision making state, among other things, that all decisions of the Committee shall be taken by consensus unless another method of arriving at a decision is reached.

The Standard Voluntary Reporting Format contains an introduction and 40 questions to report on. On Article 9 on farmers' rights, questions include:

- subject to national law, as appropriate, have any measures been taken to protect and promote farmers' rights in your country?
- if so, please indicate whether such measures were related to: recognition of the enormous contribution that local and indigenous communities and farmers of all regions of the world have made and will continue to make for the conservation and development of plant genetic resources; and any rights that farmers have to save, use, exchange, and sell farm-saved seed/propagating material.

### **THIRD PARTY BENEFICIARY**

On Wednesday, the Secretariat introduced the report on the operations of the Third Party Beneficiary for the period 2011-2013 (IT/GB-5/13/19).

ERG supported requesting the Secretariat to continue exploring the practices of the Third Party Beneficiary. GRULAC considered that the current Third Party Beneficiary operational reserve level should be maintained as is. The ETC Group drew attention to instances of Treaty implementation, including: the provision of privileged access to MLS materials by CGIAR centers without using an SMTA; a patent granted over farmers' potato varieties in Peru without SMTA and benefit-sharing; and the patenting of traits of varieties in the public domain that could affect large amounts of germplasm under the Treaty. On the first instance, the CGIAR clarified that the germplasm in question was developed before the CGIAR centers entered into an agreement with the GB, and that the material is still under evaluation for the provision of further information on the case.

On Saturday afternoon, delegates considered a draft resolution. Australia proposed to include in the meeting's report as an issue for the intersessional period under the Bureau's mandate a request to investigate the practice of IARCs in relation to PGRFA under development and the application of Article 15.1, and the possible need for the GB to provide IARCs with policy guidance.

ERG proposed to clarify, in welcoming the information technology tools developed by the Secretariat to facilitate the submission, collection and storage of information that the GB shall make available to the Third Party Beneficiary information provided to it. Delegates adopted the resolution as amended.

During adoption of the report, ERG proposed, and delegates agreed, to request the Secretary to explore, in consultation with the Bureau, the practice of the IARCs of the CGIAR in relation to plant genetic resources under development and to report to GB 6; and to delete a request to the Secretary to explore the need for the GB to provide the IARCs with policy guidance on the issue.

**Final Outcome:** In the resolution on the operation of the Third Party Beneficiary, the GB, *inter alia*:

- requests the Secretary to continue providing a report on the operation of the Third Party Beneficiary at each GB session;
- decides to maintain the Third Party Beneficiary Operational Reserve for the 2014-2015 biennium at the current level of US\$283,280 and to review it at GB 6;
- authorizes the Secretariat to draw upon this reserve as needed for the implementation of the functions of the Third Party Beneficiary;
- calls upon parties, non-parties and other entities to contribute periodically, as necessary, to the reserve in order to maintain it at a level commensurate with the needs;
- welcomes the information technology tools the Secretariat has developed to facilitate the submission, collection and storage of information in the implementation of Article 4.1 of the Third Party Beneficiary Procedures in accordance with the SMTA; and
- requests the Secretariat to provide the GB with detailed information on the use of resources for the Third Party Beneficiary Procedures, as part of the financial statements.

### **BUSINESS PLAN**

On Thursday, the Secretariat introduced the revised draft business plan of the GB (IT/GB-5/13/20).

Australia and GRULAC supported that the Secretariat develop a multi-year programme of work (MYPOW) based on the business plan developed for consideration by GB 6. Canada stressed that the MYPOW should consider synergies and avoid duplication of activities with other bodies, such as the CGRFA. ERG stressed the need to ensure farmers' and other stakeholders' participation during intersessional activities. He further highlighted the relevance of the private sector on a goal related to strengthening collaboration and partnerships among stakeholders relevant to the implementation of Articles 5, 6 and 9 of the Treaty.

On Friday afternoon, plenary considered a draft resolution. Canada requested clarification on whether parties' requests to the Secretariat to develop a MYPOW based on the business plan for consideration by GB 6 will be included in the draft resolution.

The Secretariat clarified that the report of the meeting will reflect this request. Ecuador questioned whether the adoption of a business plan is necessary given that the adoption of a MYPOW will optimize the GB's work. Delegates eventually agreed to continue working on the business plan.

On the outcomes relating to the Third Party Beneficiary's procedures being implemented in a routine manner, Canada suggested removing reference to "including the necessary collection and maintenance of information." ERG requested

retaining this reference in brackets, pending the outcome of negotiations under the agenda item on the Third Party Beneficiary.

In a reference to strengthening collaboration and partnerships among stakeholders on conservation and sustainable use, Ethiopia suggested, and delegates agreed, to delete a specific reference to the private sector.

In the chapeau of the goal on cooperating and improving partnerships, Canada suggested removing reference to the “implementation of Articles 5, 6 and 9.” He noted that the development of policy guidance for PGRFA conservation and sustainable use at the national level would be better related to “Treaty implementation” in general, given that Article 9 in particular emphasizes that the responsibility for realizing farmers’ rights rests with national governments. Ecuador and Brazil opposed, but parties eventually agreed to the Canadian proposal. Brazil suggested that the referred policy guidance should be developed “considering on-farm conservation” and Canada suggested also considering “*ex situ* conservation and sustainable use.” Parties eventually agreed to both proposals.

Ecuador, with Brazil, but opposed by Canada, objected to the organization of regional workshops on farmers’ rights be “subject to the availability of resources.” Eventually the reference remained.

**Final Outcome:** The Business Plan identifies six targets for the period 2014-2019 to serve for medium-term planning of Treaty implementation, resource mobilization and awareness raising, namely:

- consolidating the core systems and processes of the MLS;
- operating policy support and further guidance on the development of the MLS;
- implementing the Funding Strategy;
- conservation and sustainable use;
- farmers’ rights;
- capacity building; and
- awareness raising.

Each target describes key goals and elements projected as necessary for the completion of specified deliverables and priority objectives. Under a target on Conservation and Sustainable Use, within Goal 2 on cooperating and improving partnerships, the Business Plan states that, to strengthen collaboration and partnerships among stakeholders participating in projects and programmes relevant to the implementation of the Treaty, a priority objective is developing policy guidance on the implementation of measures for the conservation and sustainable use of PGRFA at the national level considering on-farm and *ex-situ* conservation and sustainable use. Under the target on farmers’ rights, within the goal on gathering information on the status of farmers’ rights implementation, the Business Plan states the priority objective of supporting the organization of regional workshops on farmers’ rights subject to the availability of resources.

In the report of the meeting in the section on the Business Plan, it is reflected that the GB requested the Secretariat to prepare, with the guidance of the Bureau, a draft MYPOW

for its consideration and adoption at GB 6; the draft MYPOW should provide an indication of the human resources needed for implementation and take account of synergies with other bodies.

### **RELEVANT MATTERS ARISING FROM FAO REFORM**

On Thursday morning, the Secretariat introduced the document on matters relevant to the Treaty arising from the FAO reform process and the review of statutory bodies (IT/GB-5/13/23).

GRULAC preferred that the Secretariat continue engaging in the FAO reform process and report to GB 6 “as necessary.” ERG supported reporting at GB 6 on the Secretariat’s involvement in the implementation of the FAO Strategic Plan and Medium-term Plan, and in the review of statutory bodies.

ERG also drew attention to a list of functional needs for the Treaty, as a basis for discussion with FAO and the Bureau, noting that it was not discussed by the GB or included in official documents for GB 5, and proposed further intersessional work on the list.

On Friday afternoon, delegates agreed on a draft resolution on greater financial and administrative authority for the Treaty within the framework of FAO.

**Final Outcome:** In the resolution on greater financial and administrative authority for the Treaty within the framework for FAO, the GB decides to:

- recognize the support that FAO has provided under the leadership of the Director-General to the Treaty;
- request the Bureau to facilitate contacts with the FAO management for the recognition of the Treaty’s functional authority according to the criteria identified by the Committee on Constitutional and Legal Matters and the other governing bodies of FAO;
- request the GB 6 Bureau to continue to review the list of the Treaty’s functional needs based on the lists identified by past Bureaus and forward it to GB 6 for consideration and adoption; and
- request the Secretariat to continue engaging in the FAO reform process, as needed, in particular in the implementation of the FAO Strategic Framework and the Medium-Term Plan, the review of the FAO statutory bodies and to report to GB 6 on relevant matters.

### **WORK PROGRAMME AND BUDGET**

On Tuesday, plenary approved the establishment of a Budget Committee and its organization of work.

On Saturday evening, Australia presented on behalf of the Budget Committee a draft resolution on the work programme and budget for the 2014/2015 biennium, drawing attention to a total core budget of nearly US\$7 million and the decision that the location of next GB session be FAO Headquarters in Rome, Italy, and subsequently alternate between FAO Headquarters and outside FAO.

ERG expressed willingness to accept the proposed resolution, even if she would have preferred a zero-growth budget, recalling the need for the Secretariat to identify possible savings and increase the efficiency of its operations and emphasizing that

accession to the Treaty by new parties should not lead to a proportional budget increase. Delegates adopted the work programme and budget without amendments.

**Final Outcome:** In the resolution on the work programme and budget for the 2014/2015 biennium, the GB, *inter alia*:

- recognizes that the Treaty is at a crucial stage in its implementation, with a number of the major fields of activities that derive directly from the provisions of the Treaty now taking substantive shape;
- urges parties to provide the resources required in the core administrative budget of US\$6,943,284; and
- decides to hold the next meeting of the GB at FAO Headquarters on cost considerations, and then on an alternating basis at FAO Headquarters and outside FAO, subject to offers from potential host governments.

The annex to the resolution contains: the core administrative budget and work programme for the 2014-2015 biennium, an indicative scale of contributions, and a Secretariat staffing table.

### CLOSING PLENARY

The closing ceremony was held on Saturday afternoon, 28 September. H.E. Fuad bin Jafar bin Al-Sajwani, Minister of Agriculture and Fisheries of Oman, drew participants' attention to the Muscat Declaration on the ITPGR, adopted at the high-level meeting prior to GB 5, and expressed willingness to cooperate in the implementation of GB 5 outcomes.

Chair Mozafari noted that GB 5 gathered political momentum in further pursuing the Treaty objectives, and witnessed a trend in increasing membership and importance also for non-parties.

ITPGR Secretary Bhatti congratulated delegates on having reached a historical compromise to start a process to develop a range of measures to increase user-based payments and contributions to the Benefit-sharing Fund and enhance the implementation of the MLS. Delegates transmitted a note of appreciation to H.M. Qaboos bin Said Al Said, the Sultan of Oman.

Following a brief break, plenary reconvened in the evening to adopt outstanding resolutions and the meeting's report.

The regions nominated the following Bureau members for the 2014/2015 biennium: Yacoob Mungroo (Mauritius) for Africa; Clarito Barron (Philippines) for Asia; Thomas Meier (Germany) for ERG; Ahmed El Barri (Oman) for the Near East; Felicitas Katepa-Mupondwa (Canada) for North America; Mathew Worrel (Australia) for the South-West Pacific; and Saulo Ceolin (Brazil) for GRULAC. Mathew Worrel was elected GB 6 Chair.

Delegates then elected the following members for the Compliance Committee: Maria Antonieta Coelho (2 years) and Angeline Munzara (4 years) for Africa; Tashi Dorji (2 years) and Amparo Ampil (4 years) for Asia; Claire Hamilton (2 years) and René Lefeber (4 years) for ERG; Lianne Fernandez (4 years) and Armando Bustillo (2 years) for GRULAC; Mustafa Ali Alagil (2 years) and Ali Chehade (4 years) for the Near East; Douveri Mavaru Henao (2 years) and Geoff Budd (4 years) for the South-West Pacific; and Felicitas Katepa-Mupondwa (Canada) for North America.

All delegations thanked Oman for the warm and generous hospitality. GRULAC highlighted the crucial role of the Treaty for hunger eradication in view of population increase, land scarcity and increased climate hazards. Africa called for provision of funds for at least one regional preparatory meeting, and invited parties to put in place legislation focusing on small-scale farmers. North America welcomed the move forward with the *Ad hoc* Working Group to Enhance the Functioning of the MLS. Asia emphasized the critical role of the Treaty in relation to climate change. The South-West Pacific expressed hope that other countries in the region will join the Treaty.

Iranian NGO Cenesta called for: effective governance to enable farmers to continue to develop and use crops at times of increasing social, political, economic and environmental threats; enhanced inclusion of biodiversity-conserving farmers' movements in the Treaty process; and prioritization of support to smallholder farmers under the Benefit-sharing Fund. She also welcomed the process to enhance the MLS, cautioning that otherwise the Treaty would become irrelevant.

Palestine expressed hope to be allowed to participate in the Treaty processes to protect farmers' rights. The International Seed Federation congratulated delegates on the resolutions on enhancing the MLS and the Funding Strategy, expressing willingness to constructively contribute to future discussions.

ITPGR Secretary Bhatti expressed satisfaction that GB 5 embarked on a new path for innovating the Treaty at a time when its future was fundamentally at stake, by mandating the working group to develop user-based benefit-sharing contributions and enhance the MLS.

Chair Mozafari closed the session at 10:38 pm.

## A BRIEF ANALYSIS OF ITPGR GB 5

### THE TREATY AT A CROSSROADS

*This is your last chance. After this, there is no turning back.*

[Morpheus, *The Matrix*]

"The decisions you take at this session will determine whether the Treaty will flourish or wither away." With these words, Shakeel Bhatti, Secretary of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR), challenged delegates to step out of their comfort zone and take far-reaching measures to equip the Treaty for a time of mounting challenges both in global agricultural development and the international regulatory landscape in which the Treaty operates. The fifth session of the ITPGR GB was held amidst rapid global changes, eloquently summarized by the Executive Director of the Global Crop Diversity Trust, Marie Haga, in her address to the GB: "We need to produce more food on less land with less water and less energy in a more challenging environment."

A growing, more affluent world population will demand an increase in global food production of up to 70% by 2050, which will have to be accomplished in an environment of rapidly increasing regional- and global-scale impacts of climate change, including widespread drought. This is the projection reconfirmed in the Intergovernmental Panel on Climate Change Working Group I's Summary for Policymakers, which was released

during the GB session. To meet this challenge, farmers and plant breeders will have to provide more sophisticated, adapted plant varieties at increasingly shorter time intervals, using the global pool of plant genetic resources that the Treaty aims to conserve and make available for research and development.

At the same time, the anticipated entry into force of the Nagoya Protocol on Access and Benefit-sharing (ABS) under the Convention on Biological Diversity (CBD) may result in radical changes in the global and national regulation of genetic resources, possibly affecting the exchange of plant genetic resources of value for agricultural research, in particular those not currently covered by the Treaty's Multilateral System. The special nature of agricultural biodiversity, however, is recognized in the Nagoya Protocol, and the Treaty itself is considered to be part of the international regime on ABS, together with the CBD and the Nagoya Protocol. The challenge—and the opportunity—is thus for the Treaty to build on this acknowledgement and engage proactively in developments to shape the future of international governance of genetic resources.

Deliberations at this session focused on the Treaty's core, the functioning of its Multilateral System of ABS (MLS) and the Funding Strategy, including the Benefit-sharing Fund. Following discussions in a conciliatory spirit, far from the divisions of previous sessions, the meeting established an intersessional process aimed at enhancing the functioning of the MLS, which is not only expected to explore the Treaty's full potential but may well result in re-negotiating its basic elements.

In the fairytale-like environment of the Al Bustan Palace Hotel, described by many as a beautiful oasis by the sea, it would have been easy for delegates to make themselves believe that a business-as-usual approach, building on the Treaty's past successes, would do the trick. The meeting outcomes, however, show that delegates were acutely aware that the reality of global agriculture and the challenges ahead look more like the barren desert land surrounding the oasis. This brief analysis examines the major steps taken during the session, within the context of these current and upcoming challenges.

### **CONTINUING IN SAFETY MODE ...**

*You take the blue pill – the story ends, you wake up in your bed and believe whatever you want to believe.*

[Ibid]

The Treaty's MLS was established to facilitate access to, and exchange of, those plant genetic resources that are considered to be vital for agricultural research and food security, and to institutionalize the sharing of benefits arising from their use. Referring to a specified list of crops (Annex I), the MLS is to include at least all those plant genetic resources for food and agriculture that are under the management and control of parties, and in the public domain. According to reports on the MLS operation, material is being exchanged at a satisfactory pace, albeit mainly between the international agricultural research centers, which had a highly functional system of exchange in place even before the Treaty entered into force. Only a limited number of countries have confirmed which material is part of the MLS and is thus made available under the standard Material

Transfer Agreement (SMTA), while others have only placed a small number of their resources in the system. At the same time, inclusion of material held by individuals, other research institutes and companies lags behind. Essentially, the system is far from achieving its full potential. The GB, therefore, adopted a resolution reminding parties of their *existing* obligations to that end.

The Funding Strategy, including its Benefit-sharing Fund, is the second critical element for the achievement of the Treaty's objectives. It has always been clear that the monetary benefits arising from commercialization of PGRFA accessed through the MLS would take years to materialize, and studies conducted for this meeting showed that the time-lag may be even longer than expected. To date, the Benefit-sharing Fund relied almost exclusively on voluntary contributions. With a deepening shortfall compared to the targets set for the Benefit-sharing Fund, an intersessional committee had focused on exploring innovative approaches for resource mobilization with a focus on user-based benefit-sharing. While the work has not been finalized and will certainly continue in the new working group, significant donations from Norway and other governments came to the rescue, allowing for the replenishment of the Benefit-sharing Fund and the launch of the third call for proposals, which is expected shortly after the closure of the GB session. This was rightly celebrated, particularly since the budget of the third project cycle will double the amount of the second.

With regard to the forthcoming entry into force of the Nagoya Protocol, a resolution to ensure and strengthen cooperation between the Treaty and the CBD Secretariats was also adopted. The resolution also rubberstamped activities already undertaken by the two Secretariats, such as organization of joint workshops and exchange of information.

On both sets of challenges, the GB took necessary measures to ensure the Treaty's functioning and a certain sharing of benefits, albeit mostly based on voluntary contributions and a minimum of collaboration between the Treaty and the CBD. These activities alone would have certainly kept the Secretariat and parties busy until 2015 and delivered sufficient progress to report to GB 6 in order for delegates to continue to rightfully believe that things are going "just fine," choosing to keep the Treaty inside the oasis. But continuing in safety mode was not enough.

### **...OR GOING BEYOND THE CHALLENGE**

*You take the red pill – you stay in wonderland, and I show you how deep the rabbit hole goes.*

[Ibid]

Preparations for the upcoming entry into force of the Nagoya Protocol are intensifying the interest of the international community in ABS and the contribution of genetic resource use to sustainable development. The Protocol creates a more complex international architecture based on national legislation and bilateral agreements between providers and users of genetic resources. The Treaty, instead, is a reflection of the agricultural sector's collective realization that a multilateral approach to ABS is better suited to its needs. Arguably, the Nagoya

Protocol's approach could apply to genetic resources for food and agriculture not included in Annex I of the Treaty, leading to regulatory complexity and possibly creating a competitive environment for the exchange of genetic resources inside and outside the MLS. At the same time, harmonious interpretation and implementation of the Nagoya Protocol and the Treaty, as stipulated in the Protocol, could provide an opportunity for the Treaty to leap ahead and present itself as the first fully operative specialized ABS instrument in line with the Protocol, and possibly serve as a model for future instruments to be developed for other sectors of genetic resources. To prove the Treaty's case, however, the coverage of the MLS and potential for benefit-sharing will have to be significantly enhanced.

While the precise rationale remains a topic for discussion, the dynamics on these issues significantly differed from previous sessions. The traditional divide between developed countries favoring access for continued research and development, and developing countries focusing on sharing of benefits was less evident. Drastically redefining their position, the majority of regions indicated readiness to realize the full potential of the Treaty. This repositioning, accompanied by a conciliatory atmosphere, enabled the establishment of an intersessional working group, which could mark a fundamental turning point in the history of the Treaty.

As a priority, the newly-established working group will explore measures to increase user-based payments and contributions to the Benefit-sharing Fund, to ensure sustainable and predictable funding. It will also look into "additional measures" to enhance the functioning of the MLS, generally understood to refer to measures aimed to facilitate exchange of material and expand coverage of the MLS.

Although it is not clear where this process will end up, many wondered whether it might result in a rethinking of the list of crops in Annex I, which was intensely debated during the Treaty negotiations—a rethinking widely considered inconceivable some years ago! Two sessions of this working group will take place over the next two years; they will be funded by the core administrative budget, with any further sessions to be covered by extra-budgetary funds. The terms of reference for this new (and potentially ground-breaking) intersessional process leave no doubt that fully-fledged negotiations are about to take place. At the same time, an informal multi-stakeholder dialogue, championed by the CGIAR Centers, is also aiming to enhance the functioning of the MLS and increase contributions to the Benefit-sharing Fund. This dialogue may provide input to the working group, including the possibility of fresh ideas coming from ABS practitioners.

The working group clearly reflects the ambition to restructure the MLS to tackle the challenges of global agricultural research, and seize the opportunity arising from the Nagoya Protocol to evolve into a fully-bloomed specialized ABS agreement for PGRFA.

#### THE WAY AHEAD

*The answer is out there ...and it's looking for you*  
[Trinity, *The Matrix*]

Hailed as a major success by all involved in the Treaty processes, the launch of this new intersessional working group provides the opportunity for the Treaty and the agricultural sector as a whole to reposition themselves in the global framework of genetic resource governance with a view to more effectively contributing to global agricultural development and food security. The outcome of this new process will determine whether the Treaty will live up to the challenges and flourish, or whether it will wither away.

Finally, further opportunities may arise for repositioning the Treaty in global ABS governance from future work on farmers' rights: GB 5 launched an intersessional exchange of views towards identifying "options" for implementing Article 9 at the national level. This exchange may arguably open the door for further consideration of developments on traditional knowledge, genetic resources and the right to food in other fora. Where the Treaty will go from here will be a choice for GB 6 delegates.

*A world where anything is possible. Where we go from there is a choice I leave to you.*

[Neo, *The Matrix*]

### UPCOMING MEETINGS

#### 8th meeting of CBD Working Group on Article 8(j):

The Working Group on Article 8(j) of the Convention on Biological Diversity is expected to consider, among other issues, a draft plan of action on customary sustainable use, as well as the terminology related to "indigenous peoples and local communities." An in-depth dialogue will be held on "connecting traditional knowledge systems and science, such as under the IPBES, including gender dimensions." **dates:** 7-11 October 2013 **location:** Montreal, Canada **contact:** CBD Secretariat **phone:** +1-514-288-2220 **fax:** +1-514-288-6588 **email:** secretariat@cbd.int **www:** <http://www.cbd.int/doc/?meeting=WG8J-08>

**CFS 40:** The Committee on World Food Security was reformed to be the most inclusive international and intergovernmental platform for all stakeholders to work together in a coordinated way to ensure food security and nutrition for all. At its 40th session, it is expected to address a series of policy and implementation-related issues. **dates:** 7-11 October 2013 **location:** Rome, Italy **contact:** FAO Secretariat **phone:** +39-6-57051 **fax:** +39-6-570-53512 **email:** CFS@fao.org **www:** <http://www.fao.org/cfs/>

**CBD SBSTTA 17:** The 17th meeting of the Subsidiary Body on Scientific, Technical and Technological Advice of the Convention on Biological Diversity is expected to address a series of ecosystem-related and cross-cutting issues. **dates:** 14-18 October 2013 **location:** Montreal, Canada **contact:** CBD Secretariat **phone:** +1-514-288-2220 **fax:** +1-514-288-6588 **email:** secretariat@cbd.int **www:** <http://www.cbd.int/doc/?meeting=SBSTTA-17>

**FAO Council:** The 148th regular session of the Council is organized by FAO. **dates:** 2-6 December 2014 **location:** Rome, Italy **contact:** Louis Gagnon **phone:** +39-6-570-54625 **fax:** +39-6-570-53152 **email:** FAO-HQ@fao.org **www:** <http://www.fao.org/bodies/council/cl148/en/>

**ICNP 3:** The third meeting of the Intergovernmental Committee for the Nagoya Protocol on Access and Benefit-sharing to the Convention on Biological Diversity will address issues related to the ABS clearing-house, compliance, codes of conduct and model clauses and the multilateral benefit-sharing mechanism. **dates:** 24-28 February 2014 **location:** Pyeongchang, Republic of Korea **contact:** CBD Secretariat **phone:** +1-514-288-2220 **fax:** +1-514-288-6588 **email:** secretariat@cbd.int **www:** <http://www.cbd.int/doc/?meeting=ICNP-03>

**FAO Council:** The 149th regular session of the Council is organized by FAO. **dates:** 16-20 June 2014 **location:** Rome, Italy **contact:** Louis Gagnon **phone:** +39-6-570-54625 **fax:** +39-6-570-53152 **email:** FAO-HQ@fao.org **www:** <http://www.fao.org/about/meetings/en/>

**CBD SBSTTA 18:** The 18th meeting of the Subsidiary Body on Scientific, Technical and Technological Advice of the Convention on Biological Diversity is expected to address a series of ecosystem-related and cross-cutting issues. **dates:** 16-20 June 2014 (tentative) **location:** Montreal, Canada **contact:** CBD Secretariat **phone:** +1-514-288-2220 **fax:** +1-514-288-6588 **email:** secretariat@cbd.int **www:** <http://www.cbd.int/meetings>

**CBD WGRI 5:** The fifth meeting of the *Ad Hoc* Open-ended Working Group on Review of Implementation of the Convention will convene following SBSTTA 18. **dates:** 23-27 June 2014 (tentative) **location:** Montreal, Canada **contact:** CBD Secretariat **phone:** +1-514-288-2220 **fax:** +1-514-288-6588 **email:** secretariat@cbd.int **www:** <http://www.cbd.int/meetings>

**3rd International Genetic Resource Symposium:** Held within the framework of the 29th International Horticultural Congress and co-convened by the International Society for Horticultural Science, the Global Crop Diversity Trust and Griffith University, this symposium will focus on genetic resources and climate change. **dates:** 17-22 August 2014 **location:** Brisbane, Australia **contact:** Congress Secretariat **phone:** +61-7-3255 1002 **fax:** +61-7-3255-1004 **email:** info@ihc2014.org **www:** [http://www.ihc2014.com/symposium\\_27.html](http://www.ihc2014.com/symposium_27.html)

**Biosafety Protocol COP/MOP 7:** The seventh Meeting of the Parties to the Cartagena Protocol on Biosafety to the Convention on Biological Diversity will address a range of issues related to the implementation of the Protocol. **dates:** 29 September - 3 October 2014 **location:** Pyeongchang, Republic of Korea **contact:** CBD Secretariat **phone:** +1-514-288-2220 **fax:** +1-514-288-6588 **email:** secretariat@cbd.int **www:** <http://www.cbd.int/meetings>

**CBD COP 12:** The 12th meeting of the Conference of the Parties to the Convention on Biological Diversity is expected to conduct, among other issues, a mid-term review of the implementation of the Strategic Plan for Biodiversity 2011-2020 and its Aichi targets. **dates:** 6-17 October 2014 **location:** Pyeongchang, Republic of Korea **contact:** CBD Secretariat **phone:** +1-514-288-2220 **fax:** +1-514-288-6588 **email:** secretariat@cbd.int **www:** <http://www.cbd.int/meetings>

**Nagoya Protocol COP/MOP 1:** Depending on entry into force, the first Meeting of the Parties to the Nagoya Protocol on Access and Benefit-sharing will be held concurrently with CBD COP 12. **dates:** October 2014 **location:** Pyeongchang, Republic of Korea **contact:** CBD Secretariat **phone:** +1-514-288-2220 **fax:** +1-514-288-6588 **email:** secretariat@cbd.int **www:** <http://www.cbd.int/meetings>

**UPOV Council:** The Council of the International Union for the Protection of New Varieties of Plants (UPOV) will address, *inter alia*, the draft programme and budget for the biennium 2014-2015. **date:** 24 October 2013 **location:** Geneva, Switzerland **contact:** UPOV Secretariat **phone:** +41-22-338-9111 **fax:** +41-22-733-0336 **email:** upov.mail@upov.int **www:** [http://www.upov.int/meetings/en/details.jsp?meeting\\_id=29623](http://www.upov.int/meetings/en/details.jsp?meeting_id=29623)

**CGRFA 15:** The 15th regular session of the Commission on Genetic Resources for Food and Agriculture is expected to address a range of issues related to its Multi-Year Programme of Work. **dates:** 19-23 January 2015 **location:** Rome, Italy **contact:** Linda Collette, CGRFA Secretary **phone:** +39-6-570 54981 **fax:** +39-6-570-53152 **email:** cgrfa@fao.org **www:** <http://www.fao.org/nr/cgrfa/cgrfa-home/en/>

**ITPGR GB6:** The sixth session of the Governing Body of the ITPGR will be held in 2015. **dates:** to be confirmed **location:** FAO Headquarters, Rome, Italy **contact:** ITPGR Secretariat **phone:** +39-6-570-53441 **fax:** +39-6-570-56347 **email:** pgrfa-treaty@fao.org **www:** <http://www.planttreaty.org/>

## GLOSSARY

ABS	Access and Benefit-sharing
CBD	Convention on Biological Diversity
CGIAR	Consultative Group on International Agricultural Research
CGRFA	FAO Commission on Genetic Resources for Food and Agriculture
COP	Conference of the Parties
ERG	European Regional Group
FAO	UN Food and Agriculture Organization
GB	Governing Body
GPA	Global Plan of Action on the Conservation and Sustainable Use of Plant Genetic Resources for Food and Agriculture
GRULAC	Latin American and Caribbean Group
IARCs	International Agricultural Research Centers
IPBES	Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services
ITPGR	International Treaty on Plant Genetic Resources for Food and Agriculture
MLS	Multilateral System
MTA	Material transfer agreement
PGRFA	Plant genetic resources for food and agriculture
SMTA	Standard material transfer agreement
TORs	Terms of reference
UPOV	International Union for the Protection of New Varieties of Plants
WIPO	World Intellectual Property Organization