

Eighth Meeting of the *Ad Hoc* Open-ended Working Group to Enhance the Functioning of the Multilateral System of the International Treaty on Plant Genetic Resources for Food and Agriculture: 10-12 October 2018

The eighth meeting of the *Ad Hoc* Open-ended Working Group to Enhance the Functioning of the Multilateral System (MLS) of access and benefit-sharing (ABS) of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) convened from 10-12 October 2018 at the headquarters of the UN Food and Agriculture Organization (FAO), in Rome, Italy.

The Working Group was first established by the fifth session of the Treaty's Governing Body (GB, September 2013, Muscat, Oman), with the mandate to develop measures to increase user-based payments and contributions to the Treaty's Benefit-sharing Fund (BSF), as a priority, as well as additional measures to enhance the functioning of the MLS. It is composed of up to 27 regional representatives: up to five from Europe; up to five from Asia; up to five from Latin America and the Caribbean (GRULAC); up to three from the Near East; up to two from North America; and up to two from Southwest Pacific. Up to two representatives from each of the following groups may participate as observers: civil society organizations; the seed industry; farmers' organizations; and the CGIAR Consortium of International Agricultural Research Centers.

Since its establishment, the Working Group has focused on the revision of the Standard Material Transfer Agreement (SMTA) and elaboration of a subscription system for user-based payments to the MLS. Its mandate was extended by the seventh meeting of the ITPGRFA GB (30 October - 3 November 2017, Kigali, Rwanda). Accordingly, the Working Group is holding two meetings during the intersessional period, focusing on:

- development of a proposal for a growth plan to attain the enhanced MLS;
- revision of the SMTA on the basis of prior deliberations and proposals, including the Co-Chairs' proposed consolidated text; and
- elaboration of criteria and options for possible adaptation of the coverage of the MLS.

The eighth meeting of the Working Group did not achieve any concrete outcomes in relation to specific clauses in the SMTA. In addition, questions related to digital sequence information (DSI) and a possible expansion of the MLS remain deeply divisive. However, several participants welcomed the constructive spirit and open discussion that provided opportunities for mutual learning and clear procedural steps allowing for informed deliberations at its next meeting in June 2019.

A Brief History of the Treaty

Concluded under the auspices of FAO, the ITPGRFA is a legally-binding instrument that targets the conservation and sustainable use of plant genetic resources for food and agriculture (PGRFA), and fair and equitable sharing of the benefits arising out of their use, in harmony with the Convention on Biological Diversity (CBD), for sustainable agriculture and food security. It establishes an MLS for facilitated access to a specified list of PGRFA including 35 crop genera and 29 forage species (Annex 1), and institutionalizes monetary and non-monetary benefit-sharing from the utilization of these resources in the areas of commercialization, information exchange, technology transfer, and capacity building.

The Treaty was adopted on 3 November 2001 by the FAO Conference, following seven years of negotiations. It entered into force on 29 June 2004, and currently has 145 parties.

Key Turning Points

GB 1: The first session of the ITPGRFA GB (June 2006, Madrid, Spain) adopted the SMTA and the Funding Strategy. The SMTA includes provisions on a benefit-sharing scheme, providing two options. Firstly, the recipient can choose to pay 0.77% of gross sales from commercialization of new products

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incorporating material accessed from the MLS, if its availability to others for further research and breeding is restricted. Alternatively, the recipient can choose to pay 0.5% of gross sales on all PGRFA products of the species they accessed from the MLS, regardless of whether the products incorporate the material accessed and regardless of whether the new products are available without restriction. 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 Crop Trust; and a model agreement with the international agricultural research centers of the CGIAR Consortium and other international institutions.

GB 2: The second session of the GB (October-November 2007, Rome, Italy) addressed, *inter alia*, the implementation of the Funding Strategy, the material transfer agreement for non-Annex I crops, 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 Commission on Genetic Resources for Food and Agriculture (CGRFA).

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 USD 116 million for the period July 2009 - December 2014; a resolution on the 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.

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 resolutions on farmers' rights, sustainable use, and implementation of the Funding Strategy.

GB 5: The fifth session of the GB (September 2013, Muscat, Oman) established the *Ad hoc* Open-ended Working Group to Enhance the Functioning of the MLS, with the mandate to develop measures to increase user-based payments and contributions to the BSF, as a priority, as well as additional measures to enhance the functioning of the MLS. GB 5 also adopted a resolution on the funding strategy for the BSF containing a list of innovative approaches to increase voluntary contributions and a work programme on sustainable use.

GB 6: The sixth session of the GB (October 2015, Rome, Italy) extended the mandate of the Working Group on the MLS, and requested that it, among other issues: elaborate a full draft revised SMTA; elaborate options for adapting coverage of the MLS, based on different scenarios and income projections; and consider issues regarding genetic information associated with material accessed from the MLS. The meeting adopted a work programme for the Global Information System, and resolutions on a series of substantive, cooperation-related, and administrative items, with a focus on addressing the shortfall in the BSF and on strengthening the implementation of Treaty provisions regarding conservation and sustainable use of PGRFA on-farm, through the work programme on sustainable use and farmers' rights.

GB 7: The seventh session of the GB (October-November 2017, Kigali, Rwanda) extended the mandate of the Working Group on the MLS, requesting it to continue revision of the SMTA, develop a proposal for a growth plan to attain the enhanced MLS, and elaborate criteria and options for possible adaptation of the coverage of the MLS. GB 7 further established an *Ad Hoc* Technical Expert Group on farmers' rights;

reconvened the Committee on the Funding Strategy and Resource Mobilization to develop the updated Funding Strategy; and decided to put DSI on the GB 8 agenda.

Report of the Eighth Meeting of the Working Group

On Wednesday, 10 October, Co-Chair Javad Mozafari opened the meeting by highlighting that the Treaty is crucial for food security and sustainable agriculture globally, and calling for expediting efforts to enhance its efficiency. He recalled that the Working Group elected Amb. Hans Hoogeveen (the Netherlands) by electronic means as its new Co-Chair, to replace former Co-Chair Bert Visser, who retired during GB 7. Co-Chair Hoogeveen said that informal consultations held since GB 7 highlighted elements of a compromise in several controversial areas and urged participants to focus on finalizing a workable SMTA. ITPGRFA Secretary Kent Nnadozie expressed hope that the spirit of understanding and cooperation that prevailed during informal consultations will continue.

The Working Group then adopted the meeting's agenda and timetable (IT/OWG-EFMLS-8/18/1 and 2).

Several regions expressed optimism about the negotiations and highlighted progress achieved so far. North America and Europe emphasized that increasing monetary benefits and expanding coverage of the MLS are "two sides of the same coin." With Africa, they also emphasized creating a flexible and easy system for providers of material to avoid technical issues related to access. Africa called for parties to achieve political traction for the next GB meeting. The Near East stated that he considers the subscription model an acceptable solution to enhancing the MLS. Explaining that diverse positions exist among countries in the region regarding the expansion of the MLS, the Latin American and Caribbean Group (GRULAC) stressed the need to reflect compromises in the negotiated text.

The Secretariat updated the Working Group on the briefing of the FAO Permanent Representatives and the informal consultations held in Rome and Addis Ababa, noting that the outcomes are reflected in the Co-Chairs' note on enhancing the functioning of the MLS (IT/OWG-EFMLS-8/18/4).

Emphasizing that benefit-sharing needs to be "fair and equitable," Civil Society underscored the importance of providing evidence that expanding coverage will enhance food security, which depends on distribution, not production. The CGIAR Consortium stated that a positive way forward is visible, to increase predictable income and keep transaction costs low. Farmers' Organizations urged finding a solution to secure funding for *ex situ* collections in developing countries, and stressed that access to online DSI cannot be controlled easily.

Liaison with the Advisory Committee on the Funding Strategy and Resource Mobilization

On Wednesday, Alwin Kopse, Co-Chair of the Advisory Committee on the Funding Strategy and Resource Mobilization, reported on the outcome of the tenth meeting of the Committee (IT/ACFSRM-10/18/Report), including setting targets for the Funding Strategy and the BSF.

Revision of the Standard Material Transfer Agreement

The Working Group addressed this item on Wednesday and Thursday. The Secretariat noted that the basis for negotiations is the draft revised SMTA resulting from the Working Group's sixth meeting (IT/OWG-EFMLS-8/18/3). He added that the Working Group may also use the Co-Chairs' proposed consolidated text of the revised SMTA and summary arising from GB 7 (IT/

OWG-EFMLS-8/18/Inf.3 and 4), and the Co-Chairs' note on enhancing the functioning of the MLS (IT/OWG-EFMLS-8/18/4). He drew further attention to the report of the Standing Group of Legal Experts, particularly on definition of "sales" (IT/OWG-EFMLS-8/18/Inf.5) and the compilation of submissions (IT/OWG-EFMLS-8/18/Inf.6).

Discussion focused on the terms and conditions of the subscription system (Annex 3) and options on benefit-sharing payments (Articles 6.7 and 6.8).

Terms and Conditions of the Subscription System (Annex 3): *Subscription:* North America preferred referring to a subscription "option" rather than "system." Both were kept in brackets.

Effect of the subscription: The Working Group discussed whether to specify that subscription would take effect upon receipt of the "first" duly signed registration form by the Secretary. Many underscored the need to convey that subscribers would not need to sign registration forms with every new SMTA.

Subscription coverage: There was discussion about whether the subscription system would cover all PGRFA in the MLS or would allow for a single crops option. Asia suggested that both remain as options. Europe, North America, and Africa highlighted the interlinkages of each option with payment rates and MLS expansion.

Subscriber's obligations under previous SMTAs: Europe and North America supported the Co-Chairs' proposal relieving subscribers of making payments under previous SMTAs, under the condition that it was clarified whether the subscription system refers to all PGRFA in the MLS or to single crops.

Register: Co-Chair Hoogeveen clarified that in case a subscription on a crop-by-crop basis is decided, this will be reflected in the register.

Monetary benefit-sharing: Co-Chair Hoogeveen drew attention to the Co-Chairs' proposal, which suggests that the subscriber make annual payments based on the sales of products that are PGRFA, highlighting linkages with the definitions of "Sales" and "Product." The Secretariat explained that the Working Group needs to identify which income streams constitute the basis for payments and who should pay.

Europe and Africa supported payments based on sales, with Africa reiterating a preference for a simple system with a flat payment rate on seed sales.

Participants discussed the difference between "Product" and "product," with North America noting that "Product" refers to PGRFA incorporating MLS material, while "product" is broader, with no need to trace MLS material. Europe called for clarity in understanding "product." Civil Society pointed to complexities concerning dissemination of DSI by a subscriber without its conversion into a product, for its commercial use by a non-subscriber.

Participants discussed possible differentiated subscriptions and rates by crop group. The Secretariat recalled prior discussions in the Working Group, noting that at the sixth meeting it was agreed to remove references to differentiated rates, but not to different crop groups. North America and Africa recommended a straightforward, simple approach to subscription.

Exemptions: The Working Group addressed a bracketed provision exempting small-scale users from payments. Europe and North America recommended removing brackets to support smaller-scale users with limited financial flow in using the MLS. Civil Society suggested retaining the brackets until DSI is discussed. Participants further discussed the threshold for payments and the definition of sales.

Reporting, confidentiality, and auditing: The Secretariat drew attention to simplified language proposed by the Co-Chairs, focusing on submission of information by the subscriber on sales and the applicable rates of payment.

Participants expressed concerns about language regarding audits. Europe requested that reference to audits be bracketed. North America requested deleting the proposition that the Secretary be entitled to audit subscribers' annual reports. Civil Society suggested that a lack of auditing capacity would make the system unaccountable. Asia expressed concerns regarding the auditing of sales for small companies. GRULAC cautioned against free-riding. The CGIAR highlighted the risk of driving off small-scale users by making the subscription system burdensome and introducing annual audit declarations. After a brief discussion, Europe recommended that brackets be retained until a consensus is achieved on the definition of "audit." Co-Chair Hoogeveen stressed the need for balance between submission of reliable information and lessening the burden for small companies and farmers. Europe proposed text referring to subscribers that are unable or do not wish to distinguish between products available with and without restriction for further research and breeding, noting that "at the request of the subscriber the higher rate of payment should apply to sales without distinction."

Civil Society stressed the need to establish a minimum amount of accessible information.

Withdrawal: The Working Group agreed that the subscriber may withdraw not less than 10 years from the date the subscription took effect. Civil Society noted that a 10-year withdrawal period is too short. Co-Chair Hoogeveen stressed the difficulty of establishing a tracking and tracing system when a subscriber withdraws. Civil Society stressed that consequences after withdrawal should extend to the full time cycle of research and development, and intellectual property rights use, as benefits continue to be generated during that time. Co-Chair Hoogeveen said that the Co-Chairs will produce simplified text combining existing options on withdrawal, including subscribers' obligations after withdrawal.

Consequences of withdrawal: The Secretariat explained that three options in the text refer to the starting point for monetary benefit-sharing obligations to continue after the end of the subscription, namely: the end of the subscription; the entry into effect of the subscription; and the last access to the MLS.

Europe proposed that the monetary benefit-sharing provisions apply for five years from the end of the subscription. North America proposed specifying which provisions would continue to apply. Africa stressed the need to first discuss the subscription vis-à-vis single access.

Validity of SMTAs after withdrawal: Regarding a provision noting that withdrawal from or termination of the subscription does not affect the validity of SMTAs signed during the subscription term, the Working Group discussed whether a subscriber would need to sign SMTAs for each transfer of material. The Secretariat explained that a subscriber would sign a registration form and, according to current understanding, an SMTA for each transfer of material. The CGIAR noted that individual SMTAs may not be needed if the subscription system is considered a framework agreement. Civil Society highlighted the need to track material accessed through the MLS after withdrawal from the subscription. The Seed Industry called for a simple subscription system, noting the need for a tracking mechanism but not the signature of individual SMTAs. The Near East stressed that some sort of simple signature of SMTAs is needed for each exchange within a subscription to allow record

keeping on the material exchanged. GRULAC stressed the need to discuss the basic principles of the system rather than specific modalities of subscription.

The Working Group then discussed the location of the provision within the text. North America agreed with the Co-Chairs' suggestion to move the provision from Annex 3 into the main SMTA body. Asia said termination and withdrawal could be dealt with under dispute resolution. Co-Chair Hoogeveen clarified that a subscriber's withdrawal is not a dispute, and suggested that the provision remain bracketed.

Termination of subscription by the GB: The Working Group discussed a bracketed provision on the GB's right to terminate a subscription if the amended subscription terms are not accepted by the subscriber 10 or 20 years after entry into force. Many noted the provision's link with a paragraph proposed by the Co-Chairs that the GB may amend the subscription terms at any time, and the amended terms will not apply to any existing subscription. Participants agreed to delete the provision, and add a reference to the Co-Chairs' proposal on the possibility on termination after a certain period. The proposal remained bracketed.

Benefit-Sharing Payments: The Secretariat explained the options regarding benefit-sharing payments under SMTA Articles 6.7 and 6.8, namely:

- mandatory payments in case of commercialization, with lower rates if the product is available without restriction for further research and breeding; or
- mandatory payments if the product is not available for further research and breeding, and voluntary payments if the product is available.

He further drew attention to the reports of the Standing Group of Legal Experts (IT/OWG-EFMLS-8/18/Inf.5).

GRULAC proposed that specific categories of users, including public institutions, indigenous peoples, and family farmers, should be exempt from mandatory payments. North America expressed preference for maintaining voluntary payments. Africa favored a single system for different subscribers with "an attractive flat rate system." Europe stressed that administrative obligations, like audited reports, will affect small-scale users, and supported a separate single access mechanism. The Seed Industry indicated that sales do not always translate into profit and suggested that the rate means a competitive disadvantage for some. Farmers' Organizations stressed that companies do not need access to physical material and that payments should arise also from patents based on non-physical material.

The Working Group discussed the difficulties of combining the Treaty's requirements for facilitated access and benefit-sharing arising from commercialization with upfront payments in relation to subscription. Europe pointed to contradictions in the Treaty's text and called for flexibility and creative solutions. Civil Society pointed to solutions developed under the framework of the World Health Organization, which allows users to apportion payments related to benefit-sharing amongst themselves.

Co-Chair Hoogeveen suggested working on the basis of mandatory benefit-sharing payments, while defining exemptions for categories of users. North America reiterated a wish to retain the option on voluntary payments, adding that a system of mandatory payments would need to be accompanied by conditions on termination, and proof that the commercialized product consists of at least 25% of MLS material or contains a trait of commercial value that originated in MLS material.

The Near East, Africa, and Asia accepted the Co-Chair's proposal. Europe accepted it in the spirit of compromise, stressing that access to genetic resources for further research and

breeding is a substantial benefit in itself. GRULAC also agreed, highlighting diversity of views in the region and the need to consult.

Regarding exemptions from payments, North America recommended that payments should remain voluntary if a commercialized product is available without restriction to others for further research and breeding, noting that this way, small-scale users would not be required to contribute. Europe expressed concerns that a single system would create administrative burdens to the high number of small-scale users. Participants considered how to define the users that would be exempt from payments. Europe and the Seed Industry remarked that the subscription system's payment threshold could cover these exemptions.

Stressing that the revised SMTA should be simple, workable, and enforceable, Co-Chair Hoogeveen summarized that the participants had agreed to work in a framework with mandatory payments, with exemptions based on a sales threshold rather than strict definitions. He indicated that a consolidated text will be circulated in preparation for the ninth meeting of the Working Group.

Digital Sequence Information

On Thursday, Co-Chair Mozafari stated that access to DSI needs to be seen from the benefit-sharing and SMTA points of view. The Secretariat highlighted informal discussions with the CBD and CGRFA Secretariats regarding the issue of DSI.

The CBD Secretariat reported on the steps taken in the context of the Nagoya Protocol and CBD on DSI. She said that potential implications of the use of DSI on genetic resources will be considered at the 14th meeting of the CBD Conference of the Parties (COP 14) in November 2018, and that information from the scoping study conducted was exchanged with the Treaty and CGRFA Secretariats. The CGRFA Secretariat reported on the established workstream on DSI at CGRFA 16 (February 2017). She highlighted preparation of an exploratory fact-finding scoping study to provide information on the extent of DSI use and its relevance for food security and nutrition. Secretary Nnadozie drew attention to the close collaboration between Secretariats.

North America cautioned against an SMTA that covers something that is out of the Treaty's scope. Europe noted that it is premature to address an issue that will be discussed at the next GB session. Africa said benefit-sharing should be extended to DSI. Co-Chair Mozafari highlighted that the Working Group's report will inform GB discussions on the issue.

GRULAC stressed that DSI use was not anticipated when the Treaty and the CBD were negotiated, and that it can enhance use of genetic material and thus creation of benefits. He called for addressing benefit-sharing from DSI that derives from PGRFA in the MLS, explaining that benefits arising out of the use of DSI should be shared. He further noted that under the subscription model, advance payments do not correspond to access but to anticipated benefits.

Civil Society drew attention to the outcomes of the African workshop in preparation for the CBD COP, which concluded that African countries will control use of DSI through mutually agreed terms until a mechanism is established for benefit-sharing. He suggested that an agreement on enhancing the MLS would be impossible without including DSI.

Europe pointed out that the current draft addresses DSI implicitly, by requiring sharing of benefits based on a portfolio of products, not only on products incorporating MLS material. He added that the Treaty considers DSI in terms of information sharing, cautioning against trying to define it and recalling the agreement not to define "genetic parts and components."

North America stressed that conventional exchanges of material remain the rule, and should not be put at risk on the basis of a hypothetical paradigm shift in research. Africa reiterated that a levy on seed sales under a single option for subscription would inevitably include DSI. The Near East called for a viable, clear system to share monetary and non-monetary benefits from the use of DSI.

Participants discussed the definition of DSI and its consequences. Asia questioned that the subscription system could resolve the issue without defining the nature of DSI. Speaking in their national capacity, Japan, Germany, and France stressed that they could not negotiate the definition of DSI due to repercussions in other fora, including the CBD and the CGRFA. North America noted that they would have amendments to almost all suggestions about DSI in the Co-Chairs' note if the meeting decided to consider textual proposals.

The CGIAR cautioned against delaying discussion of the issue, and called for the GB to signal that both material and related data are dealt with under the same body. It suggested that the SMTA cover benefits from access to material and associated information. Farmers' Organizations and Civil Society expressed concerns about the public availability of DSI, and raised the issue that a subscription system would not cover use of DSI originating from non-MLS material.

Elaboration of Criteria and Options for Possible Adaptation of the Coverage of the Multilateral System

On Friday, the Secretariat introduced a number of supportive measures in the Co-Chairs' note (IT/OWG-EFMLS-8/18/4) on the possible adaptation of the coverage of the MLS, including: enabling "fast track" adoption and implementation; encouraging provisional application of the expanded coverage; and preparation of explanatory notes to clarify legal consequences of the amendment and its practical implications.

The Working Group confirmed that the proposal by Switzerland to expand the annex to all PGRFA is still on the table. Participants then discussed national modalities for ratification, including possibilities for fast track adoption of international law. Co-Chair Hooegeven urged the Working Group to find ways to speed up implementation. Europe highlighted that legal certainty and high-level political commitment are required.

Civil Society stated that an amendment to the Treaty will not enhance the functioning of the MLS and suggested exploring possibilities of signing a political declaration. He urged for conditions for parties to put material in the MLS, including enhancing benefit-sharing. Europe and North America emphasized the importance of minor crops in the MLS for conservation purposes. GRULAC emphasized its support for limiting PGRFA coverage to *ex situ* material.

Development of a Proposal for a Growth Plan

On Friday, the Secretariat recapitulated the Co-Chairs' suggestion that the Working Group identify the points in the current growth plan that could be helpful, and suggest additional elements.

Participants discussed linking the entry into force of the enhanced SMTA and an expanded Annex I of the Treaty. Speaking in a national capacity, Japan recommended that the Annex and SMTA be implemented simultaneously. Europe made a textual proposal that the Annex and SMTA be implemented once both have entered into force through their respective processes, in order to build trust and commitment in users and parties. Civil Society, Africa, GRULAC, and Costa Rica in a

national capacity stressed that benefits must be evident to users and parties before an expanded Annex is implemented, to build trust in the Treaty and its MLS.

In their national capacity, Germany and Switzerland clarified that under an enhanced SMTA, parties could not seize material from farmers. Germany and France underscored that benefits may require more time to flow. Germany called for input on Europe's proposal on the growth plan.

Highlighting lack of agreement in the region and the need for internal consultations, GRULAC expressed confidence that progress will be achieved as long as the revised SMTA does not encourage avoidance of benefit-sharing by allowing voluntary payments. Africa said governments should assist farmers in conserving their crop varieties, with Co-Chair Hooegeven noting that parties can bring farmers' material in the MLS only with farmers' approval.

North America stressed the need for suggestions on how to build trust, adding that current practices for collection of material need to follow clear rules. GRULAC highlighted difficulties related to the fact that the Treaty serves both farmers and the seed industry. Farmers' Organizations noted that trust depends on benefit-sharing, and called for linkages with the expert group on farmers' rights. Europe indicated that some farmers may wish to put material in the MLS because they want to protect their varieties from property rights or because they are proud and want to make them available.

The Seed Industry supported the European proposal for a simplified growth plan, and drew attention to the industry's declaration to subscribe if certain conditions are met.

Co-Chair Hooegeven stressed the need to build on elements of compromise and take steps to build trust.

Closing Plenary

On Friday afternoon, Co-Chair Hooegeven stated that the dates and locations of informal consultations before the next meeting of the Working Group will be available to all parties and observers, and advocated transparency in that regard. He stressed that consultations should be open to seeking funding possibilities for all parties to participate. GRULAC stated that there is limited time for informal consultations to take place before the next Working Group meeting and that the consultations need to be open if some result is to be delivered in time for the next GB meeting.

Co-Chair Mozafari noted that the views of parties who are not members of the Working Group are needed during the informal and regional consultations, so that consensus can be hopefully reached in the next GB meeting.

The Secretariat informed participants that the ninth meeting of the Working Group will be held from 17-21 June 2019, in Rome.

Adoption of the Report: Participants reviewed the report paragraph by paragraph. On North America and Europe's recommendation, the Secretariat modified language to specify that there are divergent views on the question of DSI, and that the Co-Chairs will seek further views on the matter. Africa and GRULAC requested the Secretariat to add language stating there are divergent views about the possible expansion of Annex I.

North America and Europe suggested removing specific references to additional conditions and specifications with regard to expansion of coverage, such as benefit-sharing conditions and exclusion of specific types of species. Participants agreed to refer consistently to "expansion" of the MLS coverage, rather than its "adaptation."

On the development of a proposal for a growth plan, Europe requested an additional step on the simplification of the growth plan where “both the revised SMTA and the amended Annex I would enter into force at the same time.” Europe further suggested that the GB adopt a decision approving the SMTA and the expansion of coverage “at the same session of the GB.”

At the urging of Civil Society, Asia, and GRULAC, the alternative proposal on payments to the GB, namely, that a subscriber could defer payments due until these accumulated to a certain threshold, was placed in the Annex of the report for discussion at a future meeting. Civil Society and the CGIAR emphasized that the threshold in that proposal refers to payments due rather than declared sales.

The Working Group then adopted the report. Co-Chair Mozafari adjourned the meeting at 4:44 pm.

A Brief Analysis of the Meeting

Ensuring the efficiency of an international treaty vital for food security and sustainable agriculture is not an easy task. Five years after its establishment, the *Ad Hoc* Open-ended Working Group to Enhance the Functioning of the Multilateral System (MLS) of access and benefit-sharing (ABS) of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) met for an intense, three-day meeting in Rome, with a renewed mandate, to address a package of measures to enhance the Treaty’s MLS. This brief analysis will assess this meeting in the context of recent developments and future expectations.

Setting the Scene

Implementation of the MLS has yielded mixed results. Although it has successfully facilitated millions of exchanges of plant genetic resources for food and agriculture (PGRFA), mainly to enable public agricultural research, and has provided support required for PGRFA utilization, it has not succeeded in generating and sharing monetary benefits. The Treaty’s Benefit-sharing Fund has been operating on the basis of donor country voluntary contributions. The first user-based payment realized since the Treaty’s entry into force took place in June 2018, and concerned the commercialization of vegetable varieties not included in the MLS; the payment was made on the basis of national legislation, which made the use of the SMTA mandatory for all PGRFA. Therefore, while it was certainly a reason for celebration, it can safely be considered an exception to the rule.

Sharing of the benefits arising from commercialization remains a major target mainly for developing countries, which have historically seen their resources exchanged freely for research and development purposes, while access to the product that incorporates them is restricted due to intellectual property rights. To address this gap, the Working Group was established to focus on user-based benefit-sharing. To increase efficiency of the system and predictability of finances, the Group decided to elaborate a subscription system allowing for advance payments. As mandated by the Governing Body, it also initiated discussions on expanding the list of crops in the MLS. The challenges for the Working Group are many, though, and range from building trust and agreeing on the principles of the system to devising legal technicalities.

Where We Are

A number of developments took place since the seventh meeting of the Governing Body, held in October-November 2017, in Kigali, Rwanda, which extended the Working Group’s mandate. Co-Chairs Amb. Hans Hoogeveen and Javad Mozafari

led a number of informal consultations with negotiators and stakeholders to share ideas on how to structure and advance the process. As many participants noted, these consultations were valuable as a frank exchange of views and point of inspiration, in preparation for the Working Group meeting.

Still, in Rome the Working Group realized that it needs to address a triple challenge before it can reach agreement. First, a fundamental, principled division remains between parties that want to see flows of benefits before expanding the list of crops in the MLS and those that would only amend the SMTA if MLS coverage is expanded in parallel. Questions related to digital sequence information (DSI) make this division even deeper. Developing countries want to ensure sharing of the benefits that arise from DSI use, while developed countries express concerns on whether the Treaty’s scope can include data.

It is still to be decided whether and how DSI can be accommodated within the Treaty system, but developing, and some developed, countries acknowledge that benefits arising from the use of DSI resulting from MLS material need to be shared through the Treaty system.

While participants were optimistic that such a contentious topic as DSI is on the table, the reality is that they made no progress on this issue. While some parties were more willing to discuss ways to address DSI in the SMTA than in the past, they were nonetheless hesitant to put forward positions that would affect the ongoing discussions under the Convention on Biological Diversity (CBD) and Nagoya Protocol on ABS. As one seasoned participant noted, when all fora are at an impasse, someone must take the lead. Due to its flexible mandate, the Working Group is uniquely positioned to provide concrete suggestions, which might also inspire larger bodies and allow for progress both within and outside the Treaty.

Second, the revision of the SMTA requires both imaginative and legally accurate thinking in relation to the Treaty and the details of its contractual clauses. While the meeting did not successfully negotiate concrete outcomes in relation to specific clauses, several participants welcomed the constructive spirit and open discussion that provided opportunities for mutual learning. In this regard, challenging topics were spelled out for the first time as they await future consideration, such as the legal status of PGRFA *in situ*, and links between upfront payments under the envisaged subscription system and the Treaty’s requirement for monetary benefit-sharing from commercialization. At the same time, the majority agreed to work on provisions calling for mandatory benefit-sharing payments only, with exemptions for small-scale users, to ensure more predictable funding of the system.

Third, amidst historical injustices concerning use of genetic resources and global agricultural development and an international environment that does not favor sharing, a series of trust-building measures need to be devised to build a process that accommodates all and allows for solutions to be found. In this regard, as a Working Group participant noted, a growth plan can assist with providing clear, procedural steps in that direction.

Where We Are Going

The next meeting of the Working Group is scheduled for June 2019. Until then, as many underscored, much work needs to be done both at the technical and the trust-building level to allow for regional consultations, better communication of the Treaty framework at the national level, and better understanding of the needs of the different users of the Treaty system, which range from smallholder farmers to public researchers and commercial seed companies. This work can prepare the ground for more

politically-charged discussions at the next Working Group meeting on controversial issues, such as payment rates for benefit-sharing, the expansion of Annex 1, and benefit-sharing from DSI. The fast-approaching UN Biodiversity Conference, to be held in November 2018 in Sharm El Sheikh, Egypt, will certainly provide additional opportunities for deliberation.

Upcoming Meetings

CFS 45: The 45th session of the FAO Committee on World Food Security (CFS) will hold discussions on policy convergence on food security and nutrition in the context of the 2030 Agenda, convene a Global Thematic Event on the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, and celebrate World Food Day. **dates:** 15-19 October 2018 **location:** Rome, Italy **contact:** CFS Secretariat **email:** cfs@fao.org **www:** <http://www.fao.org/cfs/home/plenary/cfs45/en/>

UPOV Council 52: The 52nd meeting of the Council of the International Union for the Protection of New Varieties of Plants (UPOV) is expected to address legislative, administrative, and technical matters. **date:** 2 November 2018 **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/>

African Ministerial Summit on Biodiversity: Egypt, in collaboration with the CBD Secretariat, the African Union, the African Ministerial Conference on the Environment, and other partners, will convene an African Ministerial Summit on Biodiversity, prior to the UN Biodiversity Conference. **date:** 13 November 2018 **location:** Sharm El-Sheikh, Egypt **contact:** CBD Secretariat **phone:** +1-514-288- 2220 **fax:** +1-514-288-6588 **email:** secretariat@cbd.int **www:** <https://www.cbd.int/meetings/COP-14-AFR-HLS>

2018 UN Biodiversity Conference: The 14th meeting of the Conference of the Parties to the Convention on Biological Diversity (CBD), the ninth Meeting of the Parties to the Cartagena Protocol on Biosafety and the third Meeting of the Parties to the Nagoya Protocol on Access and Benefit-sharing are expected to address a series of issues related to implementation of the Convention and its Protocols. A High-level Segment will be held from 14-15 November. **dates:** 17-29 November 2018 **location:** Sharm el-Sheikh, Egypt **contact:** CBD Secretariat **phone:** +1-514-288-2220 **fax:** +1-514-288- 6588 **email:** secretariat@cbd.int **www:** <https://www.cbd.int/conferences/2018>

55th Meeting of the GEF Council: The Council is the main governing body of the Global Environment Facility (GEF). It meets twice annually to develop, adopt, and evaluate the operational policies and programmes for GEF-financed activities. It also reviews and approves the work programme (projects submitted for approval). **dates:** 17-20 December 2018 **location:** Washington D.C., US **contact:** GEF Secretariat **email:** <https://www.thegef.org/contact> **www:** <http://www.thegef.org/council-meetings/>

Third Meeting of the ITPGRFA Compliance Committee: The Compliance Committee of the ITPGRFA will address implementation- and compliance-related matters. **dates:** 31 January - 1 February 2019 **location:** Rome, Italy **contact:** ITPGRFA Secretariat **phone:** +39-6-57053441 **fax:** +39-6-57053057 **email:** pgrfa-treaty@fao.org **www:** <http://www.fao.org/plant-treaty/meetings/meetings-detail/en/c/1099128/>

CGRFA 17: The 17th regular session of the Commission on Genetic Resources for Food and Agriculture will address a range of issues related to its Multi-year Programme of Work. **dates:**

18-22 February 2019 **location:** Rome, Italy **contact:** CGRFA Secretariat **phone:** +39-6-570-54981 **fax:** +39-6-570-53152 **email:** cgrfa@fao.org **www:** <http://www.fao.org/cgrfa/>

Ninth Meeting of the ITPGRFA Working Group to Enhance the Functioning of the MLS: The Working Group will continue its deliberations on the revision of the SMTA and other issues within its mandate. **dates:** 17-21 June 2019 **location:** Rome, Italy **contact:** ITPGRFA Secretariat **phone:** +39-6-57053441 **fax:** +39-6-57053057 **email:** pgrfa-treaty@fao.org **www:** <http://www.fao.org/plant-treaty/meetings/>

Eighth Session of the ITPGRFA Governing Body: The Governing Body will review the progress made in the Working Group as well as the implementation of the Treaty. The session will be preceded by two days of regional and inter-regional consultations and other related events. **dates:** 11-16 November 2019 **location:** Rome, Italy **contact:** ITPGRFA Secretariat **phone:** +39-6-57053441 **fax:** +39-6-57053057 **email:** pgrfa-treaty@fao.org **www:** <http://www.fao.org/plant-treaty/meetings/>

For additional upcoming events, see <http://sdg.iisd.org/>

Glossary

ABS	Access and benefit-sharing
BSF	Benefit-sharing Fund
CBD	Convention on Biological Diversity
CGRFA	FAO Commission on Genetic Resources for Food and Agriculture
COP	Conference of the Parties
DSI	Digital sequence information
FAO	Food and Agriculture Organization of the UN
GB	Governing Body
GRULAC	Latin American and Caribbean Group
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
MLS	Multilateral System
PGRFA	Plant genetic resources for food and agriculture
SMTA	Standard Material Transfer Agreement