

THIRD SESSION OF THE GOVERNING BODY OF THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE: 1-5 JUNE 2009

The third session of the Governing Body (GB 3) of the International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty or ITPGR) opens today and will continue until 5 June 2009 in Tunis, Tunisia. The meeting will address: procedures and operational mechanisms to promote compliance and address issues of non-compliance; implementation of the funding strategy; the business plan of the Governing Body; the relationship between the Governing Body and the Global Crop Diversity Trust; implementation of the Treaty's Multilateral System (MLS) of Access and Benefit-sharing (ABS); procedures for the Third Party Beneficiary; implementation of Article 6 (Sustainable Use of Plant Genetic Resources); implementation of Article 9 (Farmers' Rights); the relationship between the Governing Body and the FAO Commission on Genetic Resources for Food and Agriculture (CGRFA); and the work programme and budget for 2010/2011.

A BRIEF HISTORY OF THE ITPGR

Concluded in the framework of 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 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 120 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 principle was subsequently subjected to "the sovereignty of States over their plant genetic resources," according to FAO

Resolution 3/91. In April 1993, the CGRFA decided that the IU should be revised to be in harmony with the newly adopted 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. From 1999-2001, a contact group consisted 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 (IPRs) 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. CGRFA's sixth extraordinary session (June-July 2001, Rome, Italy) attempted to conclude negotiations, but delegates did not reach agreement on the definitions of "PGRFA" and "genetic material," the application of IPRs to materials in the MLS, the new treaty's relationship with other international agreements, and the list of crops to be included in the MLS. The session adopted the text and transmitted outstanding issues to the FAO Council. 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: As part of the interim arrangements, CGRFA, acting as the ITPGR Interim Committee, convened to: prepare draft rules of procedure and draft financial rules for the ITPGR Governing Body, and a budget proposal; propose procedures for compliance; prepare draft agreements to be signed by the IARCs and the Governing Body; draft a standard material transfer agreement (MTA) for facilitated access to material in the MLS, including terms for commercial benefit-sharing; and initiate cooperative arrangements with the CBD Conference of the Parties (COP).

The Interim Committee held two meetings (October 2002 and November 2004, Rome, Italy), where it adopted its rules of procedure and terms of reference for intersessional consideration of the rules of procedure and financial rules for the Governing Body, procedures for compliance and the terms of the standard MTA. An open-ended intersessional working group on the rules of procedure and financial rules of the Governing Body, the funding strategy and procedures for compliance (December

2005, Rome, Italy) revised these items and prepared a draft resolution on compliance, for consideration by the first meeting of the Governing Body. An expert group on the standard MTA (October 2004, Brussels, Belgium) considered options for the terms of the standard MTA and its 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 standard MTA. 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 legal person representing the Governing Body, as a Third Party Beneficiary, as part of the MTA to monitor its execution. The second meeting (April 2006, Alnarp, Sweden) agreed on a draft standard MTA 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 meeting of the Governing Body.

ITPGR GB 1: The first session of the ITPGR Governing Body (June 2006, Madrid, Spain) adopted a standard MTA and the funding strategy. The standard MTA 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 the alternative payments scheme. The Governing Body 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; a model agreement with the IARCs of the CGIAR and other international institutions; and the budget and work programme for 2006/07.

ITPGR GB 2: The second session of the ITPGR Governing Body (October-November 2007, Rome, Italy) addressed a series of items, including implementation of the funding strategy, the 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.

INTERSESSIONAL HIGHLIGHTS

ADVISORY COMMITTEE ON THE FUNDING

STRATEGY: The Advisory Committee convened twice (16-17 October 2008, Rome, Italy and 12-13 March 2009, Geneva, Switzerland). The Committee drafted information and reporting requirements under the funding strategy and a strategic plan for the implementation of the strategy's benefit-sharing fund, as well as decision elements pertaining to the adoption of these draft texts, for consideration and adoption by GB 3.

35TH FAO CONFERENCE: The 35th FAO Conference (18-21 November 2008, Rome, Italy) decided that "the statutory bodies and conventions will be strengthened, enjoying more financial and administrative authority within the framework of FAO and a greater degree of self-funding by their Members."

THIRD PARTY BENEFICIARY COMMITTEE: The Committee held two meetings (24-25 November 2008 and 26-27 March 2009, Rome, Italy), where it drafted: procedures for the operation of the Third Party Beneficiary; operations of the Third Party Beneficiary; and an enabling resolution. The Committee also proposed amendments to the financial rules providing for the establishment of the Third Party Beneficiary operating reserve within the core administrative budget; recommended the establishment of operational guidelines for the amicable dispute settlement and mediation phases; and agreed on the information that the Third Party Beneficiary would require to carry out its roles and responsibilities.

SVALBARD GLOBAL SEED VAULT: The opening ceremony of the Svalbard Global Seed Vault was held on 26 February 2008. An international seminar on the occasion of its first anniversary was held on 26 February 2009 on "Frozen Seeds in a Frozen Mountain – feeding a warming world."

WIPO IGC: The 12th session of the Intergovernmental Committee on Traditional Knowledge, Genetic Resources and Folklore (IGC) of the World Intellectual Property Organization (WIPO) (25-29 February 2008, Geneva, Switzerland) reached a compromise agreement on steps for future work, which called for the Secretariat to prepare separate documents on international protection for traditional knowledge and for traditional cultural expressions/expressions of folklore, including a gap analysis, and to re-issue documents on genetic resources for "full in-depth discussion" at the 13th session. The IGC's 13th session (13-17 October 2008, Geneva, Switzerland), however, ended with no agreement, due to disagreement on two competing proposals on intersessional work. Substantive ITPGR-related issues included the development of a guide for contractual practices for ABS contracts, disclosure requirements for genetic resources in patent applications, the legal protection of traditional knowledge, and patent information systems as sources of information on new inventions utilizing genetic resources.

CBD ABS NEGOTIATIONS: The sixth meeting of the CBD Working Group on ABS (21-25 January 2008, Geneva, Switzerland) proceeded with the elaboration and negotiation of an international regime on ABS, under the co-chairmanship of Fernando Casas (Colombia) and Timothy Hodges (Canada). Discussions focused on the main components of the international regime, including fair and equitable sharing of benefits, access to genetic resources, compliance, traditional knowledge and genetic resources, and capacity building. The Working Group made considerable progress in producing a short and concise working document on the international regime, consisting of sections on the main components and lists of items "to be further elaborated with the aim of incorporating them in the international regime" in case there was agreement in principle, or "for further consideration," in case of disagreement or need for further clarification. CBD COP 9 (19-30 May 2008, Bonn, Germany) adopted a roadmap for continuing ABS negotiations, ensuring that three ABS Working Group and three expert group meetings will take place before the 2010 deadline for completion of negotiations.

The seventh meeting of the Working Group on ABS (2-8 April 2009, Paris, France) focused on operational text on the objective, scope, compliance, fair and equitable benefit-sharing, and access. The Working Group encountered several procedural obstacles, most of which related to the structure of the negotiating document agreed upon at ABS 6. Discussions on the ITPGR and application of its MLS were held with regard to potential exemptions from the scope of the regime.

ITPGR GB 3 HIGHLIGHTS: MONDAY, 1 JUNE 2009

Delegates to the third session of the Governing Body (GB 3) of the International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty or ITPGR) met in plenary throughout the day, to hear keynote speeches and opening and regional statements, address organizational matters, and begin discussions on outstanding financial rules and compliance.

PLENARY

OPENING: GB Chair Modesto Fernández Díaz-Silveira (Cuba) welcomed delegates and thanked the government of Tunisia for hosting the meeting and showing their commitment to the Treaty.

Afioga-Taua Tavaga Kitona Seuala, Minister of Agriculture of Samoa, presented on the importance of agriculture to Pacific Islands and the need to protect biological diversity to ensure food security, especially in light of climate change and natural disasters. He said that the region's significant diversity is not enough to deal with future challenges, and welcomed access to global diversity through ratification of the ITPGR. He pointed to the work of the Centre for Pacific Crops and Trees hosted by the Secretariat of the Pacific Community (SPC) and signed an agreement with FAO to place material in the Centre's collection in the Treaty's Multilateral System (MLS).

Efrain Figueroa, Vice Minister of Agriculture of Honduras, stressed the need to strengthen the processes of conservation and sustainable use of plant genetic resources for food and agriculture (PGRFA), calling on parties to act in harmony with each other and on developed countries to provide financial resources.

Alicia Crespo Pazos, Spain's Ministry of Environment, Rural and Marine Affairs, invited parties to contribute to the funding strategy's benefit-sharing fund as a key element of the Treaty, and announced Spain's contribution of 3 million Euros.

A video presented how the Treaty connects farmers, researchers and donors globally through the exchange of genetic material and benefit-sharing. It was noted that over 440,000 accessions to the MLS occurred in one year, and some 300 proposals were submitted for small-scale projects to support local farmers.

Cinzia Scaffidi, Slow Food, Italy, noted recent G8 statements recognizing the role of local communities in promoting food security. She alerted delegates of the need to educate consumers to counter the erosion of genetic resources and food cultures.

Jean Beigbeder, Pro-Maïs, France, stressed that facilitated access to plant genetic resources is key to creating improved varieties and vital for food security, and highlighted that they made the first private sector contribution to the MLS, consisting of 500 accessions from maize populations and lines.

Abdelmajid Labidi, Tunisian Union of Agriculture and Fishing, for the International Federation of Agricultural Producers, stressed farmers' contribution to food security and biodiversity protection, and called for their involvement in decision making and for universal recognition of their right to save, use and exchange seeds.

Chair Fernández then declared the session open and presented his report (IT/GB-3/09/3). He highlighted the Treaty's importance for adapting agriculture to climate change and said that the lack of necessary financial resources hampers its implementation. He announced that on Sunday, 31 May 2009, the Bureau approved the first eleven projects under the benefit-sharing fund, demonstrating that benefit-sharing is a reality.

Presenting his report (IT/GB-3/09/4), ITPGR Secretary Shakeel Bhatti said the Treaty heeds the call for a new multilateralism based on global public goods to address the inter-related crises of food, climate and energy, by setting up an MLS that covers more than 80% of our foods from plants and is a key tool for climate change adaptation. He described how the MLS has been implemented over the past 18 months including through the standard material transfer agreement (SMTA), which he said requires revisions to overcome legal and technical uncertainties. He raised concerns about the Treaty's financial stability and said the budget presented is a minimum one that ensures operationalization of core tasks. He stressed that the ITPGR serves as a model to various international forums, and can put agriculture back on the international policy map.

Abdessalem Mansour, Tunisia's Minister of Agriculture and Water Resources, stressed his country's commitment to PGRFA conservation and utilization, and to the full implementation of the ITPGR. He highlighted that Tunisia has managed to preserve crop biodiversity while ensuring intellectual property protection for new varieties, including through international cooperation and the establishment of a national genebank in 2007.

Modibo Traoré, FAO Assistant Director-General, expressed satisfaction with record progress made under the Treaty and with the innovative governance model it provides. He urged delegates to accelerate resource mobilization to avoid the risk of undermining implementation of the Treaty.

ORGANIZATIONAL MATTERS: Delegates adopted the agenda and timetable (IT/GB-3/09/1 Rev.1 and IT/GB-3/09/2); elected Campbell Davidson (Canada) as Rapporteur of the

meeting; and established a credentials committee, as well as a budget committee, co-chaired by François Pythoud (Switzerland) and a G-77/China representative to be nominated on Tuesday. Noting that the budget committee will need to reach consensus on the work programme and budget, Chair Fernández said it will be open to all delegations but only parties will have decision-making power.

REGIONAL STATEMENTS: Ecuador, for G-77/CHINA, said the Treaty was more than the SMTA and called for transparent implementation and the meeting of funding commitments by increasing voluntary contributions to the core budget and agreeing to base these on an indicative scale. She requested daily updates in plenary by the budget committee and asked to postpone work on compliance until GB 4. Australia, for the SOUTHWEST PACIFIC, disagreed on postponing discussions on compliance, noting it had already been postponed from GB 2. Uruguay, for the LATIN AMERICA AND THE CARIBBEAN GROUP (GRULAC), said that equitable benefit-sharing and financing were required for the Treaty to be sustainable. Belgium, for the EUROPEAN REGIONAL GROUP, stressed that all its members want to further promote implementation and are committed to working constructively.

Canada, for NORTH AMERICA, underscored that the US fully supports the objectives of the ITPGR and said the Obama administration has recommended Senate action on the Treaty. He highlighted Canada's contribution to the Treaty's core budget and announced a voluntary contribution to the benefit-sharing fund. Indonesia, for ASIA, offered to host GB 4 in 2011. Egypt, for the MIDDLE EAST, supported the establishment of a reliable and stable funding strategy and stressed the need to: build capacity in all countries for implementation; support plant breeding programmes; and involve all stakeholders. Kenya, for the AFRICAN GROUP, noted that lack of funding had slowed progress on the Treaty's implementation in the region, and indicated that the balance between access and benefit-sharing remains skewed towards the former.

The INTERNATIONAL PLANNING COMMITTEE FOR FOOD SOVEREIGNTY, on behalf of civil society, emphasized that implementation of farmers' rights is critical to addressing the world's food, climate change, energy and economic crises. They put forward proposals including for parties to ensure the rights of small-scale farmers, indigenous peoples and pastoralists to protect farming social systems and cultures, and commit to biennial reporting on the state of the world's farmers and farmers' rights.

FINANCIAL RULES OF THE GOVERNING BODY: The Secretariat introduced the item (IT/GB-3/09/5) and noted that outstanding matters concern whether parties' voluntary contributions will be based on an indicative scale. He highlighted that parties' contributions to date are in line with the UN indicative scale and explained that the UN Joint Inspection Unit report on voluntary contributions has found that use of this scale has helped to improve predictability and adequacy of resources, and sustainability of programme delivery.

The G-77/CHINA supported that contributions be based on an indicative scale, stressing that these would remain voluntary. INDIA suggested that an indicative scale would be better for both the Treaty and the parties, bringing certainty and predictability to budget planning. SWITZERLAND and NORWAY also supported using an indicative scale, adding that this would strengthen the Treaty's independence from FAO. CANADA preferred voluntary contributions without an indicative scale. The Czech Republic, for the EU and TURKEY, asked that the financial rules be dealt with under the agenda item on implementation of the MLS. Pointing to the majority in support of an indicative scale, the ETC GROUP supported

adopting it, thereby putting in place the key building block for sustainable financing. FRANCE stressed that the brackets around the two existing options could not be removed unless there was unanimity.

Supporting the G-77/CHINA position, the AFRICAN GROUP suggested establishing a contact group on the issue, while SWITZERLAND proposed suspending discussions until the end of the week, when further voluntary contributions will be announced. CAMEROON suggested building consensus through informal consultations. The EU then proposed deferring consideration of this issue until GB 4. Chair Fernández suspended discussions to allow for informal consultations among regional groups.

COMPLIANCE: The Secretariat introduced the draft procedures and operational mechanisms to promote compliance (IT/GB-3/09/06 Rev.1) and presented documents tabled and decisions taken in previous sessions of the GB recommending that a contact group be established at this session.

The G-77/CHINA, supported by the AFRICAN GROUP, requested deferring this issue to a later GB session, noting it was premature to address it when there is a lack of resources to ensure proper implementation of the Treaty. The EUROPEAN REGIONAL GROUP called for implementing the GB 2 decision to set up a contact group at this session, and noted the compliance committee should be small and composed of technical and legal experts who serve in their personal capacity. INDIA stressed that the aim of compliance procedures should be to formulate responses and correct non-compliance. The SOUTHWEST PACIFIC and SWITZERLAND also noted that the establishment of a contact group on compliance was mandated by GB 2 and could not be postponed. The G-77/CHINA remarked that GB 2 had decided to establish a contact group "as appropriate," which, in their view, is not the case here, and Chair Fernández suspended discussions to allow for informal consultations.

FUNDING STRATEGY IMPLEMENTATION: The Secretariat introduced the item and reported on actions undertaken since GB 2, in particular the completion of the first project cycle under the benefit-sharing fund (IT/GB-3/09/8 Rev.1). The Secretariat noted the number and quality of proposals received and awarded certificates to representatives of eleven projects approved for funding, as listed in IT/GB-3/09/Inf.11. Discussions will resume on Tuesday.

IN THE CORRIDORS

Arriving in Tunisia, many delegates commented that the ITPGR Secretariat had mounted a tireless campaign to facilitate implementation of the Treaty, overcoming impressive obstacles on the way, not unlike Hannibal on his epic journey from Carthage to Rome. The announcement of the first eleven projects to be funded under the benefit-sharing fund was taken as further proof of a job well done. Yet many wondered whether such an effort could be sustained in the absence of long-term financial commitments. A heated afternoon discussion on whether parties' voluntary contributions should be based on an indicative scale or not, coupled with developing countries' reluctance to discuss compliance in the absence of commitments from developed countries on additional financial resources, made it clear that funding issues would take center stage at this session. Meanwhile, rumor had it that developed country regional groups still need to bridge internal divides regarding the provision of increased financial support towards the Treaty's implementation. As delegates broke for the evening, it was evident that a strategic plan of attack is needed to ensure that clear directions for the next two years of campaigning are brought back to Rome from Carthage.

ITPGR GB 3 HIGHLIGHTS: TUESDAY, 2 JUNE 2009

Delegates to the third session of the Governing Body (GB 3) of the International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty or ITPGR) met in plenary to address implementation of the funding strategy. Following a long break for consultations and a meeting of a Friends of the Chair group on establishment of contact groups on the funding strategy and/or compliance, a contact group on the funding strategy met in the evening.

PLENARY

FUNDING STRATEGY IMPLEMENTATION: Bert Visser (the Netherlands), Co-Chair of the *ad hoc* advisory committee on the funding strategy, presented the Co-Chairs' report (IT/GB-3/09/7 and App. 2), consisting of a strategic plan for implementation of the benefit-sharing fund, an elaborated Annex 4 of the funding strategy on information and reporting requirements, and a draft decision. He remarked that a strategic plan was necessary to raise voluntary contributions to the benefit-sharing fund until mandatory payments to the multilateral system (MLS) under the standard material transfer agreement materialize. He suggested focusing discussions on the major policy elements of the plan, namely: the financial objective of US\$116 million over five years; having parties as major donors; establishing a committee on the funding strategy to guide implementation of the strategic plan; selecting goodwill ambassadors; and resource allocation.

Brazil, for GRULAC, stressed the need to prioritize the benefit-sharing pillar of the Treaty and expressed disappointment at the slow pace of resource mobilization and implementation of the funding strategy. He welcomed the draft strategic plan, and urged adoption of the US\$116 million objective. Iran, for the MIDDLE EAST, stressed that lack of resources hampers implementation, and said that the funding strategy must be transparent and based on concrete and predictable pledges. He supported approaching all economic sectors when fundraising. Australia, for the SOUTHWEST PACIFIC, supported the draft strategic plan. SWITZERLAND said the strategic plan focused on fundraising and should also include alternative ways for securing contributions to the benefit-sharing fund.

Belgium, for the EUROPEAN REGIONAL GROUP (ERG), recalled financial contributions made by ERG members. She welcomed the annex on information and reporting

requirements, and stated that the ERG was prepared to discuss the establishment of an intersessional committee on the funding strategy. CANADA and ECUADOR supported the continued work, on a temporary basis, of the advisory committee on the funding strategy.

The ERG, the SOUTHWEST PACIFIC, SWITZERLAND and INDIA supported establishment of a contact group, and SWITZERLAND proposed that the advisory committee Co-Chairs also chair the contact group. Supported by the SOUTHWEST PACIFIC and the ERG, SWITZERLAND urged delegates to also set up a contact group on compliance, since establishing a compliance mechanism together with a funding strategy would demonstrate to donors parties' commitment to Treaty implementation. Delegates then held a lengthy discussion on whether contact groups should be established, with many pointing to difficulties for small delegations. The MIDDLE EAST said there should not be three contact groups at the same time, and called for prioritization.

At the request of CAMEROON and CANADA, the Secretariat presented draft terms of reference (TORs) for the proposed contact group on the funding strategy, stating that the group would: be regionally representative and open-ended; work on the basis of the documents tabled for this item; discuss policy elements of the strategic plan and additional innovative funding mechanisms; and present proposals for a draft decision to plenary. CANADA and SWITZERLAND suggested discussing only the policy elements in the advisory committee Co-Chairs' report and the Secretariat report (IT/GB-3/09/7 and 8), and drafting a decision for plenary's consideration. GRULAC suggested welcoming the draft strategic plan as it stands, and restricting discussions to the draft decision, with the MIDDLE EAST also calling for discussion on the annex on information and reporting requirements.

ANGOLA and CAMEROON proposed that the contact group consider only the draft decision including elements on: resource allocation; strategic plan commitments for the implementation of the benefit-sharing fund; and the need for goodwill ambassadors. The ERG expressed willingness to discuss the draft decision. SWITZERLAND added that he will not accept establishment of a contact group on the funding strategy unless a contact group on compliance is also established. BRAZIL, supported by IRAN, opposed making the creation of one contact group contingent on the establishment of another, noting that compliance is entirely dependent on the adequate funding of the Treaty, which should be discussed first.

Chair Modesto Fernández (Cuba) noted that there was agreement “in principle” on the establishment of a contact group on the funding strategy and suspended discussions on its TORs until the afternoon plenary.

VIA CAMPESINA reminded delegates that industry continues to profit through research and seeds accessed through the MLS, while farmers are still waiting to see any benefits. He said that funds should go not only to *ex situ* collections and universities, but also to farmers and participatory structures. He concluded that if the Treaty cannot help farmers get the benefits owed to them, the MLS should not continue.

In the afternoon, discussion continued on the TORs for the contact group on the funding strategy. Ecuador, for the G-77/CHINA, supported focus on the draft decisions. The ERG, supported by the SOUTHWEST PACIFIC, agreed with the focus on the draft decisions, but reiterated the need to establish a contact group on compliance during the week, to continue work on the draft compliance procedures (IT/GB-3/09/6 Rev.1). The G-77/CHINA stressed the need to concentrate on the contact group on the funding strategy first, noting that this item needs to be finished before moving onto the following one, and YEMEN opposed the establishment of two parallel contact groups. Chair Fernández underscored the seriousness of the situation and the need for political will in order to guarantee funding and avoid a “disastrous situation.” Asking delegates to reconsider their stance and hold informal consultations, he called for a 30 minutes break. Following the break, a Friends of the Chair group was established, consisting of one representative per region, which convened immediately.

In the early evening, Chair Fernández reported on the outcome of the consultations, presenting a short compromise text indicating parties’ agreement to make their “best efforts” to put priority on the funding strategy in the evening, as a good basis for setting up the contact group on compliance to commence work the following day and for the contact group on the funding strategy to continue its work. BRAZIL, supported by the G-77/CHINA and IRAN, made clear that this text did not imply automatic agreement to establishing a contact group on compliance. Delegates agreed that Ana Berreta (Uruguay) and Bert Visser (the Netherlands), Co-Chairs of the advisory committee on the funding strategy, would co-chair the contact group on the funding strategy, consisting of two speakers per region, with the mandate of reviewing the draft decisions contained in the advisory committee Co-Chairs’ report and the Secretariat report.

CONTACT GROUP ON THE FUNDING STRATEGY

In the late evening, the contact group on the funding strategy convened. They agreed to a draft decision for the adoption of Annex 4 of the funding strategy regarding information and reporting requirements without amendments. Regarding a draft decision for the adoption of the strategic plan for implementation of the benefit-sharing fund, GRULAC tabled alternative text and proposed it be used as the basis for negotiations. Eventually, the contact group agreed to work on the basis of the draft decision included in the report of the advisory committee Co-Chairs (IT/GB-3/09/7).

Regarding preambular text, GRULAC suggested adding a reference to Article 18.3 of the Treaty, which provides that the Governing Body shall periodically establish targets for funding. The ERG suggested specifically referring to funding for priority activities, plans and programmes, but agreed to refer to Article 18.3 and also to include a reference to Article 18.4(f) (voluntary contributions), as suggested by NORTH AMERICA.

SWITZERLAND and NORWAY tabled a proposal for operative text, inviting parties to explore, with relevant stakeholders, the development of innovative mechanisms to allow for the provision of resources to the benefit-sharing fund on a regular and predictable basis. The text further refers to the Norwegian example of providing 0.1% of the annual value of seed sold in its territory to the fund. Discussions continued into the night.

IN THE CORRIDORS

The second day saw growing frustration among participants, with the afternoon plenary grinding to a halt after less than 30 minutes and not resuming until after 7:00 pm. The time was spent in a Friends of the Chair group in an attempt to untie the Gordian knot consisting of intertwined strands of financial rules, funding strategy and compliance. This was manifest in disagreement on whether to set up contact groups on these issues. Previous sessions of the Governing Body had found themselves at a similar impasse, where pulling on the various strands only served to tighten the knot, and the best solution became to defer consideration of compliance. This time participants acknowledged that “things are serious,” wondering “if we take so long to agree on process, what will happen when we touch substance?”

It almost looked as if the Friends of the Chair group had reached consensus, when the momentum was again disrupted by a developed country regional group requesting time for internal consultations. One participant stressed that developed countries needed to coordinate and “get their priorities straight” before negotiations could actually begin. Delegates finally agreed to launch into a contact group on the funding strategy late in the evening and to set up a contact group on compliance on Wednesday, although developing countries made it clear that its establishment would depend on progress being made on funding issues during the night.

This move reflected the earlier emerging consensus that unless there was a clear funding strategy and long-term funding commitments in place, the Treaty would be in jeopardy. Controversy over establishing the contact group on the funding strategy only arose when some tried to make its creation contingent upon the establishment of another one on compliance, their argument being that key elements of the funding strategy had already been put in place, while compliance has been postponed already twice. Others countered that compliance cannot be discussed unless funds are secured, and pointed to the continuing funding deficit of the Treaty. Some delegates explained that from a developing country perspective a compliance mechanism is mainly perceived as a mechanism to secure increased access, while funding commitments remain voluntary and slow to materialize. One delegate also pointed out that the Treaty itself spells out that implementation of commitments in developing countries will depend on effective allocation of funds by developed countries. A bold stroke, or a substantive influx of funding, might be required to cut the Gordian knot of competing interests in compliance and funding.

The current lack of funding seems to not only hamper negotiations and implementation of the Treaty’s core tasks, but also to prevent the benefit-sharing fund from coming to full fruition. A number of farmer organizations and other NGOs stressed that monies should flow directly to communities rather than to academic and public institutions as has occurred in the first set of project approvals, leaving some to wonder whether benefits would trickle down to the ground.

ITPGR GB 3 HIGHLIGHTS: WEDNESDAY, 3 JUNE 2009

Delegates to the third session of the Governing Body (GB 3) of the International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty or ITPGR) met in plenary to address the relationship with the Global Crop Diversity Trust, the draft business plan, implementation of the Multilateral System (MLS) and the Third Party Beneficiary. The budget committee met briefly in the evening, followed by a contact group on compliance.

PLENARY

FUNDING STRATEGY IMPLEMENTATION: Ana Berretta (Uruguay), Co-Chair of the contact group on the funding strategy, reported on Tuesday night's consultations. She said delegates made progress, and suggested that the group continue its work. Belgium, for the EUROPEAN REGIONAL GROUP (ERG), noted that good efforts were made, and that a contact group on compliance should also be established. Ecuador, for LATIN AMERICA AND THE CARIBBEAN GROUP (GRULAC), with IRAN, opposed establishing a compliance contact group until critical remaining issues are resolved. She suggested, and delegates agreed, to move on with the agenda in plenary and return to the funding strategy later.

GLOBAL CROP DIVERSITY TRUST: Margaret Catley-Carlson, Chairperson of the Executive Board of the Global Crop Diversity Trust, presented the report of the Trust (IT/GB-3/09/10), explained how the Trust acquires its funds and outlined the draft fund disbursement strategy (IT/GB-3/09/Inf. 8). She highlighted the Trust's support for capacity building, including development and provision of a genebank management system and a global accession level system, and explained the difference between endowment and project funding.

Many delegates expressed appreciation for the Trust's work and welcomed its report. Australia, for the SOUTHWEST PACIFIC, noted the significant achievements of the Trust, including its work on *ex situ* conservation and capacity building. The ERG welcomed further interaction between the Trust and the Governing Body, and highlighted the importance of activities for adaptation of crops to climate change. GRULAC underscored the need for: strengthening the communication mechanism and building capacity for documentation systems in the region; greater transparency in the allocation of resources; and reviewing the Trust's policies as to the provision of funds to non-parties. The AFRICAN GROUP underscored that the Governing Body should have a greater role in providing

policy guidance to the Trust. Canada, for NORTH AMERICA, supported the Trust's disbursement strategy, and continuous and transparent consultations between the Governing Body and the Trust. Iran, for the NEAR EAST, called for formalized communication between the Trust and the Treaty, and for the disbursement strategy to prioritize developing countries.

BRAZIL recalled that the Trust alone cannot cover the whole range of activities necessary to preserve crop genetic diversity, and urged parties and donors to re-establish a balance between the core budget of the Treaty, the benefit-sharing fund, and the Trust. NORWAY highlighted the importance of the Svalbard Global Seed Vault for food security in the climate change context. ANGOLA warned that, without funds, the Treaty risks being overshadowed by the Trust.

USC CANADA commended progress made by the Trust, but called on the global community to make funding of *ex situ* genebanks conditional on supporting on-farm *in situ* conservation. The INTERNATIONAL SEED FEDERATION gave examples of the seed sector's support to the Treaty and supported that all crops for food and agriculture, rather than Annex I crops only, be covered by the benefit-sharing fund.

BUSINESS PLAN: The Secretariat introduced the item (IT/GB-3/09/9 and Inf.12), noting that the draft business plan needs further elaboration for adoption at GB 4. Many delegates thanked Switzerland for hosting an informal meeting on the development of the business plan. The ERG supported the elements of the possible draft decision. GRULAC noted that the business plan has to be flexible and not become an obstacle to Governing Body decisions. The NEAR EAST and the AFRICAN GROUP prioritized completion of the funding strategy.

With regard to intersessional work, delegates discussed three proposals: to establish an *ad hoc* committee, as proposed by GRULAC but opposed by most; to request the Bureau and the Secretariat to develop the draft on the basis of further input from parties, as supported by many; or to set up a working group to communicate electronically, as proposed by Cameroon. The decision is pending.

MLS IMPLEMENTATION: The Secretariat introduced the item, including documents on: a review of the MLS implementation; an assessment of progress on the inclusion of plant genetic resources for food and agriculture (PGRFA) in the MLS; a review of implementation and operation of the standard material transfer agreement (SMTA); and a review of the implementation of the SMTA as used by the international agricultural research centres (IARCs) of the Consultative Group

on International Agricultural Research (CGIAR) for non-Annex I PGRFA (IT/GB-3/09/12, 13, 14, 15 and Inf.15). The Secretariat outlined short-term priorities, namely to document materials and exchange under the MLS, and to assist users in resolving legal and technical uncertainties in using the SMTA. He noted the limited information available on the inclusion of PGRFA by natural and legal persons, and on levels of payment under the SMTA, and suggested deferring these issues to GB 4.

Chair Modesto Fernández (Cuba) invited comments on, and parties submitted written amendments to, the draft resolutions contained in the documents. The ERG expressed its commitment to strengthening the MLS. GRULAC stressed that more human and financial resources are necessary. The AFRICAN GROUP stressed the need to include more collections in the MLS, including those held by the private sector. BRAZIL highlighted that the Brazilian Agricultural Research Corporation has made available a representative part of its collection of Annex I crops through the MLS.

On a draft resolution on MLS implementation (IT/GB-3/09/13), CANADA asked to add “consistent with Article 12.3(b)” to a paragraph on information systems documenting PGFRA, noting that such systems should not become tracking systems. The ERG and CANADA, opposed by ANGOLA, asked to delete a request for updating the Code of Conduct for Plant Germplasm Collecting and Transfer. CANADA suggested deleting a specific reference to the Joint Capacity-building programme, and the Cook Islands, for the PACIFIC REGION, with the AFRICAN GROUP, opposed.

On a draft resolution on inclusion of PGRFA in the MLS by natural and legal persons (IT/GB-3/09/12), GRULAC suggested that information on parties’ measures to encourage natural and legal persons to include PGRFA in the MLS be provided “according to national capacities.” The ERG noted that only three notifications by natural and legal persons had been received and, with CANADA, supported deferring the issue to GB 4. He suggested a number of revisions to allow for an effective assessment avoiding bureaucratic burden.

On a draft resolution on implementation and operation of the SMTA (IT/GB-3/09/14), the ERG pointed to lack of information and supported postponing the issue to no later than GB 5. CANADA added that the proposed *ad hoc* technical committee on the SMTA should have the mandate of addressing the issues identified in the first meeting of experts on the SMTA and that the Secretariat should not provide legal advice to parties.

On the experience of the IARCs with the SMTA (IT/GB-3/09/15 and Inf.15), the CGIAR reported that the use of the SMTA for Annex I and non-Annex I PGRFA has been largely positive, and noted that an intersessional mechanism to provide guidance on outstanding technical and legal questions would be appreciated. The ERG welcomed the CGIAR procedure of using only one SMTA for the transfer of Annex I and non-Annex I materials. BRAZIL noted that whenever reference is made to using the SMTA for non-Annex I PGRFA, the specification that they were collected before the entry into force of the Treaty should be included in the text.

THIRD PARTY BENEFICIARY: Javad Mozafari (Iran), Chair of the Third Party Beneficiary committee, presented the committee’s report (IT/GB-3/09/11 Rev. 1), highlighting: drafting of Third Party Beneficiary procedures and operations; proposed amendments to the financial rules providing for the establishment of the Third Party Beneficiary operating reserve within the core administrative budget; and information that the Third Party Beneficiary would require to carry out its roles and responsibilities. Noting that restriction on information or lack of financial resources would make it impossible for the Third Party

Beneficiary to exercise its rights in case of breach of an SMTA, the G-77/CHINA stressed that the committee report was adopted unanimously; called for its approval *en bloc*; and suggested that the budget committee consider the proposed amendments to the financial rules. The Czech Republic, for the EU, supported the draft Third Party Beneficiary procedures, but on the Third Party Beneficiary operations, he suggested bracketing a subparagraph detailing the information to be provided by the SMTA parties. SWITZERLAND supported the draft resolution on the Third Party Beneficiary operations and, with AUSTRALIA, supported the establishment of a Third Party Beneficiary operational reserve. ECUADOR expressed disappointment at certain delegates’ attempts to reopen results arrived at unanimously by the committee. CANADA said that North America had not been represented at the last session of the committee. Noting that violations would be rare and do not justify onerous requirements, he agreed with the ERG regarding the need for amendments.

Chair Fernández suggested adopting the procedures as proposed and reconsidering the operations on the basis of comments in plenary. He also suggested referring the proposed amendments to the financial rules to the budget committee. BRAZIL suggested the budget committee consider all outstanding issues regarding the financial rules.

ORGANIZATIONAL MATTERS: Regional groups made the following nominations for the Bureau: Cosima Hufler (Austria) for ERG; Mohd Shukur Nordin (Malaysia) for Asia; Marco Valicenti (Canada) for North America; Javad Mozafari (Iran) for the Near East; Mohamed Kharrat (Tunisia) for Africa; and Fiona Bartlett (Australia) for the Southwest Pacific. The GRULAC nomination is pending.

In the evening, the ERG presented a compromise in order to move negotiations forward: he proposed removing the brackets around the financial objective of US\$116 million for the funding strategy, on the understanding that: a contact group on compliance will convene the same evening following a brief budget committee meeting, and will work for at least two hours; the contact group on the funding strategy will meet on Thursday; and an informal group of experts will resolve the technical issues regarding the Third Party Beneficiary. Delegates accepted the compromise proposal and elected René Lefeber (the Netherlands) and Javad Mozafari (Iran) as Co-Chairs of the contact group on compliance.

IN THE CORRIDORS

Following Tuesday’s fireworks, Wednesday started off rather uneventfully, as delegates ably navigated through several issues on the agenda. Even the potentially explosive item of the Governing Body’s relationship with the Global Crop Diversity Trust failed to ignite. Delegates seemed content to welcome the “magnificent” work of the Trust and bask in its financial success rather than wrangle over control of the purse strings, as has happened in earlier sessions. Nonetheless, in the corridors some delegates remarked critically that a number of parties who had made significant donations to the Trust had not made any contributions to the Treaty’s core budget.

However, fireworks went off again as dusk settled over Tunis, with accusations of bad faith made over text on the Third Party Beneficiary, and for a tense moment it looked like the meeting might hang in the balance. However, when the regional groups returned for a late evening plenary, an olive branch was extended via a compromise proposal to remove the brackets around the US\$116 million objective of the funding strategy in return for establishing – finally – a contact group on compliance. As a happy delegate commented “Let the meeting begin!”

ITPGR GB 3 HIGHLIGHTS: THURSDAY, 4 JUNE 2009

Delegates to the third session of the Governing Body (GB 3) of the International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty or ITPGR) met in plenary to address the implementation of Article 6 (Sustainable Use of Plant Genetic Resources) and Article 9 (Farmers' Rights), the relationship with the Commission on Genetic Resources for Food and Agriculture (CGRFA), cooperation with other organizations, and the independent FAO evaluation. Contact groups on the funding strategy and on compliance, and the budget committee, as well as informal groups on the Third Party Beneficiary and implementation of the Multilateral System (MLS) met throughout the day and night.

A late night plenary adopted resolutions on: the funding strategy; the Third Party Beneficiary, including its procedures and operations; the business plan; cooperation with other organizations; relationship with the CGRFA; and farmers' rights. Following the closure of plenary after midnight, the contact group on MLS implementation and the budget committee met into the early morning hours of Friday.

PLENARY

ORGANIZATIONAL MATTERS: Plenary heard reports on Wednesday night's contact group meetings. François Pythoud (Switzerland), Co-Chair of the budget committee, reported that the group addressed the resource requirements of statutory and overhead expenditures for 2010/11 (IT/GB-3/09/21, Annex I). René Lefeber (the Netherlands), Co-Chair of the contact group on compliance, reported that the group had a limited mandate, and thus had proceeded with a first reading of the document allowing delegates to table new proposals. Delegates then held a lengthy discussion on the day's work schedule, with a number of developing countries insisting that the new text on compliance be translated before proceeding with negotiations. Following explanations by the Secretariat on the time needed for translation and requests by other developing countries to resolve the issue to allow for a meeting of the contact group on the funding strategy, delegates finally agreed to the original proposal to hold the meeting of the compliance contact group over lunch time.

MLS IMPLEMENTATION: Shakeel Bhatti, ITPGR Secretary, introduced a consolidated draft resolution. Delegates established an informal group to consider outstanding issues, which was later transformed into a contact group.

IMPLEMENTATION OF ARTICLE 6: The Secretariat introduced the item on implementation of Article 6 (Sustainable Use of Plant Genetic Resources) (IT/GB-3/09/16 and Inf. 10), and highlighted the work of the CGRFA on the second report on the State of the World's plant genetic resources for food and agriculture (PGRFA).

Belgium, for the EUROPEAN REGIONAL GROUP (ERG), highlighted the links between Article 6 and farmers' rights, and the work of the Global Crop Diversity Trust and CGRFA. Ecuador, for GRULAC, noted that the funding strategy will be crucial for work on sustainable use. Iran, for the NEAR EAST, underscored the need for building national research and breeding capacity to increase agricultural production in developing countries, and for returning new germplasm and improved material to the MLS. CANADA highlighted its new policy framework on sustainable use to ensure an environmentally sustainable agriculture sector.

The Philippines, for the ASIAN REGION, supported by NORWAY, stressed that the benefit-sharing fund should also support sustainable use through informal farmers' systems and on-farm conservation. BRAZIL requested increased international cooperation and collection of information from relevant stakeholders. Kenya, for the AFRICAN GROUP, said sustainable use is a pillar of the Treaty as it enhances diversity and food security. ETHIOPIA called for special emphasis on the role of small and subsistence farmers; MADAGASCAR for an integrated approach to assist with implementation of sustainable use; and KENYA for coordinated national legislation and harmonization. AUSTRALIA recognized the importance of sustainable agricultural industries, noting that farmers decide on crops according to market demand.

The GLOBAL COMMUNITY-BASED BIODIVERSITY CONSERVATION AND DEVELOPMENT NETWORK stressed food sovereignty and community-led approaches as the way out of the current food crisis, and called for a global fund to support farmers' sustainable use.

WORK PROGRAMME AND BUDGET: ITPGR Secretary Shakeel Bhatti presented the financial report (IT/GB-3/09/20 Rev.1), highlighting the disparity between the adopted core administrative budget and actual contributions received.

FARMERS' RIGHTS: The Secretariat introduced the item, highlighting the compilation of views on implementation of Article 9 (IT/GB-3/09/Inf. 6). GRULAC stressed the need for progress at the national level on: instruments for protection of traditional knowledge; identification of a national competent authority for farmers' rights; and incorporation of farmer organizations in advisory structures. The AFRICAN GROUP called for capacity building to implement farmers' rights. ECUADOR announced full recognition of farmers' rights in its new constitution. The ASIAN REGION called for amending existing seed legislation in line with farmers' rights, and supported stronger initiatives by the Secretariat to involve farmers in policy-making processes.

BRAZIL, supported by GRULAC and the AFRICAN GROUP, proposed that the Governing Body consider ways to support national efforts and presented a draft resolution.

CANADA disagreed that the Governing Body should provide assistance and, with AUSTRALIA, stressed that under the Treaty implementation rests with national governments. NORWAY said that the Governing Body should ensure full implementation of the Treaty including farmer's rights. The ERG agreed to work on a resolution and proposed a number of amendments.

BRAZIL then presented a revised draft, which was supported by GRULAC, the AFRICAN GROUP, the SOUTH WEST PACIFIC and the ERG, inviting parties to consider reviewing seed legislation to implement Article 9; encouraging continuing exchange of experiences; requesting the Secretariat to convene regional workshops; and appreciating the involvement of farmer organizations. SAUDI ARABIA wondered how the Governing Body could ask countries to change their seed laws. COSTA RICA stressed the need for Governing Body action to translate farmers' rights into operational mechanisms for their implementation. CANADA highlighted willingness to discuss seed legislation under Article 6, but not to include such a reference in a resolution on farmers' rights, and called for specifying the funding sources for the regional workshops.

The INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS (UPOV) said that the UPOV Convention foresees exemptions for breeders and subsistence farmers collecting seeds for use on their own farms and called for mutually supportive implementation with the ITPGR. The INTERNATIONAL SEED FEDERATION said that to ensure continued investment in breeding plant varieties "adequate protection against inadequate access" has to be provided and the intellectual property rights (IPRs) of breeders have to be respected. The ANDES ASSOCIATION stressed that indigenous peoples and farmers look to the Treaty to help them address challenges when seeking to protect their ancestral heritage and to secure fair and equitable benefit-sharing. The INTERNATIONAL COMMITTEE ON PLANNING FOR FOOD SOVEREIGNTY noted that benefit-sharing agreements fail to oblige IPR holders to respect the rights of farmers to save and exchange seeds. The GLOBAL COMMUNITY-BASED BIODIVERSITY CONSERVATION AND DEVELOPMENT NETWORK argued that the Treaty requires all parties to revise their legislation to recognise farmers' and breeders' collective rights. The LOCAL INITIATIVE FOR BIODIVERSITY RESEARCH AND DEVELOPMENT (Nepal) noted that the life of farmers is interlinked with seeds and farmers' participation must be ensured.

At midnight, plenary adopted the resolution as revised during informal consultations.

RELATIONSHIP WITH THE CGRFA: The Secretariat presented the item, including possible elements for a decision (IT/GB-3/09/17), highlighting progress in updating the report on the State of the World's PGRFA and the rolling Global Plan of Action. The AFRICAN GROUP stressed the need to define the relationship to avoid inconsistencies. CANADA expressed satisfaction with ongoing cooperation, and proposed that all sectoral matters concerning PGRFA, especially on the Treaty's supporting components, should be addressed by the Governing Body. The ERG stressed the importance of close collaboration to optimize potential synergies and, with CANADA, opposed requesting the CGRFA to update the Code of Conduct for Plant Germplasm Collecting and Transfer.

COOPERATION WITH OTHER ORGANIZATIONS: The Secretariat introduced the item (IT/GB-3/09/18). The CONVENTION ON BIOLOGICAL DIVERSITY (CBD) provided an update on the ongoing negotiations on access and benefit-sharing (ABS) and recent developments related to the Global Strategy for Plant Conservation. The ARAB ORGANIZATION FOR AGRICULTURAL DEVELOPMENT reported on how it coordinates Treaty implementation in Arab countries. The ERG stressed that the ITPGR should continue

enhancing collaboration with the CBD, especially on ABS negotiations, and recommended that the ITPGR Secretariat follow negotiations under UPOV, WIPO and WTO.

FAO EVALUATION: The Secretariat introduced the item (IT/GB-3/09/19). SWITZERLAND stressed that the Governing Body should express interest in the FAO reform process. AUSTRALIA proposed that the new Bureau ask FAO to present it with the reform's implications for the Treaty, and the ERG requested the issue be reviewed at GB 4. PAKISTAN and BRAZIL said increasing the Governing Body's administrative and financial authority may be premature for the Treaty.

CONTACT GROUP ON THE FUNDING STRATEGY

The contact group addressed the draft decision on the strategic plan for implementation of the benefit-sharing fund. Delegates discussed potential activities for the reconvened *ad hoc* advisory committee on the funding strategy, agreeing that the committee should address "in particular funds not under the direct control of the Governing Body." Delegates also agreed to engage goodwill ambassadors to increase public awareness of the fund, and to request the Secretary to engage fundraising services.

Delegates then considered the draft decision on the strategy's operationalization. They debated the list of developing countries eligible to apply to the fund and the selection of experts, and agreed that the Bureau oversee the next project cycle. They also agreed to GRULAC's proposal to specify that only Annex I material resulting from projects under the fund would be made available in the MLS. The contact group approved the decisions with no remaining brackets.

CONTACT GROUP ON COMPLIANCE

Delegates initiated negotiations on the basis of the draft procedures on compliance, which included new text and brackets introduced during deliberations on Wednesday night. Regarding the objective, delegates addressed language added by GRULAC that the mechanism shall promote compliance with "all" provisions of the Treaty, "in particular Articles 18, 11.3 and 12"; and by the ERG specifying that "such legal advice or assistance could include recommendations to the Governing Body concerning interpretation of the SMTA." Delegates agreed to simply refer to "all provisions" and delete other specifications.

Regarding the principles, delegates agreed to further specify that compliance procedures should be cost-effective and non-legally binding, and also referenced accountability and good faith. GRULAC proposed that the operation of the compliance procedures "shall take into account the capacities of contracting parties," to which NORTH AMERICA could not agree. The remaining regional groups supported inclusion of this wording in return for deletion of a paragraph referring to an adequate balance between developed and developing countries. Discussions resumed briefly in the late evening.

IN THE CORRIDORS

Thursday saw a marathon plenary session and so many contact and informal groups happening in parallel, that at times it was difficult to keep track of them all. In the end, the contact group on the funding strategy and the informal group on the Third Party Beneficiary reached consensus allowing a late-night plenary to adopt its first substantive resolutions. Agreement in the latter group was made possible due to the inclusion of a provision ensuring confidentiality of information provided to the Third Party Beneficiary. A number of delegates, still concerned that the meeting is running out of time to tie up all the loose ends, stand to be corrected by optimists predicting that "all will magically come together at the very end."

ENB SUMMARY AND ANALYSIS: The *Earth Negotiations Bulletin* summary and analysis of ITPGR GB 3 will be available on Monday, 8 June 2009 online at: <http://www.iisd.ca/biodiv/itpgrgb3/>

SUMMARY OF THE THIRD SESSION OF THE GOVERNING BODY OF THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE: 1-5 JUNE 2009

The third session of the Governing Body (GB 3) of the International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty or ITPGR) convened from 1-5 June 2009, in Tunis, Tunisia. Approximately 350 participants from parties and other governments, international, non-governmental and farmer organizations, and industry attended the session.

The meeting addressed: the outstanding financial rules of the Governing Body; procedures and operational mechanisms to promote compliance and address issues of non-compliance; implementation of the funding strategy; the business plan of the Governing Body; the relationship between the Governing Body and the Global Crop Diversity Trust; implementation of the Treaty's Multilateral System (MLS) of Access and Benefit-sharing (ABS); the Third Party Beneficiary; implementation of Article 6 (Sustainable Use of Plant Genetic Resources) and Article 9 (Farmers' Rights); the relationship between the Governing Body and the Food and Agriculture Organization's (FAO) Commission on Genetic Resources for Food and Agriculture (CGRFA); cooperation with other organizations; matters arising from the independent external evaluation of FAO; and the work programme and budget for 2010/2011.

Following two days of lengthy procedural discussions regarding the establishment of contact groups on the funding strategy and/or compliance, and the eventual agreement to establish both, the Governing Body managed to make good progress going through its heavy agenda. Delegates 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 to December 2014; a resolution on implementation of the MLS, including setting up an intersessional advisory committee on implementation issues; a resolution on farmers' rights; and procedures for the Third Party Beneficiary. They also adopted the work programme and budget for the next biennium; agreed to the urgent need to finalize the outstanding financial

rules at GB 4; and established intersessional processes to finalize compliance procedures by GB 4 and review the Standard Material Transfer Agreement (SMTA).

A BRIEF HISTORY OF THE ITPGR

Concluded in the framework of 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 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

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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 120 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 principle was subsequently subjected to "the sovereignty of States over their plant genetic resources," according to FAO Resolution 3/91. In April 1993, the 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. From 1999-2001, a contact group consisted 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 (IPRs) to materials in the MLS, financial resources, genetic materials held by the International Agricultural Research Centres (IARCs) of the Consultative Group on International Agricultural Research (CGIAR) and definition of key terms. The CGRFA's sixth extraordinary session (June-July 2001, Rome, Italy) attempted to conclude negotiations, but delegates did not reach agreement on the definitions of "PGRFA" and "genetic material," the application of IPRs to materials in the MLS, the new treaty's relationship with other international agreements, and the list of crops to be included in the MLS. The session adopted the text and transmitted outstanding issues to the FAO Council. 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.

As part of the interim arrangements, CGRFA, acting as the ITPGR Interim Committee, convened to: prepare draft rules of procedure and draft financial rules for the ITPGR Governing Body, and a budget proposal; propose procedures for compliance; prepare draft agreements to be signed by the IARCs and the Governing Body; draft a Standard Material Transfer Agreement (SMTA) for facilitated access to material in the MLS, including terms for commercial benefit-sharing; and initiate cooperative arrangements with the CBD Conference of the Parties (COP).

ITPGR INTERIM COMMITTEE: The Interim Committee held two meetings (October 2002 and November 2004, Rome, Italy), where it adopted its rules of procedure and terms of reference for intersessional consideration of the rules of procedure and financial rules for the Governing Body, procedures for compliance and the terms of the standard MTA. An open-ended intersessional working group on the rules of procedure and financial rules of the Governing Body, the funding strategy and procedures for compliance (December 2005, Rome, Italy) revised these items and prepared a draft resolution on compliance, for consideration by the first meeting of the Governing Body. An expert group on the standard MTA (October

2004, Brussels, Belgium) considered options for the terms of the standard MTA and its 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 standard MTA. 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 legal person representing the Governing Body, as a Third Party Beneficiary, as part of the MTA to monitor its execution. The second meeting (April 2006, Alnarp, Sweden) agreed on a draft standard MTA 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 meeting of the Governing Body.

ITPGR GB 1: The first session of the ITPGR Governing Body (June 2006, Madrid, Spain) adopted a standard MTA and the funding strategy. The standard MTA 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 the alternative payments scheme. The Governing Body 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; a model agreement with the IARCs of the CGIAR and other international institutions; and the budget and work programme for 2006/07.

ITPGR GB 2: The second session of the ITPGR Governing Body (October-November 2007, Rome, Italy) addressed a series of items, including implementation of the funding strategy, the 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 REPORT

On Monday, 1 June 2009, Governing Body Chair Modesto Fernández Díaz-Silveira (Cuba) welcomed delegates and thanked the government of Tunisia for hosting the meeting and for their commitment to the Treaty.

Afioga-Taava Tavaga Kitiona Seuala, Minister of Agriculture of Samoa, presented on the importance of agriculture to Pacific Islands and the need to protect biological diversity to ensure food security, especially in light of climate change and natural disasters. He pointed to the work of the Centre for Pacific Crops and Trees, hosted by the Secretariat of the Pacific Community and signed an agreement with FAO to place material from the Centre's collection in the MLS.

Efrain Figueroa, Vice Minister of Agriculture of Honduras, stressed the need to strengthen processes for conservation and sustainable use of plant genetic resources for food and agriculture (PGRFA), calling on parties to act in harmony with each other and on developed countries to provide financial resources.

Alicia Crespo Pazos, Spain's Ministry of Environment, Rural and Marine Affairs, expressed her concern regarding the financial situation of the Secretariat and the various funds under the Treaty, recalled parties' commitment to the Treaty, and announced Spain's contribution of 3 million Euros over four biennia.

A video presented how the Treaty connects farmers, researchers and donors globally through the exchange of genetic material and benefit-sharing. It was noted that over 440,000 accessions to the MLS occurred in one year, and some 300 proposals were submitted for small-scale projects under the benefit-sharing fund.

Cinzia Scaffidi, Slow Food, Italy, noted recent Group of 8 (G8) statements recognizing the role of local communities in promoting food security. She alerted delegates of the need to educate consumers to counter the erosion of genetic resources and food cultures.

Jean Beigbeder, Pro-Maïs, France, stressed that facilitated access to plant genetic resources is key to creating improved varieties and vital for food security, and highlighted that they made the first private sector contribution to the MLS, consisting of 500 accessions from maize populations and lines.

Abdelmajid Labidi, International Federation of Agricultural Producers, stressed farmers' contribution to food security and biodiversity protection, and called for their involvement in decision making and for universal recognition of their right to save, use and exchange seeds.

Chair Fernández then declared the session open and presented his report (IT/GB-3/09/3). He highlighted the Treaty's importance for adapting agriculture to climate change and said that the lack of necessary financial resources hampers Treaty implementation. He announced that on Sunday, 31 May 2009, the Bureau approved the first eleven projects under the benefit-sharing fund, demonstrating that benefit-sharing is a reality.

Presenting his report (IT/GB-3/09/4), ITPGR Secretary Shakeel Bhatti said the Treaty heeds the call for a new multilateralism based on global public goods to address the inter-related crises of food, climate and energy, by setting up an MLS that covers more than 80% of our foods from plants and is a key tool for climate change adaptation. He said the SMTA requires revisions to overcome legal and technical uncertainties. He raised concerns about the Treaty's financial stability and said the budget presented is a minimum one that ensures operationalization of core tasks. He stressed that the ITPGR serves as a model to various international fora, and can "put agriculture back on the international policy map."

Abdessalem Mansour, Tunisia's Minister of Agriculture and Water Resources, stressed his country's commitment to PGRFA conservation and utilization, and to the full implementation of the ITPGR. He highlighted that Tunisia has managed to preserve crop biodiversity while ensuring intellectual property protection for new varieties, including through international cooperation and the establishment of a national genebank in 2007.

Modibo Traoré, FAO Assistant Director-General, expressed satisfaction with record progress made under the Treaty and the innovative governance model it provides. He urged delegates to accelerate resource mobilization to avoid the risk of undermining implementation of the Treaty.

Ecuador, for Group of 77 and China (G-77/China), said the Treaty was more than the SMTA and called for transparent implementation and the meeting of funding commitments by increasing voluntary contributions to the core budget and agreeing to base these on an indicative scale. Uruguay, for the Group of Latin American and Caribbean States (GRULAC), said that equitable benefit-sharing and financing were required for the Treaty to be sustainable. Belgium, for the European Regional Group (ERG), stressed that all its members want to further promote implementation. Canada, for North America, underscored that the US fully supports the objectives of the ITPGR and said the Obama administration has recommended Senate action on the Treaty. He highlighted Canada's contribution to the Treaty's core budget and announced a voluntary contribution to the benefit-sharing fund. Indonesia, for the Asian Region, offered to host GB 4 in 2011. Egypt, for the Middle East, supported the establishment of a reliable and stable funding strategy and stressed the need to: build capacity in all countries for implementation; support plant breeding programmes; and involve all stakeholders. Kenya, for the African Group, noted that lack of funding had slowed progress on the Treaty's implementation in the region, and indicated that the balance between access and benefit-sharing remains skewed towards the former.

The International Planning Committee for Food Sovereignty, on behalf of civil society, emphasized that implementation of farmers' rights is critical to addressing the world's food, climate change, energy and economic crises. They put forward proposals including for parties to ensure the rights of small-scale farmers, indigenous peoples and pastoralists to protect farming social systems and cultures, and to commit to biennial reporting on the state of the world's farmers and farmers' rights.

ORGANIZATIONAL MATTERS: On Monday, delegates adopted the agenda and timetable (IT/GB-3/09/1 Rev.1 and IT/GB-3/09/2); elected Campbell Davidson (Canada) as Rapporteur of the meeting; and established a credentials committee and a budget committee. The meeting's Bureau included: Chair Modesto Fernández (Cuba), and Vice-Chairs Sugiono Moeljopawiro (Indonesia), Fiona Bartlett (Australia), Campbell Davidson (Canada), Hanaiya El-Itriby (Egypt), Catherine Mungoma (Zambia) and François Pythoud (Switzerland).

Following protracted discussions on process, relating to the establishment of contact groups on the funding strategy and/or compliance, on Wednesday evening the ERG presented a compromise in order to move negotiations forward, including removing the brackets around the financial objective of US\$116 million for the funding strategy, on the understanding that: a contact group on compliance will convene the same evening following a brief budget committee meeting, and will work for at least two hours; the contact group on the funding strategy will meet on Thursday; and a group of experts will resolve the technical issues regarding the Third Party Beneficiary. Delegates accepted the compromise proposal.

The Governing Body convened in plenary throughout the week. The contact group on the funding strategy met on Tuesday and Thursday, while the contact group on compliance met from Wednesday to Friday. The group on the Third Party Beneficiary met on Thursday, while one on MLS implementation met on Thursday and Friday.

This report summarizes the meeting's discussions and decisions on each agenda item.

FINANCIAL RULES OF THE GOVERNING BODY

On Monday, plenary discussed the financial rules of the Governing Body (IT/GB-3/09/5). Discussions centered on provision of funds for the Treaty (Rule V), with delegates debating whether parties' voluntary contributions will be based on an indicative scale or not, an outstanding issue since GB 1.

The G-77/China supported that contributions be based on an indicative scale, stressing that these would remain voluntary. India suggested that an indicative scale would be better for both the Treaty and the parties, bringing certainty and predictability. Switzerland and Norway also supported using an indicative scale, adding that this would strengthen the Treaty's independence from FAO. Canada preferred voluntary contributions without an indicative scale. Pointing to the majority in support of an indicative scale, the ETC Group supported adopting it, thereby putting in place the key building block for sustainable financing. France stressed that the brackets around the two existing options could not be removed unless there was unanimity. Delegates discussed how to proceed with this issue, with Chair Fernández finally suspending discussions to allow for informal consultations during the week.

On Friday morning, the Secretariat introduced and plenary adopted an amendment to the financial rules to implement the establishment of the Third Party Beneficiary and its subsidiary operational reserve within the general funds. In the evening, delegates considered a draft resolution stating that the Governing Body had not reached consensus on its outstanding financial rules and decided to consider the matter at its fourth session. Brazil proposed to highlight the "urgent need to finalize" the financial rules at GB 4, and delegates held a lengthy debate, which included a counter-proposal by the EU and a request for legal advice from the FAO legal counsel regarding whether the FAO Financial Regulations shall apply, *mutatis mutandis*, to this unresolved issue (Rule I). Brazil, supported by India, Iran and many others, made an appeal to resolve the issue in a fair and balanced way to ensure the financial health of the Treaty. Delegates finally agreed to Brazil's proposal.

Final Outcome: In the adopted resolution, the Governing Body agrees on the urgent need to finalize the financial rules at its fourth session. New financial rule VI.5 provides for establishment of a subsidiary Third Party Beneficiary operational reserve under the core administrative budget.

COMPLIANCE

This item was considered in plenary on Monday, and in plenary and a contact group from Wednesday to Friday. In plenary, the Secretariat introduced the draft procedures and operational mechanisms to promote compliance and address issues of non-compliance (IT/GB-3/09/6 Rev.1). The G-77/China requested deferring this issue to a later GB session, noting it was premature to address it when there is a lack of resources

to ensure proper implementation of the Treaty. The ERG noted the compliance committee should be small and composed of technical and legal experts serving in their personal capacity and, with the Southwest Pacific, called for implementing the GB 2 decision to set up a contact group at this session. Chair Fernández suspended discussions to allow for informal consultations.

On Wednesday, following the compromise proposed by the ERG, included in this report under Organizational Matters, the contact group on compliance was established, co-chaired by René Lefeber (the Netherlands) and Javad Mozafari (Iran) and consisting of up to two representatives per regional group. The group engaged in a first reading of the draft procedures on compliance allowing delegates to add additional wording or brackets. During a second reading, delegates started to negotiate the text of the amended draft procedures. They agreed on text on the objective to state that the mechanism shall promote compliance with "all" provisions of the Treaty. Regarding the principles, delegates agreed to further specify that compliance procedures should be cost-effective and non-legally binding, and also reference accountability and good faith. All regional groups but North America supported inclusion of the wording that the operation of the compliance procedures "shall take into account the capacities of contracting parties," in return for deletion of a paragraph referring to an adequate balance between developed and developing countries. The provision remains bracketed.

Regarding institutional mechanisms, the group agreed that the compliance committee should consist of two representatives from each FAO region, but could not agree to a total number of 14, pointing to regions with only one representative. The majority of regions agreed that members of the committee shall serve in their individual capacity, while North America preferred to set out that they "serve objectively in the best interest of the Treaty." Regarding functions of the committee, delegates debated specifying that the committee should: consider information submitted to it regarding matters relating to compliance and non-compliance; and address issues of non-compliance and identify the specific circumstance of the issue referred to it. The contact group did not have sufficient time to consider the remaining provisions of the draft procedures.

In plenary on Friday, contact group Co-Chair Mozafari proposed to continue the work on the draft procedures intersessionally. The ERG agreed and proposed that the same Co-Chairs lead the process. Ecuador said that given financial limitations she did not support intersessional work on compliance but the issue could be given due priority at GB 4. The ERG and Australia explained that the meetings would be funded by voluntary contributions to the special fund for agreed purposes. Stressing that the Treaty was a unit consisting of many parts that needed to function, including the funding strategy, the African Group and Brazil agreed to an intersessional process on compliance, with Brazil noting that if the ITPGR continues to have problems with funding, it might not be worthwhile to go forward on compliance. Many supported Uruguay's proposal to invite submissions by governments on the revised draft procedures, for consideration during the intersessional process. Uruguay further requested guarantees that funding for core tasks under the Treaty be prioritized, with Ecuador agreeing to an intersessional process under those conditions. Delegates then

debated the mandate for the intersessional group and agreed to prepare a final resolution in that regard. The closing plenary on Friday evening agreed to the resolution on compliance without amendments.

Final Outcome: In the adopted resolution, the Governing Body decides:

- to put the issue of compliance high on the agenda of GB 4;
- to establish and convene, subject to availability of funds from the special fund for agreed purposes, an *ad hoc* working group to negotiate and finalize the procedures and operational mechanisms to promote compliance and address issues of non-compliance, on the basis of the text contained in the annex to the resolution, with the view to their approval at GB 4;
- that the Co-Chairs of the compliance contact group also serve as Co-Chairs for the *ad hoc* working group;
- that the *ad hoc* working group shall be comprised of up to two representatives designated by each FAO region, in addition to the Co-Chairs; and
- that the *ad hoc* working group shall hold two meetings of two days each in Rome, preferably immediately before Bureau meetings.

The Governing Body further invites parties and observers to make submissions on the text contained in the annex to the resolution before 1 October 2009, for consideration by the *ad hoc* working group; and requests the Secretary to compile any such submissions.

The annex contains the draft procedures and operational mechanisms to promote compliance and address issues of non-compliance, consisting of sections on: objectives, principles, institutional mechanisms, functions of the committee, reports to the governing body, procedures, information, measures to promote compliance and address cases of non-compliance, review of the procedures and mechanisms, reporting, and monitoring.

IMPLEMENTATION OF THE FUNDING STRATEGY

Delegates discussed the implementation of the funding strategy in plenary from Monday to Wednesday. A contact group on the funding strategy, co-chaired by Ana Berretta (Uruguay) and Bert Visser (the Netherlands), was established on Tuesday and met on Tuesday evening and Thursday.

In plenary, the Secretariat presented a report on actions undertaken since GB 2, in particular, the completion of the first project cycle under the benefit-sharing fund (IT/GB-3/09/8 Rev.1). Secretary Bhatti then awarded certificates to representatives of eleven projects approved for funding, as listed in IT/GB-3/09/Inf.11. Bert Visser, in his role as Co-Chair of the *ad hoc* advisory committee on the funding strategy, presented the Co-Chairs' report (IT/GB-3/09/7 and App. 2), consisting of a strategic plan for implementation of the benefit-sharing fund, an elaborated Annex 4 of the funding strategy on information and reporting requirements, and related draft decisions. He remarked that a strategic plan was necessary to raise voluntary contributions to the benefit-sharing fund until mandatory payments to the MLS under the SMTA materialize.

GRULAC stressed the need to prioritize the benefit-sharing pillar of the Treaty and expressed disappointment at the slow pace of implementation of the funding strategy. He welcomed the

draft strategic plan, and urged adoption of the US\$116 million target over five years under the funding strategy. The Near East said that the funding strategy must be transparent and based on concrete and predictable pledges. The Southwest Pacific supported the draft strategic plan. Switzerland said the strategic plan should also include alternatives to fundraising for securing contributions to the benefit-sharing fund. The ERG welcomed the annex on information and reporting requirements. Canada and Ecuador supported the continued work, on a temporary basis, of the advisory committee on the funding strategy. Via Campesina reminded delegates that industry continues to profit through research and seeds accessed through the MLS, while farmers are still waiting to see any benefits.

In the contact group, delegates agreed, without amendments, to a draft decision for the adoption of Annex 4 of the funding strategy regarding information and reporting requirements (IT/GB-3/09/7). On the draft decision for the adoption of the strategic plan, GRULAC tabled alternative text and proposed it be used as the basis for negotiations. Eventually, the contact group agreed to work on the basis of the draft decision in the report of the advisory committee (IT/GB-3/09/7). Regarding preambular text, GRULAC suggested adding a reference to Article 18.3 of the Treaty, which provides that the Governing Body shall periodically establish targets for funding. The ERG suggested specifically referring to funding for priority activities, plans and programmes, but agreed to refer to Article 18.3 and also to include a reference to Article 18.4(f) (voluntary contributions), as suggested by North America. On operative text, Switzerland and Norway tabled a proposal inviting parties to explore, with relevant stakeholders, the development of innovative mechanisms to allow for the provision of resources to the benefit-sharing fund on a regular and predictable basis. Delegates also discussed potential activities for the reconvened *ad hoc* advisory committee on the funding strategy, agreeing that the committee should address "in particular, funds not under the direct control of the Governing Body."

The contact group then considered the draft decision on the strategy's operationalization (IT/GB-3/09/8 Rev.1), based on experience gained in the first project cycle. They debated the list of developing countries eligible to apply to the fund and the selection of experts for project proposal appraisal. They also agreed to GRULAC's suggestion to specify that only Annex I materials resulting from projects under the fund would be made available in the MLS.

On Thursday evening, the Co-Chairs of the contact group presented to plenary a single draft resolution without brackets, together with terms of reference (TORs) for the *ad hoc* advisory committee's intersessional work. Delegates debated the composition of the committee, agreeing to compromise text from the ERG, which states that the committee will be comprised of "one or two members" nominated by each region. The plenary adopted the resolution on the funding strategy with the amended TORs. When adopting the report early on Saturday morning, delegates held a lengthy debate on the introductory text to the resolution, but finally made only one minor deletion, agreeing to refer to Norway's "example" rather than "encouraging example" of providing 0.1% of the annual value of seed sales on its territory to the benefit-sharing fund.

Final Outcome: The adopted resolution contains three parts. On Part I, regarding Annex 4 of the funding strategy, the Governing Body adopts Annex 4 of the funding strategy, on information and reporting requirements.

On Part II, regarding the strategic plan for the implementation of the benefit-sharing fund of the funding strategy, the Governing Body:

- welcomes the strategic plan for the implementation of the benefit-sharing fund of the funding strategy;
- establishes a target of US\$116 million between July 2009 and December 2014;
- decides to reconvene the *ad hoc* advisory committee on the funding strategy, with appended TORs that include: advising the Bureau and the Secretary on resource mobilization efforts and on the operation of the benefit sharing fund; addressing remaining issues within the full remit of the funding strategy, in particular, resources not under the direct control of the Governing Body; and advising on monitoring of implementation of the funding strategy;
- agrees to engage “goodwill ambassadors” to increase public awareness;
- requests the Secretariat to engage adequate fundraising services for reaching the target of US\$116 million; and
- invites parties to explore, with relevant stakeholders, the development of innovative approaches for the provision of resources to the benefit-sharing fund, including on a regular and predictable basis.

On Part III, operationalization of the funding strategy, the Governing Body:

- decides that any governmental or non-governmental organization, including gene banks, research institutions, farmers and farmers’ organizations, and regional and international organizations, based in countries that are parties to the Treaty may apply for grants under the benefit-sharing fund;
- decides that PGRFA listed in Annex I of the Treaty resulting from projects funded by the benefit-sharing fund shall be made available under the MLS, and information generated by funded projects shall be made publicly available within one year of completion of the project;
- requests the Secretary to continue collaborating with the Global Crop Diversity Trust and other international organizations in the further implementation of operational procedures, and to develop disbursement, reporting and monitoring procedures for the operation of future project cycles for consideration at GB 4;
- decides that in future rounds of the project cycle, the panel of experts for project proposal appraisal will be composed of at least two experts per region in each project cycle, selected from a roster of experts; and
- decides to delegate authority for the execution of the project cycle during the next biennium to the Bureau.

The reconvened advisory committee will comprise up to two members from each FAO region and will hold two meetings.

BUSINESS PLAN

Plenary considered the draft business plan for the Governing Body on Wednesday and Thursday. The Secretariat introduced the item (IT/GB-3/09/9 and Inf.12), noting that the draft business plan needs further elaboration for adoption at GB 4.

Many delegates thanked Switzerland for hosting an informal meeting on the development of the business plan. Discussion focused on options for intersessional work. Delegates discussed three proposals: to establish an *ad hoc* committee, as proposed by GRULAC but opposed by most; to request the Bureau and the Secretariat to develop the draft on the basis of input from parties, as supported by many; or to set up a working group to communicate electronically, as proposed by Cameroon. On Thursday night, following a brief debate, the Governing Body decided to request the Bureau and the Secretariat to finalize the plan on the basis of written comments from parties. In the closing plenary, during adoption of the report, Switzerland proposed adding a deadline by which parties should provide comments on the draft plan and the paragraph was adopted as amended.

Final Outcome: In the report, it is noted that parties agreed that the draft business plan needed to be further developed. The Governing Body invited parties to provide comments on the draft and requested the Bureau with the Secretariat to revise the business plan on the basis of comments received for consideration at GB 4.

RELATIONSHIP WITH THE GLOBAL CROP DIVERSITY TRUST

On Wednesday, Margaret Catley-Carlson, Chairperson of the Executive Board of the Global Crop Diversity Trust, presented the report of the Trust (IT/GB-3/09/10), explained how the Trust acquires its funds, and outlined the draft fund disbursement strategy (IT/GB-3/09/Inf. 8). She highlighted the Trust’s support for capacity building and explained the difference between endowment and project funding.

Many delegates expressed appreciation for the Trust’s work and welcomed its report. The Southwest Pacific noted the significant achievements of the Trust, including its work on *ex situ* conservation and capacity building. The ERG welcomed further interaction between the Trust and the Governing Body, and highlighted the importance of activities for adaptation of crops to climate change. GRULAC underscored the need for: strengthening the communication mechanism and building capacity for documentation systems in the region; greater transparency in the allocation of resources; and reviewing the Trust’s policies as to the provision of funds to non-parties. The African Group underscored that the Governing Body should have a greater role in providing policy guidance to the Trust. North America supported the Trust’s disbursement strategy, and continuous and transparent consultations between the Governing Body and the Trust. The Near East called for formalized communication between the Trust and the Treaty, and for the disbursement strategy to prioritize developing countries.

Brazil urged parties and donors to re-establish a balance between the core budget of the Treaty, the benefit-sharing fund, and the Trust. Norway highlighted the importance of the Svalbard Global Seed Vault for food security in the climate change context. Angola warned that, without funds, the Treaty risks being overshadowed by the Trust.

Final Outcome: The report states that the Governing Body commended the Trust for its excellent programmatic performance, welcomed and supported its disbursement strategy and highlighted the need to maintain and develop the relationship between the Treaty and the Trust.

With regard to the selection of candidates and appointment of members to the Executive Board of the Global Crop Diversity Trust, the Governing Body decided to delegate to the Bureau the power to select and appoint Board members to replace those members whose term expires during the intersessional period. The Bureau should consult parties on the nomination of candidates and the selection committee appointed by the donor council of the Trust. The Bureau is also to oversee the selection process for appointments to be made in 2012; take action to fill any unforeseen vacancies that may arise; and prepare a report for GB 4 consideration on possible options for simplification of the normal selection and appointments procedures.

IMPLEMENTATION OF THE MULTILATERAL SYSTEM

This issue was discussed in plenary from Wednesday to Friday, an informal group convened on Thursday, and a contact group on Friday. In plenary, the Secretariat introduced the item, including documents on: review of MLS implementation; assessment of progress on the inclusion of PGRFA in the MLS by natural and legal persons; review of implementation and operation of the SMTA; and review of the implementation of the SMTA as used by the IARCs of the CGIAR for non-Annex I crops (IT/GB-3/09/12, 13, 14, 15 and Inf. 15). The Secretariat outlined short-term priorities, namely to document materials and exchange under the MLS, and to assist users in resolving legal and technical uncertainties in using the SMTA. He noted the limited information available on the inclusion of PGRFA by natural and legal persons, and on levels of payments under the SMTA, and suggested deferring these issues to GB 4.

Chair Fernández invited comments on, and parties submitted written amendments to, the draft resolutions contained in the documents under consideration. The ERG expressed its commitment to strengthening the MLS. GRULAC stressed that more human and financial resources are necessary. The African Group stressed the need to include more collections in the MLS, including those held by the private sector.

On a draft resolution on MLS implementation (IT/GB-3/09/13), Canada asked to add “consistent with Article 12.3(b)” (expeditious access without the need to track individual accessions) to a paragraph on information systems documenting PGRFA, noting that such systems should not become tracking systems. The ERG and Canada, opposed by Angola, asked to delete a request for updating the Code of Conduct for Plant Germplasm Collecting and Transfer. Canada suggested deleting a specific reference to the joint capacity-building programme, and the Cook Islands, for the Pacific Region, with the African Group, opposed.

On a draft resolution on inclusion of PGRFA in the MLS by natural and legal persons (IT/GB-3/09/12), GRULAC suggested that information on parties’ measures to encourage natural and legal persons to include PGRFA in the MLS be provided “according to national capacities.” The ERG noted that only three notifications by natural and legal persons had been received and, with Canada, supported deferring the issue to GB 4. He suggested a number of revisions to allow for an effective assessment avoiding bureaucratic burden.

On a draft resolution on implementation and operation of the SMTA (IT/GB-3/09/14), the ERG pointed to lack of information and supported postponing the issue to no later than GB 5.

Canada added that the proposed *ad hoc* technical committee on the SMTA should have the mandate to address the issues identified in the first meeting of experts on the SMTA and that the Secretariat should not provide legal advice to parties.

On the experience of the IARCs with the SMTA (IT/GB-3/09/15 and Inf. 15), the CGIAR reported that the use of the SMTA for Annex I and non-Annex I crops has been largely positive, and noted that an intersessional mechanism to provide guidance on outstanding technical and legal questions would be appreciated. The ERG welcomed the CGIAR procedure of using only one SMTA for the transfer of Annex I and non-Annex I crops. Brazil noted that whenever reference is made to using the SMTA for non-Annex I PGRFA, the specification that they were collected before the entry into force of the Treaty should be included in the text.

On Thursday, ITPGR Secretary Shakeel Bhatti introduced a consolidated draft resolution containing a number of options for specific paragraphs, and plenary mandated an informal group to work on the basis of the consolidated draft. During a first reading of the text, the group managed to consider the options provided and decide on which options to negotiate. The informal group then reported back to the plenary on the options that had been selected. Plenary welcomed the work done and transformed the informal group into a contact group.

The contact group, chaired by Leontino Taveira (Brazil), then met in the early morning hours of Friday to finish work on the resolutions. Later in the morning they agreed to retain a reference to Article 12.3(b) with regard to text on information systems documenting PGRFA. Delegates then discussed a Canadian proposal replacing an appendix on the TORs for the proposed advisory technical committee on the SMTA and the MLS, but eventually agreed to retain the appendix and work on that text. Delegates agreed to general TORs, rather than the previously proposed more detailed ones. The plenary then adopted the consolidated resolution and attached TORs as a package.

Final Outcome: The consolidated version of the resolution on the MLS contains parts on: the implementation of the MLS; inclusion of PGRFA in the MLS by natural and legal persons within the jurisdiction of contracting parties; implementation and operation of the SMTA; follow-up by the Secretariat; and the appendix containing the TORs for the *ad hoc* advisory committee on the SMTA and the MLS.

Regarding the implementation of the MLS, the Governing Body, *inter alia*:

- welcomes the efforts underway to coordinate and improve information systems documenting PGRFA, based on existing information systems, which should build the basis of the Global Information System foreseen in Article 17 and consistent with Article 12.3(b) of the Treaty;
- stresses the importance of assisting developing countries in this process bilaterally or through existing multilateral frameworks, such as the Joint FAO/Treaty Secretariat/Bioversity International Capacity-building Programme;
- requests all parties to report on their PGRFA that are in the MLS and to take measures to make information on these resources available to potential users of the MLS; and
- decides to review the implementation of the MLS at GB 4.

Regarding inclusion of PGRFA in the MLS by natural and legal persons, the Governing Body, *inter alia*, invites all parties to include in their reports on PGRFA in the MLS information on appropriate measures they are taking to encourage natural and legal persons within their jurisdiction to include PGRFA in the MLS according to their national capacities; and decides to postpone the assessment provided for in Article 11.4 until GB 4 because of the current lack of information.

Regarding implementation and operation of the SMTA, the Governing Body, among others:

- urges developed country parties to provide appropriate assistance to developing countries, bilaterally or through established multilateral frameworks, for capacity building, awareness raising, promoting the exchange of experiences among those responsible for implementing the SMTA at national level, and for electronic management of the SMTA and related reporting;
- requests the Secretary to give priority to assisting users of the SMTA to overcome implementation problems, including, subject to the availability of funds, through convening an *ad hoc* technical committee on the SMTA and the MLS, taking into account regional representation, according to the TORs as contained in Appendix 1; and
- decides to again review the levels of payments, with a view to achieving fair and equitable sharing of benefits, at GB 4.

The appendix contains the TORs for the *ad hoc* advisory committee on the SMTA and the MLS, structured according to: the mandate of the *ad hoc* committee; its membership and Co-Chairs, to consist of up to two representatives per FAO region and five technical experts; the provision of up to two meetings subject to availability of funds; and the preparation of a report and its tabling with the Governing Body.

In its final report, the Governing Body notes that: it considered a document on review of implementation of the SMTA as used by the IARCs and, although the centres have used the SMTA for a relatively short time, the impression of the IARCs is that the SMTA is attracting increasing acceptance by potential recipients as they become familiar with its terms. The Governing Body decides that it will further review these measures at GB 4.

THIRD PARTY BENEFICIARY

This issue was discussed in plenary on Wednesday and Friday and in an informal group on Thursday.

In plenary, Javad Mozafari (Iran), Chair of the Third Party Beneficiary committee, presented the committee's report (IT/GB-3/09/11 Rev.1), highlighting: the drafting of Third Party Beneficiary procedures and operations; proposed amendments to the financial rules providing for the establishment of the Third Party Beneficiary operating reserve within the core administrative budget; and information that the Third Party Beneficiary would require to carry out its roles and responsibilities. Noting that restriction on information or lack of financial resources would make it impossible for the Third Party Beneficiary to exercise its rights in case of breach of an SMTA, the G-77/China stressed that the committee report was adopted unanimously; called for its approval *en bloc*; and suggested that the budget committee consider the proposed amendments to the financial rules. The Czech Republic, for

the European Union (EU), supported the draft Third Party Beneficiary procedures, but on the Third Party Beneficiary operations, he suggested bracketing a subparagraph detailing the information to be provided by the SMTA parties. Switzerland supported the draft resolution on the Third Party Beneficiary operations and, with Australia, supported the establishment of a Third Party Beneficiary operational reserve. Ecuador expressed disappointment at certain delegates' attempts to reopen results arrived at unanimously by the committee. Canada said that North America had not been represented at the last session of the committee. Noting that violations would be rare and do not justify onerous requirements, he agreed with the EU regarding the need for amendments.

Chair Fernández suggested adopting the procedures and mandating an informal group to work on operations on the basis of comments provided in plenary. On Thursday, Mozafari reported on the work of the informal group on Third Party Beneficiary procedures. On Friday, plenary adopted the resolution on procedures for the operation of the Third Party Beneficiary and its two annexes on procedures and on operations of the Third Party Beneficiary.

Final Outcome: The resolution on procedures for the Third Party Beneficiary contains Annex 1 on the procedures for the operation of the Third Party Beneficiary and Annex 2 on the operations of the Third Party Beneficiary. In the resolution, the Governing Body decides: that the current *ad hoc* Third Party Beneficiary committee will reconvene in order to review and finalize the operational guidelines on the basis of a draft text prepared by the Secretariat in cooperation with the FAO Legal Services for adoption at GB 4; and to establish a list of experts from which the parties to the SMTA may appoint mediators and arbitrators in accordance with the Third Party Beneficiary procedures. The procedures for the Third Party Beneficiary contain articles on: designation of the Third Party Beneficiary, scope, principles, information, amicable dispute settlement, mediation, expenditure, reporting, amendments, and entry into force. The operations of the Third Party Beneficiary contain parts on: criteria for nominations of experts, procedures for nomination of experts, information to be provided to the Governing Body by parties to the SMTA, and information to be provided to the Third Party Beneficiary.

The Governing Body also incorporated the Third Party Beneficiary operational reserve into the core administrative budget, and amended the financial rules of the Treaty accordingly, as outlined in this report's section on financial rules.

IMPLEMENTATION OF ARTICLE 6

This item was considered in plenary on Thursday and Friday. The Secretariat introduced the item on implementation of Article 6 (Sustainable Use of PGRFA) (IT/GB-3/09/16 and Inf.10), and highlighted the work of the CGRFA on the second report on the State of the World's plant genetic resources for food and agriculture.

The ERG highlighted the links between Article 6 and farmers' rights, and the work of the Global Crop Diversity Trust and CGRFA. GRULAC noted that the funding strategy will be crucial for work on sustainable use. The Near East underscored the need for building national research and breeding capacity to increase agricultural production in developing countries, and for

returning new germplasm and improved materials to the MLS. Canada highlighted its new policy framework on sustainable use to ensure an environmentally sustainable agriculture sector.

The Asian Region, supported by Norway, stressed that the benefit-sharing fund should also support sustainable use through informal farmers' systems and on-farm conservation. Brazil requested increased international cooperation and collection of information from relevant stakeholders. The African Group said sustainable use is a pillar of the Treaty as it enhances diversity and food security. Ethiopia called for special emphasis on the role of small and subsistence farmers; Madagascar called for an integrated approach to assist with implementation of sustainable use; and Kenya called for coordinated national legislation and harmonization. Australia recognized the importance of sustainable agricultural industries, noting that farmers decide on crops according to market demand.

The Global Community-Based Biodiversity Conservation and Development Network stressed food sovereignty and community-led approaches as the way out of the current food crisis, and called for a global fund to support farmers' sustainable use.

On Friday, the Asian Region distributed a proposal on sustainable use. The ERG noted that it was too late to elaborate a resolution on sustainable use, and suggested the text be included in the meeting's report.

During adoption of the report, Norway requested modification of a paragraph on inviting parties to submit progress reports on implementation of Article 6 through the reporting mechanism of the Global Plan of Action for the Conservation and Sustainable Utilization of PGRFA (GPA) and proposed that the Secretariat be responsible for such a task. Following opposition from Cameroon and Canada, Norway withdrew the proposal.

Final Outcome: In the report, the Governing Body:

- notes that in many regions the implementation of Article 6 is lagging behind and that further financial resources, capacity building and technology transfer are required;
- stresses the need for contracting parties to develop appropriate policies and legal measures;
- invites contracting parties to regularly submit progress reports on implementation of Article 6 through the reporting mechanism of the Global Plan of Action; and
- requests the Secretary to develop a toolbox to assist countries in the design of measures to promote sustainable use of PGRFA by the fourth session of the GB.

IMPLEMENTATION OF ARTICLE 9

Plenary addressed implementation of Article 9 (Farmers' Rights) on Thursday. The Secretariat introduced the item, highlighting the compilation of views on implementation of Article 9 (IT/GB-3/09/Inf. 6). GRULAC stressed the need for progress at the national level on: instruments for protection of traditional knowledge; identification of a national competent authority for farmers' rights; and incorporation of farmer organizations in advisory structures. The African Group called for capacity building to implement farmers' rights. The Asian Region called for amending existing seed legislation in line with farmers' rights, and supported stronger initiatives by the Secretariat to involve farmers in policy-making processes.

Brazil, supported by GRULAC and the African Group, proposed that the Governing Body consider ways to support national efforts and presented a draft resolution. Canada disagreed that the Governing Body should provide assistance and, with Australia, stressed that implementation of farmers' rights under the Treaty rests with national governments. Norway said that the Governing Body should ensure full implementation of the Treaty, including farmer's rights. The ERG agreed to work on a resolution on farmers' rights and proposed a number of amendments to the Brazilian proposal.

Brazil then presented a revised draft, which was supported by GRULAC, the African Group, the Southwest Pacific and the ERG, inviting parties to consider reviewing seed legislation to implement Article 9; encouraging continuing exchange of experiences; requesting the Secretariat to convene regional workshops; and appreciating the involvement of farmers' organizations. Canada highlighted willingness to discuss seed legislation under Article 6, but not to include such a reference in a resolution on farmers' rights, and called for specifying the funding sources for the regional workshops.

The International Union for the Protection of New Varieties of Plants (UPOV) said that the UPOV Convention foresees exemptions for breeders and subsistence farmers collecting seeds for use on their own farms and called for mutually supportive implementation with the ITPGR. The Andes Association stressed that indigenous peoples and farmers look to the Treaty to help them address challenges when seeking to protect their ancestral heritage and to secure fair and equitable benefit-sharing. The Global Community-Based Biodiversity Conservation and Development Network argued that the Treaty requires all parties to revise their legislation to recognize farmers' and breeders' collective rights.

On Thursday, at midnight, plenary adopted the resolution, as revised during informal consultations.

Final Outcome: In the report, the Governing Body expressed its concerns about the small number of submissions regarding implementation of Article 9 and recognized the important contribution that indigenous and local communities and farmers make to the conservation and sustainable use of PGRFA.

In the adopted resolution, the Governing Body invites parties to consider reviewing and, if necessary, adjusting national measures affecting the realization of farmers' rights, and encourages parties and organizations to submit views and experiences on implementation of farmers' rights. It appreciates the involvement of farmers' organizations in its further work, according to the rules of procedure, and requests the Secretariat: to convene regional workshops on farmers' rights, subject to agreed priorities and to the availability of financial resources, aiming at discussing national experiences on the implementation of farmers' rights; and to collect parties' views and the reports of the regional workshops for GB 4 consideration.

RELATIONSHIP WITH THE CGRFA

Plenary considered this item on Thursday afternoon. The Secretariat introduced the document jointly prepared by the Secretariats of the Treaty and the CGRFA, highlighting progress in updating the report on the State of the World's PGRFA and the rolling GPA, and including possible elements for a decision (IT/GB-3/09/17). Africa stressed the need to define the relationship to avoid inconsistencies. Canada expressed satisfaction with

ongoing cooperation, and proposed that all sectoral matters concerning PGRFA, especially on the Treaty's supporting components, should be addressed by the Governing Body. The ERG stressed the importance of close collaboration to optimize potential synergies and, with Canada, opposed requesting the CGRFA to update the Code of Conduct for Plant Germplasm Collecting and Transfer.

On Thursday evening, plenary considered a revised draft resolution. Brazil, supported by GRULAC, Iran and Tunisia, asked for deletion of text on the Governing Body eventually taking responsibility for all sectoral matters related to PGRFA. Belgium proposed compromise text encouraging close cooperation that may gradually lead to an "agreed functional division of tasks and activities" between the CGRFA and the Governing Body. The ERG, supported by Brazil: deleted an invitation to parties to recognize the findings of the State of the World's PGRFA, on the basis that the report was not yet available; and asked the Secretariat to develop a vision paper to outline a process for the development of a global information system on PGRFA, and deleted reference to FAO's World Information and Early Warning System as an element of this system. Brazil, supported by the ERG, deleted an invitation to the Commission to update the Code of Conduct for Plant Germplasm Collecting and Transfer. The resolution was adopted with these and other minor amendments.

Final Outcome: In the adopted resolution, the GB:

- requests the Secretary to continue to foster close cooperation with the Secretary of the CGRFA, and to continue cooperating on the basis of the Joint Statement pending its adoption by the CGRFA;
- invites parties to participate in the finalization of the State of the World's PGRFA and invites the CGRFA to include information on Treaty implementation in future revisions and updates of the report;
- invites the CGRFA in the revision of the GPA to adequately reflect provisions of the Treaty, invites parties to participate in updating the GPA, and requests the Secretary to continue coordinating with the CGRFA and FAO in the processes related to the GPA's update;
- requests parties to continue supporting the effective functioning of international plant genetic resources networks and strengthening collaboration among these, and requests the Secretary to cooperate with the CGRFA to facilitate the involvement of these networks, when necessary or relevant, in implementation of the Treaty;
- invites the CGRFA to coordinate the process for revision of the Genebank Standards;
- requests the Secretary to continue to collaborate with FAO on the development of the global information system on PGRFA and requests the Secretary to develop a vision paper to take stock of existing information systems and to outline a process for the development of this global system;
- requests the Secretariats of the Governing Body and the CGRFA to ensure that their respective activities of relevance to the funding strategy maintain coherence and efficiency; and
- invites coordination of the Secretariats of the CGRFA and the Governing Body to ensure that genetic resource issues are appropriately integrated into the FAO Regular Programme, Mid-Term Plan and Strategic Framework.

COOPERATION WITH OTHER ORGANIZATIONS

On Thursday, the Secretariat reported to plenary on the status of cooperation with other international organizations, including agreements between the Governing Body and the IARCs of the CGIAR and other relevant international institutions (IT/GB-3/09/18). The Convention on Biological Diversity (CBD) provided an update on the ongoing negotiations on access and benefit-sharing (ABS) and recent developments related to the Global Strategy for Plant Conservation. The Arab Organization for Agricultural Development reported on how it coordinates Treaty implementation in Arab countries. The ERG stressed that the ITPGR should continue enhancing collaboration with the CBD, especially on ABS negotiations, and recommended that the ITPGR Secretariat follow negotiations under UPOV, the World Intellectual Property Organization (WIPO) and the World Trade Organization. During plenary on Thursday night, delegates discussed a draft resolution and approved it with minor amendments.

Final Outcome: In the adopted resolution, the Governing Body requests the Secretary to: continue enhancing the collaboration with other international organizations, especially the CBD; continue participating in relevant meetings of WIPO, UPOV and the World Health Organization; continue overseeing the joint capacity-building programme for developing countries set up by the Treaty, FAO and Bioversity International; convene the second and third meetings of the Capacity-Building Coordination Mechanism, in accordance with TORs appended to the resolution; facilitate cooperation for the development and strengthening of a global information system for the exchange of information; and report to GB 4 on cooperation activities.

FAO INDEPENDENT EVALUATION

On Thursday afternoon, the Secretariat introduced a document describing aspects of the FAO independent external evaluation process of special relevance to implementation of the Treaty (IT/GB-3/09/19). Switzerland stressed that the Governing Body should express interest in the FAO reform process. Australia proposed that the new Bureau ask FAO to present it with the reform's implications for the Treaty, and the ERG requested that the issue be reviewed at GB 4. Pakistan and Brazil said increasing the Governing Body's administrative and financial authority may be premature for the Treaty.

During adoption of the report, Pakistan, supported by Brazil, proposed an additional paragraph stating that the Governing Body had noted that the Treaty was not in a position to seek increased financial or administrative authority in view of the present under-funding of its core administrative budget. The paragraph was eventually added to the report.

Final Outcome: In the report, the Governing Body mandates the Bureau to request from FAO an update on the reform process and clarification on the overall implications for the Treaty. It also requests the Secretary to continue following the FAO reform process, in particular on financial and administrative implications for the Treaty, and to prepare a report for GB 4.

WORK PROGRAMME AND BUDGET FOR 2010/11

On Thursday, Secretary Bhatti presented the financial report (IT/GB-3/09/20 Rev.1), highlighting the disparity between the adopted core administrative budget and actual contributions received.

Following its establishment by plenary, the budget committee met on Wednesday evening, Thursday and Friday. The budget committee, co-chaired by François Pythoud (Switzerland) and Amir Khawaja (Pakistan), began by addressing the resource requirements of statutory and overhead expenditures for 2010/11, then moved through discussions of which activities approved by the Governing Body should be funded through the core budget or the special fund for agreed purposes, and considered the draft resolution (IT/GB-3/09/21 and annexes). Noting the lack of funds in the working capital reserve, delegates discussed but did not agree to channeling into the working capital reserve a proportion of parties' voluntary contributions to the core budget. On the understanding that resource mobilization would need an initial investment, delegates discussed options for engaging professional fundraisers, agreeing to create two new professional posts within the Secretariat, but for the 2010/11 biennium only. With the view that resource mobilization should become self-funding, they further agreed to raise a levy on voluntary contributions made to the benefit sharing fund to cover various costs associated with the fund. On activities required for the functioning of the Treaty, delegates agreed to funding one rather than two meetings of the Third Party Beneficiary committee. Remaining activities were referred to the special fund.

On Friday evening, Co-Chair Amir Khawaja (Pakistan) presented the report of the budget committee, comprising a draft resolution with an appended work programme and budget. He said that the core administrative budget totals US\$5,482,833 for the 2010/11 biennium. Given the provisional FAO contribution of US\$1,859,000, a balance of US\$3,973,833 remains to be funded from voluntary contributions. In addition, a working capital reserve is set at US\$350,000 to be capitalized in the coming biennium. The possible activities to be funded in the biennium under the special fund for agreed purposes totals US\$4,998,000. The resolution was adopted without amendments.

Final Outcome: In the adopted resolution, the GB:

- urges all parties to provide the resources required in the core administrative budget in a timely manner, and invites all states and other entities to contribute to the core budget and the special funds of the Treaty;
- appreciates the Secretary's efforts to ensure a modern and transparent approach to the work programme and budget;
- adopts the work programme and its core administrative budget for the biennium 2010/11;
- approves a working capital reserve of US\$350,000, to be capitalized in the biennium 2010/11;
- decides that 20% of voluntary contributions to the benefit-sharing fund be used to fund the costs of mobilization of resources, administration of the fund, management of the project cycle under the fund, and ancillary operations;
- decides that the percentage of voluntary contributions accumulated for the biennium 2010/11 be utilized starting from the biennium 2012/13, subject to review at GB 4;
- confirms the authorization for the Secretary to transfer resources between the main appropriation lines of the core budget up to an aggregate of 15% of the operating budget, provided that no more than 25% of any main appropriation line is transferred to another; and
- takes note of the Secretariat staffing table for the biennium 2010/11, as set out in the report's annex.

CLOSING PLENARY

The closing plenary began on Friday evening, at 8:00 pm. Italy announced its intention to include more than 22,000 Annex I accessions in the MLS, and to host a high level roundtable on the Treaty in Rome in the near future. He acknowledged the important role of farmers, and underscored that Italy has contributed 3.5 million Euros since 2005. France announced the inclusion of PGRFA samples into the MLS and a contribution of US\$50,000 to the core budget. Regional representatives expressed their appreciation to Indonesia for the offer to host GB 4, and decided that the meeting will be held sometime between April and September 2011.

Rapporteur Campbell Davidson (Canada) then presented the meeting's report (IT/GB-3/09/DRAFT REPORT). Delegates then adopted the report and all resolutions.

Following regional nominations, the Governing Body elected the GB 4 Bureau, including: Cosima Hufler (Austria) for ERG; Mohd Shukor Nordin (Malaysia) for the Asian Region; Marco Valicenti (Canada) for North America; Javad Mozafari (Iran) for the Near East; Mohamed Kharrat (Tunisia) for Africa; Fiona Bartlett (Australia) for Southwest Pacific; and Gustavo Pacheco (Brazil) for GRULAC. Cosima Hufler (Austria) was elected as GB 4 Chair. Plenary also adopted a report on credentials, as presented by Hedwig Wögerbauer (Austria), Chair of the credentials committee.

The G-77/China recognized the tremendous work done by the Secretariat. The ERG stressed that the commitment of all parties to work intersessionally will be crucial for the success of the Treaty. The African Group stressed the need to have at least one regional meeting before GB 4. The Near East and the other regions welcomed the new Chair and Bureau. North America noted the ongoing international ABS negotiations under the CBD and looked forward to positive collaboration between the Governing Body and the CBD. The Asian Region congratulated parties on the successful conclusion of the meeting and looked forward to the Treaty growing and fulfilling its mandate. The ERG and the Southwest Pacific expressed their appreciation to the *Earth Negotiations Bulletin* for coverage of the event.

Secretary Bhatti highlighted all the important achievements that the Governing Body had made at the session and thanked Italy and Indonesia for offering to host an international roundtable on the Treaty and GB 4, respectively

Following the customary exchange of courtesies, Chair Fernández gavelled the meeting to a close at 1:24 am on Saturday morning, 6 June 2009.

A BRIEF ANALYSIS OF THE MEETING

PROVIDING DIRECTION

The third meeting of the Governing Body (GB 3) of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR or the Treaty) was hosted by Tunisia, making it the first session to be held in Africa and the Arab world and underscoring the increased importance attributed to the Treaty worldwide. This is also the first time that the Governing Body has met since the FAO High-level Conference on World Food Security was held in June 2008, where the international community took official notice of the global food crisis threatening livelihoods, economic growth and political

stability in many regions. The Treaty and its Governing Body are expected to play a strategic role in addressing these challenges given the Treaty's ultimate aim of achieving sustainable agriculture and food security. Not only does the Treaty institute a functioning link between the agricultural, environmental and trade sectors, touching upon issues of conservation of plant genetic resources, sustainable agriculture and intellectual property rights (IPRs), it also provides the world's first operational multilateral system of access and benefit-sharing (ABS). The Treaty's Standard Material Transfer Agreement (SMTA) for the exchange of plant genetic resources is widely used, making the Treaty a model for several other international instruments under development in a variety of fora, including the negotiation of an international ABS regime under the Convention on Biological Diversity, Law of the Sea developments regarding marine genetic resources on the high seas and World Health Organization negotiations on access to vaccines and sharing of influenza viruses.

While the Treaty has achieved an excellent reputation in the short five years since its entry into force, it is broadly acknowledged that continued success hinges on effective financing and compliance mechanisms. This brief analysis focuses on the interlinkages between these two critical elements of the Treaty, as they played out in Tunis.

TURNING IN CIRCLES

This is not the first time the Governing Body has faced the challenge of developing a funding strategy and a compliance mechanism. Both issues came up at GB 1 and caused serious contention at GB 2, with developing countries insisting that work on compliance would have to wait until a proper funding strategy was put in place, even as work on the funding strategy proceeded. At GB 3 the division between the parties remained, with developing countries maintaining that it would be premature to discuss compliance while proper financing to ensure implementation was not yet in place. Developed countries initially seemed divided on financial issues, split between those who had contributed financially to the core operations of the Treaty and those who preferred to "invest" only in the special funds for agreed purposes or not contribute at all.

Despite this, they were united in their insistence that work on compliance had to proceed at this meeting, with the Europeans making a point of principle of securing compliance mechanisms across multilateral environmental agreements (MEAs) to promote their consistent implementation. On the other hand, developing countries implied that developed countries' true objective was to secure access to PGRFA, and insisted on funding commitments to ensure that work under the Treaty can be sustained, its implementation assured and plant research and breeding capacities built at the national level. While understandable, this strong attachment to regional priorities and the negotiating strategy of linking compliance to funding, and *vice versa*, triggered protracted procedural debates that put the meeting at risk of producing no substantive outcomes whatsoever.

It took a seemingly bold move from developed countries to break the deadlock on the third day of the meeting. Putting their money on the table, they agreed to the financial target of US\$116 million for the benefit-sharing fund set out in the funding strategy in exchange for the establishment of a contact group on

compliance. Trading a substantive commitment for a procedural one was seen by some as an indicator that no party had ever had a real issue with the proposed financial target, but instead used it only as a bargaining chip to secure progress on development of the compliance mechanism. Others perceived the deal as a trust-building measure, and felt that the strategy of developing countries had "paid off." What counts is that after this exchange, negotiations proceeded efficiently, with coordinated regional positions and delegates working in concert to secure substantive outcomes, such as elaborating on the implementation of the funding strategy and the procedures and operations for the Third Party Beneficiary. In the end, the meeting secured the financial target, a set of outcomes on implementation of the funding strategy, as well as an intersessional process to continue work on a compliance mechanism, making its adoption by GB 4 a real possibility.

IMPLEMENTATION AND FUNDING – THE CURRENT CHALLENGE

Delegates were unanimous in their recognition of the excellent work accomplished by the ITPGR Secretariat in spite of the Treaty's dire financial situation. Nonetheless, there was concern that the same level of work, let alone an increase in activities, could not be sustained without additional financial contributions. Delegates did appear unanimous that unless a clear funding strategy and long-term commitments were put in place, the continued implementation of the Treaty would be in jeopardy.

The limited contributions made to the core administrative budget of the Treaty together with the preference of some governments to contribute to the Treaty's special fund for agreed purposes or to the Global Crop Diversity Trust, had several delegates complaining about creating an unsustainable and uncertain future for the Treaty. One issue underlying this controversy is control, in that contributions to the Trust and special funds are for agreed purposes and can be made conditional, whereas contributions to the core budget serve the general implementation of activities mandated by the Governing Body. In addition, activities financed by the Trust are largely limited to *ex situ* conservation, in accordance with its mandate. Given the importance of *in situ* conservation of crop diversity and small-holder farmers' achievements in that regard, many participants argued that *ex situ* conservation cannot substitute for *in situ* activities, and called for redressing this imbalance. Adoption of a resolution on farmers' rights was seen a good step in this regard, signaling an international commitment towards ensuring farmers' rights at the national level.

The benefit-sharing fund of the Treaty is also a tool that many envision as serving this balancing role, meant to compensate provider communities for the generation and maintenance of unique crop diversity. This explains why a number of delegates expressed concern that, in the first project cycle under the fund, most recipients were academic and public institutions rather than farming communities, leaving some to wonder whether benefits would trickle down to the ground. Some noted that with tough competition for limited funds, the application process itself puts communities at a disadvantage *vis-à-vis* institutions, since the former often lack both knowledge about the process and the capacity to submit competitive proposals.

BUILDING MOMENTUM

Despite real concerns surrounding financing issues, the Treaty and its Secretariat continue to enjoy the trust of farmers, indigenous peoples and governments alike, putting it in a unique position to address a series of critical issues at the confluence of agricultural, trade and environmental issues, including food security. At this session, the Governing Body put into place a number of crucial steps to secure the implementation of the Treaty, not the least in deciding on a US\$116 million target for the benefit-sharing fund of the funding strategy. It is now in the hands of parties to take the necessary policy and legal measures, and make the financial contributions, that are necessary to strengthen the Treaty and its implementation. On a firmer footing, the Treaty can continue to serve as a pioneering example of how access to plant genetic resources can benefit society at large and, particularly farming and rural communities.

UPCOMING MEETINGS

CBD EXPERT GROUP ON TRADITIONAL KNOWLEDGE ASSOCIATED WITH GENETIC RESOURCES:

The expert group on traditional knowledge associated with genetic resources, established within the framework of the negotiations for an international ABS regime, will take place from 16-19 June 2009 in Hyderabad, India. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@cbd.int; internet: <http://www.cbd.int/doc/?meeting=ABSGTLE-03>

ITWG ON PGRFA: The fourth session of the FAO Intergovernmental Technical Working Group on plant genetic resources for food and agriculture (PGRFA) will be held from 15-17 July 2009, in Rome, Italy. For more information, contact: the FAO Plant Production and Protection Division; tel: +39-06-570-52411; fax: +3906-570-56347; e-mail: ITWG-PGRFA@fao.org; internet: <http://www.fao.org/agriculture/crops/core-themes/theme/seeds-pgr/itwg/en/>

CGRFA 12: The twelfth regular session of the FAO Commission on Genetic Resources for Food and Agriculture (CGRFA) will be held from 19-23 October 2009, at FAO headquarters in Rome, Italy. The session will be preceded by a one-day special event on policies and arrangements for ABS for genetic resources for food and agriculture, on 17 October 2009, and a day of regional consultations on 18 October 2009. For more information, contact: CGRFA Secretariat; tel: +39-06-5705-4981; fax: +39-06-5705-5246; e-mail: cgrfa@fao.org; internet: <http://www.fao.org/ag/cgrfa/>

HIGH-LEVEL ROUNDTABLE ON THE ITPGR: A high-level roundtable on the ITPGR is expected to be organized by the Italian government in late 2009, in Rome, Italy. For more information, contact: ITPGR Secretariat; tel: +39-06-570-53441; fax: +39-06-570-56347; e-mail: pgrfa-treaty@fao.org; internet: <http://www.planttreaty.org>

SIXTH MEETING OF THE CBD WORKING GROUP ON ARTICLE 8(J) AND RELATED PROVISIONS: This meeting will be held from 2-6 November 2009, in Montreal, Canada. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@cbd.int; internet: <http://www.cbd.int/doc/?meeting=WG8J-06>

ABS 8: The eighth meeting of the CBD Working Group on ABS will be held from 9-15 November 2009, in Montreal, Canada. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@cbd.int; internet: <http://www.cbd.int/meetings/>

ABS 9: The ninth meeting of the CBD Working Group on Access and Benefit-sharing is scheduled to be held from 18-24 March 2010, in Colombia, at a venue to be determined. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@cbd.int; internet: <http://www.cbd.int/meetings/>

CBD SBSTTA 14: The fourteenth meeting of the CBD Subsidiary Body on Scientific, Technical and Technological Advice (SBSTTA) will be held from 13-21 May 2010. The venue remains to be determined. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@cbd.int; internet: <http://www.cbd.int/meetings/>

CBD COP 10: The tenth Conference of the Parties to the CBD will be held from 18-29 October 2010, in Nagoya, Japan. COP 10 is expected to: assess achievement of the 2010 target to reduce significantly the rate of biodiversity loss; adopt an international ABS regime; and celebrate the International Year of Biodiversity 2010. For more information, contact: CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: secretariat@cbd.int; internet: <http://www.cbd.int/meetings/>

ITPGR GB 4: The fourth session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR GB 4) is expected to be held in the second or third quarter 2011, in Indonesia. For more information contact: ITPGR Secretariat; tel: +39-06-570-53441; fax: +39-06-570-56347; e-mail: pgrfa-treaty@fao.org; internet: <http://www.planttreaty.org>

GLOSSARY

ABS	Access and benefit-sharing
CBD	Convention on Biological Diversity
CGIAR	Consultative Group on International Agricultural Research
CGRFA	Commission on Genetic Resources for Food and Agriculture
ERG	European Regional Group
FAO	Food and Agriculture Organization
GB	Governing Body
GPA	Global Plan of Action for the Conservation and Sustainable Utilization of PGRFA
GRULAC	Latin America and the Caribbean Group
IARCs	International agricultural research centres
ITPGR	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
TORs	Terms of reference
UPOV	International Union for the Protection of New Varieties of Plants
WIPO	World Intellectual Property Organization