

SECOND SESSION OF THE GOVERNING BODY OF THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE: 29 OCTOBER - 2 NOVEMBER 2007

The second session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty or ITPGR) convenes from 29 October - 2 November 2007, at the headquarters of the UN Food and Agriculture Organization (FAO), in Rome, Italy. Delegates will address a number of issues specifically referred to the second session, including: procedures to promote compliance; priorities, eligibility criteria and operational procedures for the allocation of funds under the direct control of the Governing Body under the Funding Strategy; and some of the Financial Rules of the Governing Body. In addition, the agenda includes: a review of the implementation of the Multilateral System (MS) of Access and Benefit-sharing; consideration of a material transfer agreement (MTA) to be used for plant genetic resources for food and agriculture (PGRFA) not included in Annex I of the Treaty; implementation of Article 6 (Sustainable Use of Plant Genetic Resources) and Article 9 (Farmers' Rights); relationship between the Governing Body and the Commission on Genetic Resources for Food and Agriculture (CGRFA); cooperation with other international organizations; and the budget and programme of work for 2008-2009.

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 PGRFA and equitable benefit-sharing, in harmony with the Convention on Biological Diversity (CBD), for sustainable agriculture and food security. The Treaty establishes an MS for facilitated access to a specified list of PGRFA, balanced by benefit-sharing in the areas of information exchange, technology transfer, capacity building and commercial development. The list of crops in Annex I defines the Treaty's scope and includes 35 crop genera and 29 forage species. The Treaty entered into force on 29 June 2004, and currently has 115 parties.

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 chaired by Amb. Fernando Gerbasi (Venezuela) held six sessions to address contentious issues, including the list of crops to be included in the MS, benefit-sharing, intellectual property rights (IPRs) to materials in the MS, financial resources, genetic materials held by the International Agricultural Research Centers (IARCs) of the Consultative Group on International Agricultural Research, and definition of key terms. CGRFA's sixth extraordinary session (June-July 2001, Rome) 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 MS, the IU's relationship with other international agreements, or the list of crops to be included in the MS. 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) 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, was 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 MTA for facilitated access to material in the MS, including terms for commercial benefit-sharing; and initiate cooperative arrangements with the CBD Conference of the Parties (COP).

FIRST MEETING OF THE ITPGR INTERIM COMMITTEE: During its first meeting (October 2002, Rome), the ITPGR Interim Committee adopted its rules of procedure and established an Open-ended Working Group to propose draft rules of procedure and financial rules for the Governing Body, and draft procedures for compliance. The meeting also adopted the terms of reference for an expert group to address the terms of the standard MTA.

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MTA EXPERT GROUP: The expert group on the terms of the standard MTA (October 2004, Brussels, Belgium) considered options for the terms of the standard MTA and its draft structure, and recommended that the Interim Committee establish an intersessional contact group to draft the elements of the standard MTA.

SECOND MEETING OF THE ITPGR INTERIM COMMITTEE: At its second meeting (November 2004, Rome), the ITPGR Interim Committee agreed to establish an open-ended intersessional working group to address the rules of procedure and financial rules for the Governing Body, the funding strategy and procedures for compliance, since the working group established by its first session did not meet due to lack of funds. Delegates also agreed on the terms of reference for an intersessional Contact Group to draft the standard MTA for the Governing Body's consideration.

OPEN-ENDED WORKING GROUP ON RULES OF PROCEDURE, FINANCIAL RULES, COMPLIANCE AND FUNDING STRATEGY: In its meeting (December 2005, Rome), the Working Group revised the draft rules of procedure, financial rules, and resolution on the funding strategy with the strategy in an annex, and prepared a draft resolution on compliance, for consideration by the first meeting of the Governing Body.

MTA CONTACT GROUP: In its first meeting (July 2005, Hammamet, Tunisia), the Contact Group on the standard MTA set out the basic structure of the agreement. 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, with a number of issues still remaining unresolved, including: questions regarding 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 attempt to resolve pending issues prior to the first meeting of the Governing Body.

FIRST SESSION OF THE ITPGR GOVERNING BODY: The first session of the 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: the rules of procedure, including decision making by consensus; financial rules with bracketed text on an indicative scale of voluntary contributions; a resolution establishing a compliance committee; the relationship agreement with the Global Crop Diversity Trust; a model agreement with the IARCs and other international institutions; and the budget and work programme for 2006-2007.

INTERSESSIONAL HIGHLIGHTS

CONSULTATION ON TECHNOLOGY SUPPORT FOR MS IMPLEMENTATION: Held on 13-14 February 2007, in Rome, this technical consultation of stakeholders made a series of recommendations regarding possible information technology tools that could contribute to simplifying and, as far as possible, automating the transactions involved in the MS.

ADVISORY COMMITTEE ON THE FUNDING

STRATEGY: Established by the Governing Body's first session, the Committee held two meetings (26-28 March 2007 and 7-8 June 2007) and finalized three documents to be annexed to the Funding Strategy, for consideration by the second session of the Governing Body: priorities for the allocation of funds, and draft eligibility criteria and operational procedures with regard to the use of resources under the direct control of the Governing Body.

CGRFA-11: Held from 11-15 June 2007, in Rome, the eleventh regular session of the CGRFA considered agenda items relating to the ongoing programmes of the Commission with regard to animal genetic resources (AnGR), PGRFA, and the draft code of conduct on biotechnology, as well as the establishment and implementation of the Commission's multi-year programme of work (MYPOW). Outcomes included agreement on most of the major outputs and milestones of the MYPOW until CGRFA-16. Delegates also agreed to forward to the International Technical Conference on AnGR a draft "Interlaken declaration on AnGR" and the elements of a global plan of action, incorporating strategic priorities for action, with some parts of the text still bracketed.

INTERNATIONAL TECHNICAL CONFERENCE ON ANGR: The first International Technical Conference on AnGR was held from 3-7 September 2007, in Interlaken, Switzerland. Following a forum on the scientific aspects of AnGR and a presentation of the final version of the report *The State of the World's Animal Genetic Resources for Food and Agriculture*, delegates negotiated and adopted the Global Plan of Action for AnGR, including a section on implementation and financing that had been the subject of considerable discussion, as well as the Interlaken Declaration, which stresses the importance of AnGR and confirms the adoption of the Global Plan.

CONSULTATION ON FARMERS' RIGHTS: Organized by Norway and Zambia, an informal international consultation on farmers' rights was held from 18-20 September 2007, in Lusaka, Zambia. Participants explored the concept of farmers' rights, farmers' contribution to the conservation and sustainable use of genetic resources, and the state of realization of farmers' rights, including what the Governing Body can do to promote such realization. They discussed national implementation of farmers' rights, how stakeholders can join forces, and how resources can be pooled for this purpose. An input paper was developed, for consideration by the Governing Body at its second session.

CBD ABS-5: The fifth meeting of the CBD Working Group on Access and Benefit-sharing (ABS) was held from 8-12 October 2007, in Montreal, Canada. Delegates considered substantive elements of an international regime on ABS, including: access to genetic resources; fair and equitable sharing of benefits; compliance with prior informed consent and mutually agreed terms; an internationally recognized certificate of origin/source/legal provenance; traditional knowledge and genetic resources in the context of ABS; and capacity building. Negotiations will continue at the sixth session of the Working Group, to be held from 21-25 January 2008, in Geneva, Switzerland.

CBD ARTICLE 8(J)-5: The fifth meeting of the CBD Working Group on Article 8(j) and related provisions was held from 15-19 October 2007, in Montreal. The meeting adopted a series of recommendations to be forwarded to the ninth meeting of the CBD COP in May 2008, including on an ethical code of conduct and *sui generis* systems for traditional knowledge protection. Delegates did not reach agreement on a recommendation on Working Group inputs to the negotiation of an international regime on ABS.