

Ninth Meeting of the *Ad Hoc* Open-ended Working Group to Enhance the Functioning of the Multilateral System of the International Treaty on Plant Genetic Resources for Food and Agriculture: 17-21 June 2019

In what was described as a largely successful meeting, the ninth meeting of the *Ad Hoc* Open-ended Working Group to Enhance the Functioning of the Multilateral System (MLS) of access and benefit-sharing (ABS) of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) reached tentative compromise to amend Annex I of the Treaty (list of crops in the MLS), to include all plant genetic resources for food and agriculture under the management and control of parties and in the public domain, in *ex situ* conditions, while allowing for reasoned national exemptions regarding a limited number of native species.

The Working Group also agreed on a package of measures, also known as the growth plan, which simultaneously adopts the revised Standard Material Transfer Agreement (SMTA) and the amendment of Annex I. Negotiations continued on the draft revised SMTA. Consensus was reached on several provisions, with genetic sequence data (also addressed as digital sequence information) and rates for benefit-sharing payments remaining as the main outstanding issues. As a result, the meeting was suspended, to allow for additional time to finalize negotiations, following consultations at the national and regional level. The Working Group will reconvene for three days before the eighth session of the Treaty's Governing Body (GB 8), which will be held from 11-16 November 2019 in Rome, Italy, and is expected to adopt the amended Annex I of the Treaty and the revised SMTA.

The Working Group is composed of up to 30 representatives: up to five from Europe; up to five from Asia; up to five from Latin America and the Caribbean; up to three from the Near East; up to two from North America; and up to two from the Southwest Pacific. Up to two representatives from each of the following groups may participate as observers: civil society organizations; the seed industry; farmers' organizations; and the CGIAR Consortium of International Agricultural Research Centers (CGIAR Consortium).

The Working Group was first established by the fifth session of the Governing Body (GB) (September 2013, Muscat, Oman). It has since focused on the revision of the SMTA and elaboration of a subscription system for user-based payments to the MLS, and, more recently, on options for possible adaptation of MLS coverage.

The ninth meeting of the Working Group convened from 17-21 June 2019 at the headquarters of the UN Food and Agriculture Organization (FAO), in Rome, Italy.

A Brief History of the Treaty

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

The Treaty was adopted on 3 November 2001 by the FAO Conference, following seven years of negotiations. It entered into force on 29 June 2004, and currently has 146 parties.

Key Turning Points

GB 1: The first session of the Treaty's GB (June 2006, Madrid, Spain) adopted the SMTA and the Funding Strategy. The SMTA includes provisions on a benefit-sharing scheme, providing two

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options. First, the recipient can choose to pay 0.77% of gross sales from commercialization of new products incorporating material accessed from the MLS, if its availability to others for further research and breeding is restricted. Alternatively, the recipient can choose to pay 0.5% of gross sales on all PGRFA products of the species they accessed from the MLS, regardless of whether the products incorporate the material accessed and regardless of whether the new products are available without restriction. The GB further adopted: its rules of procedure, including decision making by consensus; financial rules with bracketed options on an indicative scale of voluntary contributions or voluntary contributions in general; a resolution establishing a Compliance Committee; the relationship agreement with the Crop Trust; and a model agreement with the international agricultural research centers of the CGIAR Consortium and other international institutions.

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

GB 3: The third session of the GB (June 2009, Tunis, Tunisia) agreed to: a set of outcomes for implementation of the Funding Strategy, including a financial target of USD 116 million for the period July 2009 - December 2014; a resolution on the implementation of the MLS, including setting up an intersessional advisory committee on implementation issues; procedures for the Third Party Beneficiary; and a resolution on farmers' rights.

GB 4: The fourth session of the GB (March 2011, Bali, Indonesia) adopted procedures and mechanisms on compliance, and reached consensus on the long-standing item of the financial rules of the GB. It also adopted resolutions on farmers' rights, sustainable use, and implementation of the Funding Strategy.

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

The Working Group met four times during the intersessional period (May 2014, December 2014, June 2015 and October 2015).

GB 6: The sixth session of the GB (October 2015, Rome, Italy) extended the mandate of the Working Group on the MLS, and requested that it, among other issues:

- elaborate a full draft revised SMTA;
- elaborate options for adapting coverage of the MLS, based on different scenarios and income projections; and
- consider issues regarding genetic information associated with material accessed from the MLS.

The meeting also adopted a work programme for the Global Information System, and resolutions on a series of substantive, cooperation-related, and administrative items, with a focus on addressing the shortfall in the BSF and on strengthening the

implementation of Treaty provisions regarding conservation and sustainable use of PGRFA on-farm, through the work programme on sustainable use and farmers' rights.

The Working Group met three times during the intersessional period (July 2016, March 2017 and September 2017).

GB 7: The seventh session of the GB (October–November 2017, Kigali, Rwanda) extended the mandate of the Working Group on the MLS, requesting it to continue revision of the SMTA, develop a proposal for a growth plan to attain the enhanced MLS, and elaborate criteria and options for possible adaptation of the coverage of the MLS. GB 7 further established an *Ad Hoc* Technical Expert Group on Farmers' Rights; reconvened the Committee on the Funding Strategy and Resource Mobilization to develop the updated Funding Strategy; and decided to put digital sequence information on the GB 8 agenda.

8th Session of the Working Group: The eighth meeting of the Working Group continued negotiations on specific clauses of the SMTA. Questions related to digital sequence information (DSI) and a possible expansion of the MLS remained deeply divisive. However, several participants welcomed the constructive spirit and open discussion that provided opportunities for mutual learning and clear procedural steps allowing for informed deliberations at its ninth meeting.

Report of the Ninth Meeting of the Working Group

On Monday, Co-Chair Javad Mozafari (Iran) opened the meeting, recalling that progress made over the Working Group's six-year mandate has resulted in well-developed documents, and urging participants to conclude negotiations at this meeting. Co-Chair Hans Hoogeveen (Netherlands) said it was "now or never" to improve the MLS to ensure improved benefit-sharing and access. ITPGRFA Secretary Kent Nnadozie pointed to the investment of time and resources, and said it was in delegates' hands to take the Treaty to the next stage of implementation.

The Working Group then adopted the meeting's agenda and timetable (IT/OWG-EFMLS-9/19/1 and 2 Rev.1). Co-Chair Mozafari reported on informal consultations in Costa Rica (January 2019), Ethiopia (March 2019), and Rome (May 2019).

The Working Group heard a report on sales within the seed sector (IT/OWG-EFMLS-9/19/Inf.5). Jonathan Shoham, Agribusiness Intelligence, presented an overview of the global seed sector, including companies' profile, and an analysis of sales and profitability by company and crop type. He highlighted the sector's dependence on research and development, and noted that genetically modified crops drive growth in the seed market, pointing out Bayer/Monsanto's exceptional profitability in that regard. The Working Group then discussed:

- the global market share of companies based in developing countries, excluding China;
- future trends and the role of technological drivers; and
- the study's division of companies into three tiers.

Participants noted issues for further analysis, including: the percentage of seed sales not destined for food; the market share of Annex I crop seeds and the impact of material accessed through the MLS on seed sales; and the impact of seed prices on the market.

On Tuesday, Co-Chair Hoogeveen established a Friends of the Co-Chairs' group, to seek compromise on outstanding matters following each day's deliberations.

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

On Monday, Alwin Kopse (Switzerland), Co-Chair of the Committee on the Funding Strategy, presented the outcomes of its eleventh meeting, including on targets of the Funding Strategy and the BSF. He noted that the updated strategy should improve funding opportunities and strengthen the linkages between different sources, and underlined that the BSF should focus on supporting on-farm management and promoting development and commercialization of all varieties.

Interim Committee Co-Chair Pierre du Plessis (African advisor) stressed the need to consider the link between increasing the BSF and expanding the scope of the MLS, and underlined the programmatic approach to resource mobilization depends on predictable resources.

The Latin America and Caribbean Group (GRULAC) emphasized urgent funding requirements in the region, and the need to understand that negotiations are also linked to biodiversity conservation.

Revision of the SMTA

Delegates negotiated the text of the draft revised SMTA throughout the week, in the Working Group and the Friends of the Co-Chairs' group.

On Monday, the Secretariat introduced the relevant documents, including the draft revised SMTA resulting from the Working Group's eighth meeting, the Co-Chairs' note, the Co-Chairs' proposed draft revised SMTA, and the Co-Chairs' explanatory notes (IT/OWG-EFMLS-9/19/3, 19/4, 19/4 Add.1, and 19/4 Add.2). The Working Group agreed to negotiate on the basis of the Co-Chairs' proposed draft revised SMTA (IT/OWG-EFMLS-9/19/4 Add.1).

The following section of the report outlines discussions under the SMTA's provisions and annexes, in the order they were introduced in the Working Group.

Definitions (SMTA Article 2): The Working Group agreed to definitions of "available without restriction," "genetic material," "governing body," "Multilateral System," "plant genetic resources for food and agriculture," "plant genetic resources for food and agriculture under development," and "product."

Delegates discussed two options for the definition of "sales," the first referring to the gross income from the commercialization of products by the recipient, its affiliates, contractors, licensees and lessees, and the second referring to the gross income received by the recipient and its affiliates in the form of license fees and from commercialization.

The Seed Industry preferred the second option that refers to the recipient and its affiliates and, supported by North America, to license fees from PGRFA.

Africa asked for reference to fees from commercialization and, opposed by Europe, from commercial use of genetic sequence data. GRULAC stressed the need to determine if licensees, contractors, and lessees were controlled under national law in the country of origin and to ensure that they are all covered in the definition.

The CGIAR Consortium proposed to define sales as payment for commercialized products and in turn explain those in the annexes.

Delegates discussed two options for the definition of "commercialize," the first one drawn from the current SMTA and referring to selling a product for monetary consideration on the open market and excluding PGRFA under development,

and the second one, proposed by the Seed Industry, referring to exchange of PGRFA for monetary consideration on the open market and excluding PGRFA under development, and the sale of commodities and other products used for food, feed and processing.

The CGIAR Consortium recommended focus on sales and reference to PGRFA or any elements that are ready for commercialization.

Africa requested reference to any means of selling a product or any associated information, including genetic sequence data.

Terms and conditions of the subscription system (Annex 3): North America suggested language stating that the recipient has the option to sign a subscription for material in Annex I, and that access to non-Annex I material will be under the terms of the single access system. Africa and GRULAC questioned the need for reference to the single access system.

Africa called for consistent reference to crops covered by the MLS, rather than crops in Annex I. GRULAC inquired if the subscriber is required to make benefit-sharing payments for material available through the CGIAR Consortium.

Europe suggested that, during the transition period, as long as voluntary payments occur, recipients should operate under the current SMTA.

Monetary benefit-sharing (Annex 3, Article 3): Delegates discussed a provision on sharing of monetary benefits from sales, with GRULAC and Europe agreeing to specify that it only applies to PGRFA listed in Annex I. Africa, opposed by Europe and North America, asked to include reference to associated information or genetic sequence data.

Africa sought clarification whether any user who gets non-Annex I material that is voluntarily in the MLS has to sign separate agreements. GRULAC said clarification could be included that non-Annex I material that is made available voluntarily is not covered by the subscription. Europe called for a separate provision on the rules that apply for non-Annex I material. The Seed Industry pointed out that many companies exchange material of both Annex I and non-Annex I crops, and suggested considering a provision to reward or incentivize subscribers.

Delegates discussed two options regarding a single payment rate or differentiated rates, depending on whether the product is available with or without restriction.

Asia, Africa, North America, and Switzerland expressed preference for a single payment rate, drawing attention to practical difficulties for both providers and recipients if multiple rates are maintained. France, for the EU, favored differentiated rates.

The Working Group agreed to retain a provision that no payment shall be required for a subscriber in a year in which its sales do not exceed a specific amount of USD, and called for discussion in the Friends of the Co-Chairs' group on the specific amount.

Following suggestions by Africa and Co-Chair Hoogeveen, the Working Group agreed to specify that all benefit-sharing payments shall be in USD "at the exchange rate that prevailed in the date of closure of accounts."

Withdrawal from and termination of the subscription (Annex 3, Article 4): Regarding a provision on obligations of the subscriber upon withdrawal, delegates discussed:

- whether a reference to the possible need to destroy the material upon withdrawal is needed;

- the option of transferring the material to an international institution that has signed an agreement with the Governing Body; and
- whether to address this matter in the main part of the draft revised SMTA rather than Annex 3, under a provision on additional items.

The Secretariat clarified that there is no legal requirement to suggest that only international institutions conserve the material in case of withdrawal, noting other genebanks could be proposed. Europe highlighted that those genebanks should operate under the MLS.

GRULAC, Africa, and Civil Society considered destroying the material upon withdrawal as problematic, and preferred avoiding this option. Asia, Europe, and North America supported retaining the option of destroying the material, as a last resort, since it may be practically difficult for users to transfer the material to genebanks. The issue was forwarded to the Friends of the Co-Chairs' group.

Delegates debated a provision setting a time limit of two years for continuation of monetary benefit-sharing requirements from the end of subscription. India suggested a ten-year time limit. Europe said a ten-year period would reduce attractiveness of the system. The Philippines and Lebanon proposed five years as a reasonable compromise. Africa underscored the subscription system has to be as attractive as possible.

North America proposed a new provision stating that the subscriber may withdraw from its subscription with three months' written notice, with related documentation to substantiate that a material breach of the terms of its subscription has occurred, further noting that under such circumstances monetary benefit-sharing requirements would cease to apply.

Registration Form (Annex 4): On Tuesday, the Working Group addressed the registration form for the subscription system, which was agreed upon without major discussion.

List of Materials Provided (Annex 1): Africa expressed concern regarding reference to material's "associated information" and the extent to which that includes digital sequence information.

Rights and Obligations of the Recipient (SMTA Article 6): Subscription system (Article 6.11): The Working Group addressed the timing for subscription, and accepted a proposal by North America to allow for subscription at any time. The provision was accepted as amended.

Delegates then addressed an explanatory provision proposed by North America, stating that the recipient has the option to sign a subscription for Annex I material, while access to non-Annex I material is covered by the single access terms (Articles 6.7/6.8), further noting that the subscription covers all Annex I PGRFA.

Permitted uses (Article 6.1): Regarding a provision on use of the material only for the purposes of research, breeding, and training for food and agriculture, Africa suggested adding that "unauthorized use would constitute a breach of contract and will result in a claim for an arbitral award for liquidated damages."

Intellectual Property Rights (Article 6.2): Delegates addressed a provision proposed by the Co-Chairs stating that the recipient shall not claim any intellectual property rights (IPRs) that limit facilitated access to the material or its genetic parts or components, in the form received from the MLS. Africa expressed concern with the deletion of prior reference to limiting farmers' rights. Europe and North America supported the Co-Chairs' proposal. France proposed new language regarding limiting "sustainable use, food and agriculture production, reproduction, exchange, and sale of reproductive material of the Material in

the form received from the MLS." North America and Japan highlighted that the current text reflects Treaty language and that additional wording is not necessary. Africa noted they can accept the French proposal, with reference to farmers' rights. Farmers Organizations said that the provision focuses on obligations of the recipient, while national legislation can still restrict use. The Working Group decided to include language along the lines of the French proposal in the draft resolution on enhancement of the MLS.

Transfer of PGRFA under development (Article 6.5): Delegates addressed a provision on transfer of PGRFA under development, including two additions proposed by the Co-Chairs: a time limit for the obligation to transfer such PGRFA under the terms of the SMTA; and an exemption for PGRFA that contain a genetic contribution of less than 25% of pedigree of MLS material or do not contain a trait of commercial value originating in the MLS material.

Europe requested deleting the reference to the time limit, while Asia and the Seed Industry favored keeping it. North America suggested setting the time limit to 12 years.

North America and the Seed Industry supported the exemption for PGRFA containing limited MLS material. Civil Society opposed it, and GRULAC warned it may lead to recipients escaping obligations.

Following consultations, the Working Group agreed to a 12-year time limit and an exemption for PGRFA containing less than 12.5% of pedigree of MLS material and no trait of commercial value.

Single access system (Articles 6.7 and 6.8): Delegates discussed provisions on rights and obligations of the single access recipient in regard to products that are not available without restriction for further research and breeding (Article 6.7) and products that are available without such restrictions (Article 6.8). The Secretariat explained that the Co-Chairs proposed a reference to the affiliates of the recipient and a time limit for the monetary benefit-sharing obligation for products available without restriction.

The Near East asked to state that the provisions refer to a single access system. GRULAC suggested, and delegates agreed, to refer instead to recipients that do not opt for a subscription system. Africa proposed that after the restriction comes to an end, the recipient or its affiliates who commercialize the products will continue to make payments at the rate applicable to products available without restriction.

North America and Japan advocated for an overall time period of limiting payments under both categories for a combined 20 years, as a separate provision. The Seed Industry said a time limit is required. Africa and GRULAC said payments should continue as long as the product is commercialized.

Provision of information (Article 6.9): Delegates addressed the provision stating that the recipient shall make available to the MLS all non-confidential information that results from research and development carried out on the material. Africa requested explicit reference to genetic sequence data, clarifying, with Civil Society, that genetic sequence data arising from MLS material cannot be confidential. North America, Europe, and Japan opposed such explicit reference, noting genetic sequence data is part of "information." Delegates discussed the possibility of including the term "information" under definitions.

IPRs and transfer of benefit-sharing obligations (Article 6.10): The Secretariat presented two options: the first one stating that when IPRs on products developed from MLS material or its components are assigned to a third party, the benefit-sharing

obligations shall be transferred too; and the second one, proposed by Africa, specifying that IPRs or applications for IPRs can be transferred to a third party only after that party has accepted the benefit-sharing obligations.

Delegates discussed whether IPR applications can be transferred, with Africa explaining that the application date establishes the date for the invention and affects the value of the patent. The Seed Industry indicated that the more commitments are added in the SMTA the more reluctant users will be to sign it. Discussions will continue, pending consultations on patent law.

Withdrawal from the Agreement (SMTA Article 9.2): The Working Group debated whether the recipient should be able to withdraw no less than thirty or ten years from the date of signing or acceptance of the agreement. Europe supported the option of ten years from the date of signing the agreement.

GRULAC underlined the provision refers to withdrawal from the specific SMTA and not the subscription system, and expressed concern that withdrawal means nothing needs to be done after leaving the agreement.

Co-Chair Hooegeven proposed to specify that withdrawal from the subscription system is provided in Annex 3 and withdrawal from the single access system in Annex 2.

Dispute Settlement (SMTA Article 8): Delegates agreed on the provisions about triggering dispute settlement and discussed if the initial steps of amicable dispute settlement and mediation involved national courts, or if national courts could be accessed after arbitration.

Delegates further discussed a proposal by Africa to refer to opportunities for access to justice available under Treaty Article 12.5 (access to justice at the national level in case of contractual disputes).

Following informal consultations, delegates agreed to state that:

- in case of a proven breach of Articles 6.1 or 6.2, the recipient may be liable for damages;
- with respect to Article 6.1, damages should be in proportion to the income received by the recipient as a result of the proven breach; and
- with respect to Article 6.2, damages should be in proportion to the income received by the recipient as a result of the IPR or other rights that limit the facilitated access to the material, or its genetic parts or components, in the form received from the MLS, and may additionally result in assignment of the IPRs or other rights involved, in accordance with relevant international law and national legislation.

Exemptions: Delegates discussed a proposal by GRULAC for a draft provision on potential exemptions from benefit-sharing obligations for family farmers, indigenous peoples, small plant breeding companies, and public institutions. GRULAC explained that each party would provide information about how these groups are defined under national legislation, so that these terms do not have to be defined at the international level.

India supported addressing exemptions in the preamble of the SMTA for all proposed categories but small plant breeding companies. North America and Europe preferred addressing exemptions under the provision on a threshold for monetary benefit-sharing obligations. GRULAC pointed out that the threshold would apply under the subscription system, not single access.

Following a question by Europe, GRULAC explained that public institutions rarely commercialize material themselves, and need to be exempted as part of the public sector.

Benefit-sharing payments by developing country entities:

Argentina introduced a proposal according to which, when the payment is made by a recipient located in a developing country party, 80% of the amount will be immediately allocated to finance projects for Treaty implementation in that country.

North America pointed to legal problems related to earmarking BSF funds, and proposed that the Committee on the Funding Strategy address the issue when setting priorities for BSF allocation.

Alwin Kopse, Co-Chair of the Committee on the Funding Strategy, noted that use of BSF funding is under the discretion of the Governing Body, adding that user-based income should not be earmarked to preserve the multilateral character of the BSF. Co-Chair Mozafari proposed addressing the issue as part of the resolution. The Secretariat drew attention to an element for the resolution proposed by the Co-Chairs, requesting the Committee on the Funding Strategy to prepare possible criteria for allocation of BSF funds that could take into account, *inter alia*, payments made by entities in a given country, whether a country has ratified the amended Annex I, or whether the country is actively sharing MLS material. Europe suggested reference to possible criteria for the allocation of BSF funding as part of the BSF operations manual. Delegates decided to address the proposal as part of the resolution.

Payment rates: On Wednesday evening, the Secretariat introduced a non-paper to facilitate informed discussion on benefit-sharing rates and allow for the development of a range of possible rates for the subscription system and single access, including estimates of target payment rates for the subscription system to reach the BSF targets under consideration by the Committee on the Funding Strategy.

GRULAC urged taking into account other funding sources and said rates should not be dependent on BSF targets. North America expressed concerns about the proposed approach and ranges of payment rates, noting that rates have to be attractive for users and useful material has to be in the MLS.

Africa and GRULAC said it was unrealistic to assume that the subscription option would cover 70% of all sales. The Seed Industry pointed to the Declaration of Commitment of industry users and their proposed 0.01% rate, noting that a higher rate leads to a choice between subscription and other investment in research and development.

Discussion on the non-paper continued on Friday morning. Co-Chair Hooegeven drew attention to the three scenarios available for the subscription system and for single access, and called for comments on the subscription rate first.

North America suggested discussion on the proportion between the subscription and single access system rates under Articles 6.7 and 6.8. Africa suggested the rate for subscription be 0.3%.

Argentina called for differentiated rates for companies in developing and developed countries and for considering exemptions. Opposing differentiations, Europe suggested a rate of 0.013%, as a realistic rate to contribute to the BSF.

GRULAC asked to distinguish between the targets for the BSF and the rates, and warned against using false presumptions like a 70% subscription rate across the global seed market. To incentivize subscription, Brazil proposed a rate of 0.01% for subscription, with 0.2% - 2% for Articles 6.7-6.8, with possible discounts for the higher rates.

Civil Society pointed to the World Health Organization's Pandemic Influenza Preparedness framework, set to raise USD 200 million in payments over seven years, with an initial rate of

just under 1% from an industry that is one-tenth of the size of the seed industry. He suggested a realistic rate would be 0.5 to 1%.

Africa reported that one member of the Committee on the Funding Strategy opposed setting of specific targets, resulting in the setting of broad target ranges, which cannot guide decision making. Pointing to the growth rate of the seed industry, he noted that a target of USD 50 million a year is needed for the region to move ahead with ratification of the amended Annex I. Alwin Kopse, Co-Chair of the Committee on the Funding Strategy, noted that the agreed methodology for setting the target would result in a 0.04 rate, adding that the BSF requires USD 20-25 million. Co-Chair Hoogeveen proposed to look for a rate corresponding to the BSF target between USD 25-50 million. Switzerland proposed a rate of 0.015%.

North America and Argentina preferred discussion on a rate that appeals to users rather than one based on the BSF requirements.

Starting from the European and Brazilian proposals, Co-Chair Hoogeveen proposed rates of 0.015% for subscription, and 0.2% - 2% for Articles 6.7 and 6.8, with a 30% discount. France expressed concern regarding increasing rates for Articles 6.7 and 6.8, noting, however, the discount could be reduced. Asia called for providing justifications to the rates selected.

Rates and modalities of payment under Articles 6.7 and 6.8 (Annex 2): Delegates agreed to discuss in parallel payment rates under the single access and the subscription systems.

Delegates agreed to exemptions from payments when the product has been obtained from an entity that has already made a payment on it, and when it is sold or traded as a commodity.

Delegates decided to delete an exemption from payment when the product does not limit farmers' rights, noting the provision is misplaced. They further agreed to harmonize language on annual reporting to the Governing Body with agreed language on reporting under the subscription system, and addressed issues related to withdrawal.

Other SMTA provisions: On Thursday evening, the Working Group agreed to, without major discussion, the following SMTA provisions:

- preamble;
- parties to the agreement (Article 1);
- subject matter of the material transfer agreement (Article 3);
- general provisions (Article 4);
- rights and obligations of the provider (Article 5), with North America and Africa suggesting to include reference that information provided by the provider to the GB "shall be treated as confidential business information and shall be used to develop aggregated reporting only, subject to national legislation, as appropriate";
- availability of the material and related information to the MLS (Article 6.3); and
- transfers to subsequent recipients (Article 6.4).

Adaptation of Coverage of the MLS

On Wednesday, the Secretariat introduced the Co-Chairs' proposal (IT/OWG-EFMLS-9/19/4 Add.3) including four options for the consideration of the Working Group:

- the proposal by the government of Switzerland to expand coverage to all PGRFA;
- additional text proposed by Africa to the Swiss proposal, regarding measures to ensure that annual user-based payments to the BSF equal 0.3% of total global seed sales and such income has accrued to the BSF for three years;

- the statement by GRULAC to limit the expanded coverage to PGRFA in *ex situ* conditions; and
- inputs received during the informal meetings regarding the possibility of limited exemptions of species from inclusion in the MLS.

GRULAC asked how exemptions included in the current Annex I are addressed in the Swiss proposal. Switzerland responded that their proposal is based on the scope of the Treaty, which covers all PGRFA with no exemptions. GRULAC reiterated their position that the MLS should only apply to material in *ex situ* collections as part of the scope of the amendment.

Europe noted that discussions on the expansion of Annex I and on the revised SMTA are seen as a package. He called for clarifying some concepts, such as the "limited number of species" to be potentially exempted from MLS coverage.

India, supported by Africa, Uruguay, and Civil Society, proposed drafting a comprehensive list of species for the purpose of expansion, instead of a general list as currently included in Annex I. Civil society added that the term PGRFA is too unclear and stressed the need to exclude crop wild relatives, and PGRFA *in situ*, especially those held by smallholder farmers and indigenous peoples. Noting that issues related to applicability are addressed in the Treaty, North America cautioned against negotiating a new list of species, suggesting it would be easier to accept exemptions. The Near East supported amending Annex I to cover all *ex situ* PGRFA.

Asia drew attention to an opinion of the Standing Group of Legal Experts that limiting the list of crops to *ex situ* material would be incompatible with Treaty Article 12.3(h) on access to PGRFA *in situ*. The Secretariat said that all PGRFA are within the Treaty's scope, and that pursuant to Treaty Article 12.3(h), access to PGRFA *in situ* takes place in accordance with national legislation or standards adopted by the Governing Body, which has not happened to date. Farmers Organizations said many countries do not have legislation on access to PGRFA *in situ*, calling for specifying that PGRFA *in situ* are not in the MLS.

Africa asked to consider including genetic sequence data used in food and agriculture.

On Thursday afternoon, delegates addressed a Co-Chairs' proposal for compromise text containing wording for a draft resolution and text for the amendment of Annex I. Co-Chair Hoogeveen noted the proposal refers to all *ex situ* PGRFA and allows parties to make declarations that they will not provide facilitated access to a limited number of species that are native to their territories.

Amendment text: Delegates addressed the proposed language for the amendment of Annex I of the Treaty, which notes that the MLS shall cover all PGRFA under the management and control of parties that are in the public domain and found in *ex situ* conditions. The CGIAR Consortium highlighted that the conditions for inclusion in the MLS are cumulative.

The Near East opposed setting a maximum number of species for exemption, and suggested including that the MLS shall cover all other plant genetic resources "which are used" for food and agriculture. Europe and North America opposed, noting that some PGRFA may become useful in the future.

GRULAC, opposed by North America, suggested referring to Treaty Article 10.1, setting out that countries have the right to determine if they give access. Following consultations, delegates agreed to refer to Treaty Articles 10-12.

On the possibility for national exemptions, North America suggested that a declaration by a party shall not affect the obligations of any other party related to the species, nor inclusion in the MLS. She further suggested that the SMTA state that payments will be based on the sales of products under Annex I, with the exception of any exclusions made by a party.

Europe proposed limiting the number to up to five species, and requiring criteria for exclusion, proposing reference to species of high importance for socio-economic or cultural considerations. Africa and GRULAC proposed to refer to Treaty language and establish exemptions for reasons of food security and interdependence.

Following informal consultations, North America presented compromise text, stating that:

- at the time of ratification, a party may, exceptionally, declare a certain and limited number of species native to its territory that it will not include in the MLS;
- such a declaration shall not affect the rights and obligations of any other party related to the species, nor shall it affect the inclusion of species in the MLS by the international agricultural research centers or other international institutions that concluded Article 15 agreements with the Governing Body; and
- a party may withdraw its declaration at any time but shall not make any additional declaration.

The CGIAR Consortium suggested including a provision clarifying that its centers have to provide access even if hosted by countries that provide for exemptions. The Secretariat recommended and delegates agreed to address this issue as part of the resolution.

Resolution: Following informal consultations, North America reported on compromise text to be included in the resolution:

- calling on parties to exercise restraint in using exemptions;
- including an indicative list of reasons;
- providing for a review of exemptions by the Governing Body in 2025; and
- recommending that the criteria for disbursement under the BSF would prioritize parties that have not excluded material under the amended Annex I, proportionate to the amount of exclusions.

North America proposed and, after some discussion, delegates agreed to request parties that are making a declaration to state clear reasons for any exclusion, which may include, *inter alia*, pre-existing legal restrictions, socio-economic or cultural reasons, bearing in mind food security and interdependence. Delegates further agreed to review the status of declarations of exclusions as part of the 2025 review and that the BSF should not support projects related to excluded species in parties that have excluded them.

North America proposed that the Committee on the Funding Strategy establish criteria for allocation of BSF funds to prioritize projects in parties that have made their material fully available. Following discussion, delegates agreed to a proposal by Africa that the BSF should prioritize projects in parties that have made their material fully available.

North America, supported by Europe, proposed an additional provision encouraging parties to include in the MLS PGRFA *in situ* in accordance with Article 12.3(h). Argentina warned that reference to *in situ* PGRFA will make ratification more difficult, expressing concerns regarding the need to involve local governments in implementation, and requested time to consult with capital.

Delegates then agreed to the rest of the provisions of the resolution with minor amendments. Switzerland and Africa questioned the need for stating that any party may provisionally apply the amendment before its entry into force, noting that this was a prerogative of any party. Following proposals by Switzerland and North America, delegates agreed to invite parties, pending entry into force of the amendment, to make available the full extent of their PGRFA under the terms and conditions of the MLS.

Genetic Sequence Data

On Wednesday, the Secretariat highlighted previous work on digital sequence information (DSI), underscoring participants' preference to avoid limiting access to DSI related to PGRFA, and possible challenges for the ABS mechanism of the Treaty. He underlined divergent views on how to address this issue in the MLS and in the revised SMTA, and reiterated that "DSI" is only a working term, noting the term "genetic sequence data" or "information associated with PGRFA" may be more appropriate. The Working Group was invited to consider addressing DSI in a draft resolution, on the basis of potential elements suggested by the Co-Chairs (IT/OWG-EFMLS-9/19/4 Appendix 1).

North America and Europe called for reference to Treaty language. Japan stated that DSI is outside the scope of the Treaty and information cannot be considered as genetic material. The Near East supported a clear formula related to the exchange of DSI within the SMTA. GRULAC said that any outcome should not go beyond what is discussed under the Convention on Biological Diversity (CBD). Africa said the complexity of the issue is no excuse for inaction, arguing the aim is not to control access to information but to ensure fair and equitable benefit-sharing. He said the term "genetic sequence data" is appropriate and expressed concern about the risk of privatization of this information.

Europe explained that genetic material and information are defined and addressed separately in the Treaty, and information cannot be considered as genetic material. He said the subscription system covers information and benefit-sharing, and it would be "extremely difficult" to consider this under the single access option.

Africa said that genetic material includes genetic information and sequencing, and stated they cannot agree to a system that will be unfit for purpose in the near future, urging delegates to aim for an agreement taking into account scientific and technological advancement. Pointing out that companies benefit from digital sequencing, Farmers Organizations said exchanges of DSI should be subject to payments.

On Friday, Co-Chair Hoogeveen invited delegates to address a revised Co-Chairs' proposal on potential elements for the draft resolution on PGRFA information and two provisions for the revised SMTA, while avoiding discussions on its definition for the time being.

Highlighting the need to ensure benefit-sharing from DSI use and capacity building, Asia noted that PGRFA "passport data" and "information associated with PGRFA" does not relate directly to the issue under consideration. Supported by Africa and the Near East, he proposed reference to information "generated from" the material, rather than "associated with" it.

North America opposed a request to the Secretariat to explore partnership with the International Nucleotide Sequence Database Collaboration and, with Japan, opposed a provision stating

that mandatory payments under the revised SMTA also reflect the sales of information associated with commercialized MLS material.

Europe opposed the proposed references to sales of associated information in the SMTA provisions. Delegates agreed to include that the benefit-sharing mechanism of the revised SMTA reflect the contribution of all inputs, including information associated with PGRFA to the development of the product.

Growth Plan

On Monday, Co-Chair Hooegeven drew attention to the Co-Chairs' note (IT/OWG-EFMLS-9/19/4) and explained that the package that has to be elaborated consists of two elements, namely the improvement of the MLS through a revised SMTA and the amendment of ITPGRFA Annex I (list of crops under the MLS). He explained that, according to the Co-Chairs' compromise proposal, the amendment of Annex I would require 96 ratifications to enter into force, within a five-year time frame. He noted that, in the meantime, implementation of the revised SMTA could start in 2020.

GRULAC said the Treaty cannot continue with a non-existent BSF. Europe stressed the importance of a strong link and synchronization between revising the SMTA and amending Annex I, including in terms of the timeline for entry into force. North America stressed the importance of facilitated access to ensure food security, and recalled that the system is built on good faith. Noting the Treaty cannot continue without a working BSF, Africa reiterated preference for a subscription model. Asia pointed to a diversity of positions in the region, yet saw room for a compromise in the region and beyond.

The Secretariat explained that the Co-Chairs' compromise proposal contains steps to be included in a resolution on a package of measures that simultaneously adopts the revised SMTA and the amendment of Annex I (IT/OWG-EFMLS-9/19/4, Appendix 1), including:

- entry into force of the revised SMTA in January 2020;
- application of the subscription system to current Annex I crops until entry into force of its amendment, following ratification by two-thirds of the parties;
- application of the subscription system to the amended Annex I after entry into force of the amendment; and
- an inbuilt review for the enhancement of the MLS, including a Governing Body decision on next steps if there are not enough ratifications by January 2025.

He noted this proposal was elaborated based on submissions from parties and stakeholders (IT/OWG-EFMLS-9/19/Inf.3) and informal inputs from key negotiators.

GRULAC found the Co-Chairs' proposal a good basis to start making benefit-sharing work and also incentivize ratification. GRULAC and Africa suggested referring to amending the MLS, rather than amending Annex I.

Europe highlighted lack of clarity regarding the use of the revised SMTA in case the required ratifications do not materialize and amendment of Annex I does not enter into force.

Regarding the proposed inbuilt review for the enhancement of the MLS, Asia, GRULAC, and Africa stressed the need to include a stocktaking of actual benefits. The Near East requested review of benefit-sharing on the basis of the SMTA.

North America and Europe called for stating that if the amendment of Annex I does not enter into force, the current SMTA would be used. North America added that the subscription could only apply to current Annex I crops. Africa inquired whether this implies parallel application of both SMTAs.

Co-Chair Mozafari summarized that the review should address ratification, availability of material under the MLS, and efficiency of benefit-sharing. If the necessary ratification number is not reached, Co-Chair Hooegeven clarified that use of the revised SMTA could not continue, and options ahead would include either use of the current SMTA or agreement by the Governing Body on a new one.

On Tuesday, the Working Group addressed a new Co-Chairs' proposal on a package of measures through a resolution that simultaneously adopts the revised SMTA and the amendment of Annex I of the Treaty, including elements on:

- entry into force of the revised SMTA in July 2020;
- application of the subscription system to current Annex I, until entry into force of the amendment;
- entry into force of the amendment after ratification by two-thirds of parties (96 ratifications);
- application of the subscription system under the revised SMTA to the amended Annex I after entry into force of the amendment;
- income generated by the subscription system flowing to the BSF;
- an inbuilt review in 2025 to assess the status of ratifications, level of user-based income, and availability of material within the MLS;
- termination of the subscription system if the number of ratifications required has not been attained by 2025, with subscriptions reverting to the single access system under the revised SMTA unless the Governing Body decides otherwise; and
- a provision in the revised SMTA stipulating the consequences and effects of a possible termination of the subscription system on the revised SMTAs in use in this period.

Discussion focused on the consequences of a possible failure to attain 96 ratifications of the amendment of Annex I of the Treaty by 2025. On the termination of the subscription system, GRULAC suggested that subscribers may retain the possibility to continue with, or withdraw from the subscription system.

Europe and North America noted difficulties in agreeing to the application of the revised SMTA in case the amended Annex I does not enter into force, since negotiations on the revised SMTA are still ongoing. Asia questioned whether 96 ratifications can realistically be expected within five years. Africa pointed to national-level difficulties regarding ratification.

Europe stressed that the region accepted the option for mandatory payments under the revised SMTA, after lengthy consultations and in the spirit of compromise, on the condition that Annex I would be amended. He suggested that payments would become mandatory when the amended Annex I enters into force and, with Japan, called for discussions on possible use of an escrow fund.

The Seed Industry said the five-year time frame to demonstrate benefit-sharing payments is too short for the breeding sector. Africa noted that a situation may arise when parties wait for benefits to realize while subscriptions are delayed due to uncertainty regarding ratifications.

On Wednesday evening, Co-Chair Hooegeven presented a revised Co-Chairs' proposal for compromise text, elements for a resolution related to the package of measures, and elements for the revised SMTA, with a suggestion for a transitional phase in case the amendment of Annex I of the Treaty does not come into force by 31 July 2025, providing for:

- voluntary payments under the single access system;
- closing the subscription system; and

- giving the option to the subscribers to either terminate their subscription and revert to the single access system or voluntarily continue their subscriptions for a total of ten years.

Africa queried what will be the legal situation for countries that ratified the amendment in case it does not enter into force, and what will be the situation for the BSF. Co-Chair Hooegeven clarified the ratification process would continue and that there would be voluntary payments.

GRULAC pointed to the temporary plan that if the amendment does not enter into force by 2025, the subscription model continues for current Annex I crops, yet there is also the option to make voluntary payments, raising the question about the use of those funds.

North America said payments made should be credited. Africa suggested payments could be made to the Crop Trust.

GRULAC urged a more positive approach that incentivizes ratification rather than focusing on managing lack of entry into force. North America suggested that countries that ratify the amendment be prioritized in the allocation of BSF funds.

Following a brief break for consultations, all regions expressed readiness to continue negotiations on the basis of the Co-Chairs' proposal. GRULAC suggested that: voluntary payments be temporary until the amendment enters into force; and benefits flow primarily to the parties that ratify the amendment of Annex I.

Africa, Asia, and the Near East supported extension of ratification beyond the proposed five-year period. North America called for balance between allowing sufficient time for ratification while incentivizing early action.

On Thursday morning, Co-Chair Hooegeven presented another compromise proposal, noting that, in case the amendment of Annex I does not enter into force by 2025:

- payments in case of commercialization of products made available without restriction would become voluntary again, until entry into force;
- the registration to the subscription system will be suspended until entry into force;
- subscribers may opt to revert to the single access system, and the amounts paid shall be credited, or may voluntarily continue their subscription for a total of ten years from its starting date; and
- 50% of the income paid into the BSF will support projects in parties that have ratified the amendment, with the remaining released after the amendment enters into force.

Africa asked for more information on BSF operations, noting the flow of funds will incentivize ratification. He suggested considering access to non-Annex I material as an incentive for first user subscribers, and added that the text needs to specify that payments become mandatory again after entry into force of the amendment. GRULAC noted that it is up to parties to decide terms for access to non-Annex I material.

Co-Chair Hooegeven noted that regional workshops may raise awareness about subscription and promote the flow of benefits.

North America and Southwest Pacific proposed including reference in the resolution to state that the Governing Body will also review the status of "accessibility," not only "availability of material within the MLS." Following discussion, delegates agreed to "review the status of availability of and access to material provided."

Europe requested clarification on use of the revised SMTA by the institutions that have signed Article 15 agreements with the Governing Body. The Secretariat explained that a Governing

Body decision is required. The CGIAR Consortium called for guidance as early as possible.

Following a question by GRULAC, the Secretariat confirmed that parties that do not ratify the amended Annex I will use the revised SMTA for exchanges of current Annex I crops. Africa noted that parties maintain the right to enter reservations when they ratify.

Draft Resolution on Enhancement of the MLS

On Friday afternoon, delegates discussed text for the draft resolution, which contains preambular language and operative sections on potential elements for:

- the revised SMTA;
- the amendment of Annex I, all parts of which have been tentatively agreed by the Working Group;
- PGRFA information; and
- the implementation and review of the enhanced MLS.

They agreed to integrate a preambular reference to Treaty Article 1 (objectives), including recalling that these objectives will be obtained by closely linking the Treaty to the FAO and the CBD.

Delegates noted that France will prepare an operative paragraph on IPRs limiting "sustainable use, food and agriculture production, reproduction, exchange, and sale of reproductive material of the Material in the form received from the MLS," to be circulated well in advance of the Governing Body meeting, together with other pending proposals.

On potential elements for the revised SMTA, delegates agreed to request the Secretariat to publicize the adoption and to promote the implementation of the revised SMTA, through provision of technical support and background information, as well as through communication efforts for various users, including regional or national capacity-building workshops, subject to the availability of financial resources.

They also agreed to recall Article 18.4 of the Treaty and the voluntary contributions made by parties to the BSF in the past, and to invite especially developed country parties, the private sector, NGOs, and other sources, at their earliest opportunity, to make pledges to the BSF for the period from 2020-2025. In addition, delegates agreed to request the Secretariat to inform the Governing Body on the state of the pledges done.

On potential elements for the implementation and review of the enhanced MLS, delegates agreed to Europe's proposal to include that the Secretariat should submit a report on the number of ratifications and respective declarations, so it is possible to know what material is excluded.

The resolution remains bracketed in its entirety, pending agreement on the package, including the revised SMTA and the amendment of Annex I of the Treaty.

Closing Plenary

On Friday afternoon, Co-Chair Hooegeven proposed to suspend the meeting of the Working Group, after review of the interim report of the meeting, and continue for three more days before the Governing Body convenes in November 2019.

The Secretariat committed to circulate pending proposals by 15 September 2019.

Some delegates asked if the resumed meeting could take place well before the Governing Body meeting, rather than back to back with it, to allow for national and regional consultations. The dates for the resumed session will be confirmed following consultation with the Bureau. A delegate from Brazil, speaking in a personal capacity, made a plea to find a solution for the rates issue.

Delegates then reviewed the interim report, which contains three annexes that reflect the current state of agreement and outstanding issues regarding: the draft resolution; the draft revised SMTA; and the draft text for the amendment of Annex I. Co-Chair Mozafari welcomed the momentum built over the week. Co-Chair Hoogeveen also thanked delegates, staff and all involved in the negotiations, as well as the *Earth Negotiations Bulletin*, for coverage of the meeting. He suspended the meeting at 5:46 pm.

A Brief Analysis of the Meeting

For most of the approximately 30 negotiators, this was the “make it or break it” week. The *Ad Hoc* Open-ended Working Group to Enhance the Functioning of the Multilateral System (MLS) of access and benefit-sharing (ABS) of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) has been negotiating the necessary revisions of the Treaty’s system for the past six years. The benefit-sharing component of the Multilateral System was not successful: no money from users accessing plant genetic resources for food and agriculture (PGRFA) in the MLS was flowing into the system to support projects on PGRFA conservation and sustainable use in developing countries. Negotiators thus decided to revise the Standard Material Transfer Agreement (SMTA) used for exchanges of MLS material to enhance payments into the system, particularly from commercial users. In addition, many of the crops that attract significant research and development efforts, which potentially result in commercially successful varieties, were not included in the current MLS. Soybean and tomato are usually mentioned as notable examples. Expanding Annex I, which contains the list of crops in the MLS, was thus proposed as an additional part of the solution to enhance the MLS and the flow of benefits.

Routinely dubbed as “two sides of the same coin,” the revision of the SMTA and the expansion of the list of crops in the MLS (Annex I) were seen as a package deal. On the one hand, developing countries need to see benefits flowing into the system; for too long they have seen their genetic resources being used to develop commercial varieties fit for the industrial agricultural model, without consideration for smallholder farmers and indigenous peoples. On the other hand, developed countries with big seed companies and advanced research capacities have an interest in expanding the list of crops in the MLS for continued agronomical research under predictable conditions.

Developing the package, however, came with a set of both political and technical legal difficulties. The historic injustices regarding use of PGRFA resulted in lack of trust among the negotiating parties in the Treaty framework, as also seen in other related ABS processes such as the Convention on Biological Diversity (CBD) and its Nagoya Protocol.

At the same time, participants had to overcome technical legal difficulties regarding the revision of the SMTA and the adoption of an amended list of crops in the MLS. Imaginative legal thinking was required to combine adoption of the revised SMTA through a Governing Body resolution, while ratification of the amended list of crops by national parliaments would require significantly more time. At this meeting, delegates successfully linked these two main elements of the package on the basis of clear procedural steps proposed by the Working Group Co-Chairs. Although some important outstanding items remain, and the meeting was suspended to allow for three additional days of deliberations before the meeting of the Governing Body in

November 2019, the Working Group achieved a breakthrough and was successful in forging the main parts of the compromise. Most participants were thus optimistic that final agreement is “definitely within reach.”

In this context, this brief analysis explains the major building blocks of the compromise, and the main items that still have to be resolved before the Governing Body meets in November 2019.

To List or Not to List

Participants achieved an important breakthrough on Thursday night, with a tentative agreement on amending the list of crops in the MLS, currently in Annex I of the Treaty. While as usual in international negotiations, “nothing is agreed until everything is agreed,” Working Group participants expressed satisfaction with the well-balanced compromise: the MLS would cover all PGRFA under the management and control of parties and in the public domain that are found in *ex situ* conditions, while parties have the right to make reasoned declarations exempting a limited number of native species.

Amendment of Annex I of the Treaty requires ratification by two-thirds of parties of the Treaty to enter into force. However, this requires awareness at the national level to make the case and build the momentum for ratification. In the meantime, the Benefit-sharing Fund is expected to be used as both an incentive for ratification and a disincentive for national exemptions of species from the MLS. No multilateral funds will be used for projects on conservation and sustainable use of species in the party that has exempted them; while parties that ratify the amendment will be prioritized in the allocation of funding. These provisions can be used also as an argument in the hands of delegates who wish to convince their governments about the added benefits of the Treaty’s framework for PGRFA exchanges, and the need for rapid ratification of the amendment.

The Art of Crafting Contracts

Crafting a contract is no easy task, particularly when its aim is to serve global objectives, including fair and equitable benefit-sharing, sustainable agriculture, and global food security. The Working Group made significant progress in detailing the envisaged subscription system for access to MLS crops, while also providing for access to MLS with no subscription, as an exception. Delegates addressed technical provisions, regarding, *inter alia*, dispute settlement, obligations of the recipient of material in case of withdrawal from the SMTA, and transfers of PGRFA that are still under development. The Working Group also dealt with historically controversial issues, such as the role of intellectual property rights and their relationship with benefit-sharing and farmers’ rights, mapping options for potential compromise and packages to be presented to the Governing Body. While significant progress was achieved, most delegates also acknowledged that two main outstanding items remain: dealing with genetic sequence data, also referred to as digital sequence information, and payment rates for monetary benefit-sharing.

Information generated from genetic resources has been making waves in all ABS-related fora, and the Treaty is no exception. Its use in research and development has been intensifying and could result in bypassing both the need for physical access to genetic resources, and requirements for benefit-sharing, potentially making ABS frameworks obsolete, unless, as some argued, the informational component is also covered. The challenge is to find a way to integrate genetic sequence data in the MLS to honor benefit-sharing obligations, while at the same time maintaining

the unrestricted flow of information, and building capacity to use such information to serve sustainable development needs, particularly in developing countries.

Agreement on specific payment rates is also still elusive although, as one participant pointed out, negotiating positions are now “closer than ever before.” A presentation on global seed sales provided the Working Group with valuable data on the sector and the origin of companies that would be called to contribute to the Benefit-sharing Fund through the revised SMTA. The report of the Committee on the Funding Strategy regarding targets for this fund was also used as an input to the negotiations. With agreement that the subscription system would be the main approach and single access would be the exception, the proposal to set a lower rate for the primary model and a much higher rate for exceptional single access to attract more users and hopefully more funds garnered significant interest. While uncertainty remains with regard to the number of companies that will eventually subscribe to the system, the number of years it will take for user-based income to flow, and the exact payment rate that will result in tangible benefits while attracting users into the system, bridging the range of proposed rates seems possible, and agreement is within reach for the first time in six years. As a civil society representative pointed out, learning from other processes, in particular the highly successful multilateral ABS system established under the Pandemic Influenza Preparedness framework of the World Health Organization, may contribute to reaching a successful outcome.

Making the Links

Deciding on a clear process for moving ahead with the revision of the SMTA and the amendment of the list of crops in the MLS proved to be crucial for building trust and eventually making the meeting a success. Co-Chairs’ proposals on all elements of the compromise, including text proposals for a Governing Body resolution, paved the way for crafting a complex legal process linking entry into force of the revised SMTA in July 2020, while providing for a review by the Governing Body in 2025, and also detailing a system in case the amendment does not enter into force. Discussion on these items allowed Working Group participants to reach clarity on a system that they are now in a position to explain to their regions, as well as to their capitals, to pave the way for approval by the Governing Body in November. After a number of evening negotiating sessions, concluding on the Solstice, which marks the shortest night of the year, delegates seemed to leave Rome more hopeful than when they had arrived and ready for even longer nights of negotiations after the Fall Equinox, that will hopefully lead to a successful conclusion.

Upcoming Meetings

FAO Conference 41st Session: The Conference is the organization’s highest governing body and sessions are held every two years. The Conference reviews and votes on the Director General’s proposed programme of work and budget. The Conference is also an important opportunity for dialogue on food and agriculture issues. **dates:** 22-29 June 2019 **location:** FAO Headquarters, Rome, Italy **www:** <http://www.fao.org/about/meetings/conference/c2019/en/>

HLPF 2019: Convening under the auspices of the UN Economic and Social Council, this year’s High-Level Political Forum (HLPF) will address the theme “Empowering People and Ensuring Inclusiveness and Equality.” It will conduct an in-depth review of Sustainable Development Goal (SDG) 4 (quality

education), SDG 8 (decent work and economic growth), SDG 10 (reduced inequalities), SDG 13 (climate action), and SDG 16 (peace, justice and strong institutions), in addition to SDG 17 (partnerships for the Goals), which is reviewed each year. Among other items, the Forum will consider the Global Sustainable Development Report, which is issued every four years. **dates:** 9-19 July 2019 **location:** UN Headquarters, New York **www:** <https://sustainabledevelopment.un.org/hlpf/2019>

Third Session of the Intergovernmental Conference on BBNJ (IGC-3): This session will continue to negotiate issues related to the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction, in particular marine genetic resources, including questions on the sharing of benefits, marine protected areas, environmental impact assessments, and capacity building and the transfer of marine technology. **dates:** 19-30 August 2019 **location:** UN Headquarters, New York **www:** <https://www.un.org/bbnj/>

First meeting of the CBD Open-ended Working Group on the Post-2020 Global Biodiversity Framework: Among other matters, this meeting will consider reports of consultations and other contributions to the post-2020 process, the potential elements of the structure and scope of the post-2020 Global Biodiversity Framework, the future work programme of the Open-ended Working Group, and allocation of tasks to other intersessional bodies and processes. **dates:** 27-30 August 2019 **location:** Nairobi, Kenya **www:** <https://www.cbd.int/conferences/post2020/wg2020-01/documents>

Committee on World Food Security (CFS 46): The 46th session of the CFS will discuss, among other issues, the report on the State of Food Security and Nutrition in the World 2019 and its policy implications in the context of the SDGs. **dates:** 14-18 October 2019 **location:** FAO Headquarters, Rome, Italy **www:** <http://www.fao.org/cfs/cfs-home/en>

Resumed Ninth Meeting of the ITPGRFA Working Group to Enhance the Functioning of the MLS: The Working Group will continue its deliberations on the revision of the SMTA and other pending issues within its mandate. **dates:** to be confirmed **location:** FAO Headquarters, Rome, Italy **www:** <http://www.fao.org/plant-treaty/meetings/meetings-detail/en/c/1106601/>

Eighth Session of the ITPGRFA Governing Body: The Governing Body will review the progress made in the Working Group as well as the implementation of the Treaty. **dates:** 11-16 November 2019 **location:** FAO Headquarters, Rome, Italy **www:** <http://www.fao.org/plant-treaty/meetings/>

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

Glossary

ABS	Access and benefit-sharing
BSF	Benefit-sharing Fund
CBD	Convention on Biological Diversity
CGIAR	CGIAR Consortium of International Agricultural Research Centers
DSI	Digital sequence information
FAO	Food and Agriculture Organization of the UN
GB	Governing Body
GRULAC	Latin America and the Caribbean
ITPGRFA	International Treaty on Plant Genetic Resources for Food and Agriculture
IPRs	Intellectual property rights
MLS	Multilateral System
PGRFA	Plant genetic resources for food and agriculture
SMTA	Standard Material Transfer Agreement