



Food and Agriculture  
Organization of the  
United Nations



**The International Treaty**  
ON PLANT GENETIC RESOURCES  
FOR FOOD AND AGRICULTURE

**INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES  
FOR FOOD AND AGRICULTURE**

**EIGHTH MEETING OF THE AD HOC OPEN-ENDED WORKING GROUP TO  
ENHANCE THE FUNCTIONING OF THE MULTILATERAL SYSTEM**

**Rome, Italy, 10–12 October 2018**

**CO-CHAIRS' SUMMARY ARISING FROM THE SEVENTH SESSION OF THE  
GOVERNING BODY**

*Note by the Secretary*

At its Seventh Session the Governing Body set up a Contact Group to assist it in making progress on discussions regarding the enhancement of the Multilateral System. The Contact Group was chaired by the Co-chairs of the Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System (Working Group) and focused on revising the Standard Material Transfer Agreement.

The Regional Groups requested the Co-chairs to reflect the discussions held in the Contact Group in a Co-chairs' Summary, which was eventually attached as Annex 2 to Resolution 2/2017, *Measures to Enhance the Functioning of the Multilateral System*. The Co-chairs' Summary captures the major issues discussed in the Contact Group.

This document reproduces the *Co-chairs' Summary Arising from the Seventh Session of the Governing Body* for the information of the Working Group.

The Co-chairs also developed the *Co-chairs Proposed Consolidated Text of the Revised Standard Material Transfer Agreement*, which is contained in the document, IT/OWG-EFMLS-8/18/Inf.3.

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**CO-CHAIRS' SUMMARY ARISING FROM THE SEVENTH SESSION OF THE GOVERNING  
BODY**

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**INTRODUCTION**

1. The Seventh Session of the Governing Body of the International Treaty set up a Contact Group to assist the Governing Body to make progress on the enhancement of the Multilateral System. The Contact Group held four sessions and was chaired by the Co-Chairs of the *Ad Hoc* Open-ended Working Group to enhance the functioning of the Multilateral System. The Regional Groups requested the Co-Chairs to reflect the discussions held in the Contact Group in this Co-Chairs' Summary.
2. The discussions focused on the revised Standard Material Transfer Agreement. With a view to make progress, the discussions were structured in five blocks containing a number of issues that require further work. These blocks were the following:
  - a. Mechanisms to access PGRFA from the Multilateral System;
  - b. Withdrawal and Termination;
  - c. Formulation of benefit-sharing in particular within the Subscription System;
  - d. Enforceability; and,
  - e. Digital sequence information in relation to the SMTA.
3. This Summary captures the major issues discussed in the Contact Group and provides the Co-Chairs' proposed consolidated text for the revised Standard Material Transfer Agreement. This proposed text was shared with the Contact Group as a source of information to facilitate future discussions and gather inputs from Regions on how to reflect possible areas of common understanding or compromise into concrete text for the revised SMTA.
4. Some members of the Contact Group reflected on the process developed to arrive to the draft revised SMTA and wondered if it would lead to meet their expectations regarding the level of benefit-sharing as well as the necessary transparency regarding the exchange of PGRFA. They also stated that a more general review of efforts so far undertaken would benefit further inter-sessional work.
5. The Regional Groups welcomed this initiative to prepare a Co-Chairs consolidated text of the revised SMTA, but at the same time were not ready to engage in negotiations on the basis of this proposal at this meeting. They noted that this consolidated text provides a useful source of information for further discussions on the revised SMTA. The basis for further negotiations of the draft revised SMTA remains the *draft revised Standard Material Agreement: proposal by the Working Group* provided in Annex 2 of the Report of the *Ad Hoc* Open-ended Working Group to Enhance the Functioning of the Multilateral System (IT/GB-7/17/7).

**A. MECHANISMS TO ACCESS PGRFA FROM THE MLS**

6. Based on the discussions, the Co-Chairs were of the view that common understanding has been reached to:
  - a. Develop an effective and balanced dual access mechanism (Subscription System + single access mechanism).
  - b. Provide access to PGRFA under conditions of mandatory payments only.

- c. Finalize a Subscription System where the subscription would cover all PGRFA within Annex 1.

### ***B. WITHDRAWAL AND TERMINATION***

7. The Co-Chairs explained that throughout the consolidated text of the revised SMTA, the term “withdrawal” was understood to mean an act by the Subscriber, whereas the term “termination” was understood to mean an act by the third party beneficiary.
8. Some members noted that the Subscription System should be designed in such a way that subscribers would not have any incentive to withdraw.
9. Based on the discussions, the Co-Chairs were of the view that common understanding has been reached to:
  - a. Incorporate a minimum period of subscription of 10 years;
  - b. Introduce a Withdrawal provision in Annex 3 (Subscription System);
  - c. Incorporate Termination provisions in the SMTA (both access mechanisms).
10. No consensus was reached on:
  - a. The length of any continuing subscription obligations after withdrawal;
  - b. The inclusion of a withdrawal option in relation to the single access mechanism.

### ***C. FORMULATION OF BENEFIT-SHARING IN PARTICULAR WITHIN THE SUBSCRIPTION SYSTEM***

11. Based on the discussions, the Co-Chairs were of the view that the text of Article 3 in Annex 3 of the draft revised SMTA contained in the report of the sixth meeting of the Working Group (IT/GB-7/17/7) forms a good basis to agree on the benefit-sharing provisions under the Subscription System. Although the Contact Group did not address the payment rates, it stressed their importance in relation to realizing effective benefit-sharing.

### ***D. ENFORCEABILITY***

12. The Regions agree that the SMTA should be an enforceable contract. No consensus was reached on whether the current SMTA provides for effective enforcement measures. Some members felt that revisiting Article 8 defining the rights of the Third Party Beneficiary would be sufficient to guarantee enforceability. Others felt that new provisions strengthening the enforceability of the SMTA would be needed. In relation to strengthening the enforceability provisions of the SMTA, the Co-Chairs noted that there was agreement that the Standing Group of Legal Experts would be the primary body to provide advice and to bring in additional skills on contract law, when and if required.

### ***E. DIGITAL SEQUENCE INFORMATION IN RELATION TO THE SMTA***

13. The Co-Chairs explained how their proposed consolidated text for the revised SMTA made provision for the concept of digital sequence information (DSI) to be reflected in the revised SMTA through a new definition of “genetic parts and components”.
14. There was no consensus at this meeting on if and how to reflect issues related to DSI in the text of the revised SMTA.