



The International Treaty
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



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Item 12.1 of the Provisional Agenda
INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE
FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS
THIRD SESSION OF THE GOVERNING BODY
Tunis, Tunisia, 1 – 5 June 2009
REPORT OF THE CHAIR OF THE <i>AD HOC</i> THIRD PARTY BENEFICIARY COMMITTEE

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I. INTRODUCTION

1. At its Second Session, the Governing Body

"thanked the Director-General for having accepted in principle, its invitation for FAO to carry out, as the Third Party Beneficiary, the roles and responsibilities as identified and prescribed in the Standard Material Transfer Agreement, under its direction. It recognised that this acceptance was subject to formal approval upon review of the procedures to be established by the Governing Body" (para 61. of IT/GB-2/07/Report)

2. Furthermore, the Governing Body, at its Second Session:

62. *requested the Secretary to prepare draft text setting out the procedures to be followed by FAO, when carrying out its roles and responsibilities as the Third Party Beneficiary, taking into account, in particular, FAO's role as specialized agency of the United Nations, its privileges and immunities. It invited Contracting Parties, other governments and international organizations to comment on the draft text.*

63. *decided to establish an Ad Hoc Third Party Beneficiary Committee, composed of seven representatives of Contracting Parties, with one representative nominated by each of the FAO Regions. The Committee's mandate is to consider the draft text prepared by the Secretary, and comments and submissions from Contracting Parties, other governments and international organizations. The Ad Hoc Committee shall prepare draft Third Party Beneficiary procedures to be submitted to the Governing Body at its next Session.*

64. *invited the Director-General of FAO to bring to the attention of the relevant bodies of FAO, the Governing Body's invitation, together with the procedures, once elaborated by the Ad Hoc Third Party Beneficiary Committee, and endorsed by the Governing Body.*

3. The Secretary accordingly prepared draft procedures, in consultation with the Legal Office of FAO, and circulated them to Contracting Parties, other governments and international organizations for their comments. He also invited the Regions to nominate a representative each to the *Ad Hoc* Third Party Beneficiary Committee. The Committee comprised of nominated Regional representatives from Africa: Ms Maria Antonieta Coelho (Alternate, Mr Carlos Amaral); Asia: Mrs Erna Maria Lokollo (Alternate, Mr Azman Mohd Saad); Europe: Ms Susanna Paakkola; Latin America and the Caribbean: Ms Mónica Martínez Menduño; Near East: Mr Javad Mozafari Hashjin; North America: Mr Marco Valicenti; and South-West Pacific: Ms Emily Collins (Alternate, Ms Fiona Bartlet).

4. The *Ad Hoc* Third Party Beneficiary Committee convened its first meeting in Rome, on 24 and 25 November 2008 and elected Mr Javad Mozafari Hashjin (Near East) as the Chair of the Meeting. The second meeting of the Committee was held in Rome on 26 and 27 March 2008. This Chair's Report contains extracts from the Reports of the first and second meetings of the Committee, IT/TPBC-1/08/Report and IT/TPBC-2/09/Report, respectively.

5. It was noted by the Committee that following the second meeting of the Committee, a revised document (Rev.1) for the Third Session of the Governing Body would be issued, updated with the resolved issues remaining from the First meeting and additional recommendations that were agreed during the Second meeting of the Committee, and including any revised texts for the consideration of the Governing Body.
6. Accordingly, the present document, which incorporates the outcomes of both the first and second meetings of the Committee, replaces Document IT/GB-3/09/11, *Report of the Chair of the Ad Hoc Third Party Beneficiary Committee*.
7. The Committee recognized the critical role of the Third Party Beneficiary in the functioning of the Multilateral System and for retaining the confidence of users and stakeholders.
8. In considering the draft procedures for the operation of the Third Party Beneficiary, the Committee noted that the Treaty itself encourages a consensual approach as a principle of interaction and compliance generally. The Committee therefore recommended emphasizing the initial stages of dispute resolution, which involve negotiations between the parties and mediation. Furthermore, it would be cost-effective to seek to settle disputes as early in the process as possible through negotiation and mediation, and resort to arbitration only if absolutely necessary.
9. The Committee noted that the Secretariat had consulted the International Chamber of Commerce (ICC), the United Nations Commission on International Trade Law (UNCITRAL), and the World Intellectual Property Organization (WIPO) to seek information, advice and practical experience about dispute resolution practices.

II. SUMMARY OF THE FIRST MEETING

10. At its first meeting, the Committee worked based on the draft Third Party Beneficiary Procedures prepared by the Secretary, comments received from Contracting Parties, and a draft Resolution for the adoption of the procedures, for the consideration of the Governing Body.
11. The Committee considered two possible modes of establishing the Third Party Beneficiary Trust Fund: (1) as a Special Fund in accordance with Rule VI.2b of the Financial Rules of the Treaty, or (2) as a Trust Fund forming an integral part of the Core Administrative Budget, both of which would require an amendment to the Financial Rules of the Treaty. It therefore requested the Secretariat to prepare a document analysing the pros and cons of these two options, and providing draft text for the possible amendment of the Financial Rules, should the Governing Body so decide. The document should also consider possible cost schemes for the operation of the Third Party Beneficiary, including the costs of the dispute resolution mechanisms under the Standard Material Transfer Agreement. The possibility of recovering costs, or of costs being found against the Third Party Beneficiary, within a dispute settlement procedure should also be considered.
12. The Committee also considered a number of further matters that it considered essential for the operation of the Third Party Beneficiary Procedures and that it needed to deal with in order to be able to provide concrete recommendations to the Governing Body at its forthcoming session. As it was not possible to deal with these in its first meeting, it decided to convene a second meeting well in advance of the Third Session of the Governing Body, in order to consider the matters it had identified, and finalize outstanding work.
13. In preparation of its second meeting, the Committee requested the Secretariat to undertake further research and consultations with relevant institutions and organizations, and prepare a number of documents for its second meeting.

14. Since the SMTA foresees a list of experts from which arbitrators may be appointed, the Committee requested the Secretariat to develop a set of criteria of expertise and the composition of the list of experts using examples from other institutions for consideration by the Committee.
15. Since the SMTA foresees that the Third Party Beneficiary has the right to request appropriate information, the Committee requested the Secretariat to prepare a paper on how and what information should be provided to the Third Party Beneficiary for the purpose of carrying out its roles and responsibilities.
16. In order to ensure that the availability of financial resources for the Third Party Beneficiary is ascertained, the Committee requested the Secretariat to prepare a paper on how the availability of financial resources will be assessed before the Third Party Beneficiary initiates dispute settlement.
17. Following further consultations, the chair proposed the following process for the completion of the work of the Committee, taking into account the outstanding issues, the amount of work that might be required to address them and the need to ensure that the work of the Committee is comprehensive enough to be helpful to the Governing Body for the adoption of the draft procedures and its deliberations on the relevant issues:
- (i) A timetable for the finalization and dispatch to Committee members of the additional papers requested from the Secretariat was established, with deadlines for comments on them. Members of the Committee may also, after due consultations with their constituencies, bring forward further comments, if any, to the Second meeting of the Committee;
 - (ii) The second meeting of the Committee would be held in Rome, on 26 – 27 March, 2009;
 - (iii) In order to meet the deadlines for the issuance of documents of the Governing Body, the outcome of the first meeting of the Committee, with a cover note, would be forwarded to Third Session of the Governing Body as the Committee's report;
 - (iv) Following the second meeting of the Committee, a revised document (Rev.1) for the Third Session of the Governing Body, updated with the additional recommendations that were agreed during the Second meeting of the Committee, and including any revised texts for the consideration of the Governing Body, would be issued.

III. SUMMARY OF THE SECOND MEETING

18. At its second meeting, the Committee worked on the basis of document IT/TPBC-2/09/2, *Information provided by the Secretary in response to the request of the Committee*, which had been requested by the Committee at its First Meeting. It thanked the Secretary for the excellent quality of the document, noting that in its preparation he had consulted relevant institutions and organizations, in particular the United Nations Commission on International Trade Law (UNCITRAL); WIPO's Mediation and Arbitration Centre, Division for Public Policies and Development, and its Patent Cooperation Treaty; and the International Chamber of Commerce (ICC).

19. The Committee considered a number of outstanding issues regarding the draft Third Party Beneficiary Procedures, as well as the draft Resolution by which the Governing Body could adopt them. It finalized the *Draft Procedures for the operation of the Third Party Beneficiary*, which are in Annex 1 to the Appendix to this report. It also finalized *Draft Resolution **/2009, Procedures for the operation of the Third Party Beneficiary*, which is in the Appendix to this report.

IV.1. *Establishment of a Trust Fund for the operation of the Third Party Beneficiary*

20. In order to establish a trust fund for the operation of the Third Party Beneficiary, the Committee examined the Financial Rules of the Treaty for consistency with the draft Procedures for the Third Party Beneficiary. The Committee found that it would be necessary to amend the Financial Rules so as to accommodate the establishment of that trust fund, to be entitled “Third Party Beneficiary Operational Reserve”. Accordingly, it proposes the amendment of the Financial Rules as set out in *Appendix 2* to this Report.

IV.2. *Possible cost schemes for the operation of the Third Party Beneficiary*

21. The Committee agreed that there was a need to contain the possible costs that would be involved in the operation of the Third Party Beneficiary, while at the same time ensuring its effectiveness. It noted that this might most easily be done by stressing the importance of the amicable dispute settlement and mediation phases.

22. In this context, the Committee agreed that it would be important to establish operational guidelines for the amicable dispute settlement and mediation phases that could, *inter alia*, assist in containing costs. It decided to recommend to the Governing Body that the current *Ad Hoc* Third Party Beneficiary Committee meet again to complete its work by reviewing and finalizing such operational guidelines, on the basis of a draft to be prepared by the Secretary. It welcomed the generous offer of WIPO’s Mediation and Arbitration Centre to provide additional technical advice and support in this regard.

23. The Committee noted the importance of a properly resourced Working Capital Reserve for the stability and sustainability of the Treaty and its functioning.

IV.3. *Possible criteria of expertise and the composition of the list of experts mentioned in Article 8.4c of the Standard Material Transfer Agreement*

24. The Committee established (a) draft criteria and (b) procedures for the nomination of experts to the List of Experts provided for in Article 8.4c of the Standard Material Transfer Agreement, as contained in Parts I and II, respectively, of *Annex 2* of the *Appendix 1* to this Report. It decided to forward these for consideration and adoption by the Governing Body as an appendix to the draft Resolution for the adoption of the Third Party Beneficiary Procedures.

IV.4. *Information to be provided to the Third Party Beneficiary for the purpose of carrying out its roles and responsibilities*

25. The Committee stressed the importance of the Third Party Beneficiary having the information that would be necessary for it to carry out its roles and responsibilities derived from the Standard Material Transfer Agreement. The Committee agreed on the information that would be required, and the schedule for its provision to the Governing Body that is contained in Parts III and IV of *Annex 2* of the *Appendix 1* to this report. It decided to forward these for consideration and adoption by the Governing Body as an appendix to the draft Resolution for the adoption of the Third Party Beneficiary Procedures.

26. The Committee recommended that the Secretary develop appropriate and cost-effective electronic technologies to facilitate the submission, collection and storage of such information, in the implementation of Article 4.1 of the Third Party Procedures, including measures to ensure the integrity and confidentiality of such information.

27. The Committee took note of the information systems that were under development by the Secretariat, through a consultative process with users of the Standard Material Transfer Agreement. It welcomed the development of such electronic technologies, as a cost-effective means of supporting the work of the Third Party Beneficiary. It noted that a datastore function had already been programmed, and that the use of PIDs (permanent unique identifiers, which were harmonized with the FAO institutional codes) to identify Providers and Recipients and that the hosting of the datastore in the United Nations Information and Computing Centre (UNICC), as well as the technological security features already envisaged, would ensure confidentiality and data integrity.

IV. CONCLUSIONS

28. The Committee worked in good harmony and agreed draft Procedures for the operation of the Third Party Beneficiary, for consideration and adoption by the Governing Body, together with a draft Resolution, by which the Governing Body might adopt these Procedures, and addressed other matters related to the operations of the Third Party Beneficiary.

29. The Committee herewith submits to the Governing Body, for its consideration and adoption, *Draft Resolution .../2009, Procedures for the operation of the Third Party Beneficiary*, which is given in the *Appendix 1* to this report, and contains the following annexes:

- 1) *Draft Procedures for the operation of the Third Party Beneficiary*; and
- 2) *Operation of the Third Party Beneficiary*, related to the criteria and procedures for the nomination of experts and information required for the operation of the Third Party Beneficiary;

and the *Proposed Amendments to the Financial Rules of the Treaty*.

30. The Committee recognized that the procedures should be as simple and transparent as possible and the need to equip the Third Party Beneficiary with the resources, tools and capacity to effectively carry out its roles and responsibilities under the Standard Material Transfer Agreement.

31. Furthermore, in order to enhance the overall effectiveness of the Third Party Beneficiary and the level of compliance with the Standard Material Transfer Agreement, the Committee stresses the importance of capacity-building on all aspects of the Treaty, and expressed concerns about the lack of funds for the implementation of the Treaty, the work of the Secretariat, and the Benefit-sharing fund.

32. With this report the Committee has fulfilled its initial task as requested.

33. The Committee thanks the specialized institutions for the information received from them during the informal consultations for the preparation of its meetings including WIPO, UNCITRAL and ICC, and requested them continue to support the work of the Treaty. With regard to expert support during its meetings, the Committee thanked WIPO in particular for having kindly put Mr. Erik Wilbers and Mr. Nuno Carvalho at the disposal of the *Ad Hoc* Third Party Beneficiary Committee, and for their technical advice.

34. The *Ad Hoc* Third Party Beneficiary Committee thanks the Secretariat for the excellent work it had done in preparing and conducting the meeting of the Committee.

Appendix 1

**DRAFT RESOLUTION X/2009
PROCEDURES FOR THE OPERATION OF THE THIRD PARTY BENEFICIARY**

THE GOVERNING BODY:

- (i) **Recalling** that the objectives of the International Treaty on Plant Genetic Resources for Food and Agriculture ('the Treaty') are the conservation and sustainable use of plant genetic resources for food and agriculture and the 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;
- (ii) **Recalling**, that Part IV of the Treaty establishes a Multilateral System of Access and Benefit-sharing, which is efficient, effective, and transparent, both to facilitate access to plant genetic resources for food and agriculture, and to share, in a fair and equitable way, the benefits arising from the utilization of these resources, on a complementary and mutually reinforcing basis;
- (iii) **Recalling** that under Article 12.4 of the Treaty, facilitated access to the Multilateral System shall be provided pursuant to a Standard Material Transfer Agreement adopted by the Governing Body at its First Session;
- (iv) **Recalling** that under Article 13.2 that benefits arising from the use, including commercial, of plant genetic resources for food and agriculture under the Multilateral System shall be shared fairly and equitably through the mechanisms specified under that Article;
- (v) **Noting** that the Governing Body, at its First Session, had invited the Food and Agriculture Organization of the United Nations ('FAO'), as the Third Party Beneficiary, to carry out the roles and responsibilities as identified and prescribed in the Standard Material Transfer Agreement, under the direction of the Governing Body, in accordance with procedures to be established at this Third Session;
- (vi) **Noting** also that, in December 2006, the Director-General informed Contracting Parties of the Treaty of his agreement in principle for FAO to act as the Third Party Beneficiary foreseen in the SMTA and that this agreement in principle was subject to formal approval, upon review of the procedures to be established by the Governing Body defining the roles and responsibilities of the Third Party Beneficiary;
- (vii) **Recognizing** that the Third Party Beneficiary will require adequate financial and other resources and that FAO acting as Third Party Beneficiary shall not incur any liabilities in excess of the funds available in the Third Party Beneficiary Operational Reserve;
- (viii) **Noting** further that the *Ad Hoc* Third Party Beneficiary Committee has prepared draft Third Party Beneficiary Procedures for the consideration of the Governing Body at this Session in accordance with its decision at the second session;
1. **Adopts** these *Procedures* ('Third Party Beneficiary Procedures'), as in *Annex 1*;
 2. **Thanks** the Director-General of FAO for having agreed in principle that FAO shall act as the Third Party Beneficiary, and requests him to bring these procedures to the attention of the relevant bodies of FAO, for formal approval;

3. **Requests** the Secretary of the Governing Body to establish a trust fund to be entitled the “Third Party Beneficiary Operational Reserve”, for the purpose of defraying costs and expenses that may be incurred by the Third Party Beneficiary in the fulfilment of its roles and responsibilities under the Third Party Beneficiary Procedures
4. **Incorporates** the Third Party Beneficiary Operational Reserve into the Core Administrative Budget and, for this purpose, amends the Financial Rules of the Treaty as given in *Appendix** of the Report*;
5. **Calls** upon Contracting Parties, States that are not Contracting Parties, intergovernmental organizations, non-governmental organizations and other entities to contribute periodically, as necessary, to the Third Party Beneficiary Operational Reserve, in order to maintain it at a level commensurate with the needs;
6. **Authorizes** the Secretary of the Governing Body, subject to the availability of financial resources, to draw upon the Third Party Beneficiary Operational Reserve, in order to implement, as appropriate, the Third Party Beneficiary Procedures;
7. **Requests** the Secretary to provide, at each session of the Governing Body, a report in accordance with Article 9 of the Third Party Beneficiary Procedures;
8. **Requests** the Secretary to develop operational guidelines for the commencement and management of amicable dispute resolution and mediation proceedings under the Third Party Beneficiary Procedures in order to promote the effective functioning of the Third Party Beneficiary, which shall include appropriate cost containment measures. In developing the operational guidelines, the Secretary shall seek, as appropriate, technical support from the Mediation and Arbitration Centre of the World Intellectual Property Organization (WIPO), and other relevant international organizations;
9. **Decides** that the current *Ad Hoc* Third Party Beneficiary Committee will reconvene in order to review and finalize the operational guidelines on the basis of a draft text prepared by the Secretary;
10. **Thanks** the WIPO Mediation and Arbitration Centre, the United Nations Commission on International Trade Law (UNCITRAL), and the International Chamber of Commerce (ICC), for their excellent technical advice to the Secretariat, and **welcomes** the offer of WIPO Mediation and Arbitration Centre to provide additional technical advice and support to the Treaty, in particular in the development of the operational guidelines for amicable dispute resolution and mediation proceedings;
11. **Decides** to establish a list of experts from which the parties to a Standard Material Transfer Agreement may appoint mediators and arbitrators in accordance with the Third Party Beneficiary Procedures; and
12. **Invites** Contracting Parties to provide names of experts to be placed on the list in accordance with the criteria of expertise and procedures for nomination contained in *Annex 2*;
13. **Requests** the Secretary to establish a mechanism on the Treaty’s web-site, where the nomination form for inclusion in the list of experts could be obtained, and invite nominations through the web-site;
14. **Stresses** the importance of having adequate regional representation, and gender balance, in the placement of experts on the list;

15. **Decides** that the parties to the SMTA shall provide to the Third Party Beneficiary, in accordance with the relevant provisions of the SMTA and in order for the Third Party Beneficiary to be able to effectively carry out its roles and responsibilities, the information contained in Parts III and IV of *Annex 2*;
16. **Accordingly decides** that the information required in accordance with Article 5e of the SMTA shall be provided according to the following schedule; at least once every calendar year or within an interval that shall be, from time to time, decided by the Governing Body;
17. **Stresses** the importance of the Provider and the Recipient fulfilling their reporting obligations as foreseen in the SMTA and, as appropriate, in accordance with this schedule;
18. **Requests** the Secretary to develop appropriate and cost-effective processes to facilitate the submission, collection and storage of such information in the implementation of Article 4.1 of the Third Party Beneficiary Procedures. In so doing, the Secretary shall apply adequate measures to ensure the integrity and confidentiality of the information so provided.

Annex 1

**INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES
FOR FOOD AND AGRICULTURE****DRAFT PROCEDURES
FOR THE OPERATION OF THE THIRD PARTY BENEFICIARY
(‘THIRD PARTY BENEFICIARY PROCEDURES’)**

**Article 1
Designation of Third Party Beneficiary**

1. The Food and Agriculture Organization of the United Nations (‘FAO’) shall act as Third Party Beneficiary of the Standard Material Transfer Agreement under the direction of the Governing Body.
2. FAO will administer its roles and responsibilities under these Procedures in accordance with the Basic Texts of FAO and in particular FAO’s Financial Regulations, Rules and directives of its Governing Bodies.
3. Nothing in these Procedures shall be deemed a waiver of FAO’s privileges and immunities.

**Article 2
Scope**

These Procedures apply to the Third Party Beneficiary, when carrying out its roles and responsibilities as identified and prescribed in the Standard Material Transfer Agreement referred to in Article 12.4 of the International Treaty on Plant Genetic Resources for Food and Agriculture, under the direction of the Governing Body.

**Article 3
Principles**

1. The Third Party Beneficiary shall act on behalf of the Governing Body of the Treaty and its Multilateral System, as foreseen in the Standard Material Transfer Agreement.
2. The Third Party Beneficiary shall perform its roles and responsibilities effectively, in a transparent, cost-effective, expeditious and, to the extent possible, in a non-adversarial manner.

**Article 4
Information**

1. The Governing Body shall make available to the Third Party Beneficiary the information provided to it, in accordance with the provisions of the Standard Material Transfer Agreement.
2. The Third Party Beneficiary may receive information on possible non-compliance with the obligations of the provider and recipient under a Standard Material Transfer Agreement from the parties under the Standard Material Transfer Agreement or any other natural or legal persons.

The information could be used for the purposes of initiating dispute settlement procedures under the Standard Material Transfer Agreement.

3. The Third Party Beneficiary has the right to request that the appropriate information, including samples as necessary, be made available by the Parties, regarding their obligations in accordance with Article 8.3 of the Standard Material Transfer Agreement.

4. Except as may be required in the settlement of disputes and for the purposes specified in Article 9 of these Procedures, and unless otherwise agreed by the Parties to the Standard Material Transfer Agreement, information received by the Third Party Beneficiary shall be treated as confidential.

Article 5 **Amicable dispute settlement**

1. Where the Third Party Beneficiary has received information on possible non-compliance with the obligations of the parties under a Standard Material Transfer Agreement, it may request information in accordance with Article 8.3 of the Standard Material Transfer Agreement.

2. If the Third Party Beneficiary has reason to believe that obligations under a Standard Material Transfer Agreement may not have been complied with, it shall attempt in good faith to resolve the dispute by negotiation in accordance with Article 8.4a of the Standard Material Transfer Agreement and, in doing so, will send in writing to the parties to the Standard Material Transfer Agreement:

(a) a summary of the relevant provisions of the Standard Material Transfer Agreement which may not have been complied with, and other relevant information ('summary of information');

(b) a notice requesting the party that may not have complied with the Standard Material Transfer Agreement or the parties to the Standard Material Transfer Agreement to attempt, in good faith, to resolve the dispute not later than six months after the issuance of the summary of information and the notice.

Article 6 **Mediation**

1. If the dispute cannot be resolved by negotiation within six months after the issuance of the summary of information and the notice referred to in Article 5, paragraph 2 above, or any shorter period of time agreed on by the parties to the dispute, the Third Party Beneficiary shall commence or encourage the parties to the Standard Material Transfer Agreement to commence mediation proceedings through a neutral third party mediator, to be mutually agreed in accordance with Article 8.4b of the Standard Material Transfer Agreement.

2. The Third Party Beneficiary may propose as neutral third party mediator an expert from the list established by the Governing Body in accordance with Article 8.4c of the Standard Material Transfer Agreement.

Article 7 **Arbitration**

1. If a dispute has not been resolved by mediation within six months of the commencement of the mediation or any shorter period of time agreed on by the parties to the dispute, or if it otherwise appears that the dispute cannot be resolved within twelve months after the issuance of

the summary of information and the notice referred to in Article 5, paragraph 2 above, the Third Party Beneficiary may submit the dispute for arbitration in accordance with Article 8.4c of the Standard Material Transfer Agreement.

2. The Third Party Beneficiary may propose as arbitrator an expert from the list established by the Governing Body in accordance with Article 8.4c of the Standard Material Transfer Agreement.

Article 8 Expenditure

1. The Secretary of the Governing Body shall, as necessary, draw upon the Third Party Beneficiary Operational Reserve to cover all costs and expenses incurred by the Third Party Beneficiary in carrying out its roles and responsibilities in accordance with these Procedures, provided that FAO, acting as the Third Party Beneficiary, shall not incur any liabilities in excess of the funds available in the Third Party Beneficiary Operational Reserve.

2. Before initiating mediation and arbitration in accordance with Articles 6 and 7, the Secretary shall assess the adequacy of funds available within the Third Party Beneficiary Operational Reserve. To this end, the Secretary shall prepare an estimated budget for the dispute settlement in question, covering, where relevant, both the current and following biennia.

3. If adequate funds are not available for activities foreseen within the current biennium, the Secretary shall inform Contracting Parties of the additional funds required within the current biennium and six months of the following biennium, and call for immediate additional voluntary contributions to the Third Party Beneficiary Operational Reserve.

Article 9 Reporting

The Third Party Beneficiary shall submit to the Governing Body, at each of its Regular Sessions, a report setting forth:

- (a) the number, and a summary, of cases where it received information regarding non-compliance with the terms and conditions of a Standard Material Transfer Agreement;
- (b) the number, and a summary, of cases where it initiated dispute settlement;
- (c) the number, and a summary, of disputes settled through amicable dispute settlement, mediation or arbitration;
- (d) the number, and a summary, of pending disputes;
- (e) any legal questions that appeared in the context of dispute settlement and that may require the attention of the Governing Body;
- (f) the expenditure from the Third Party Beneficiary Operational Reserve;
- (g) any estimate of the needs of the Third Party Beneficiary Operational Reserve in the forthcoming biennium;
- (h) any other relevant non-confidential information.

Article 10 Amendments

These procedures may be amended by a decision of the Governing Body.

Article 11
Entry into force

These procedures and any amendments thereto shall enter into force upon decision by the Governing Body and the approval of the competent bodies of FAO.

Annex 2

OPERATIONS OF THE THIRD PARTY BENEFICIARY

Part I. Criteria for the nomination of experts

- a) Highest professional qualities, qualification and expertise in relevant fields;
- b) Reputation for independence, fairness, competence and integrity;
- c) Appropriate language skills;
- d) Expressed willingness to accept the role of mediator, arbitrator or expert in dispute settlement in relation to the Treaty's Multilateral System.

Part II. Procedures for nomination of experts

- a) Contracting Parties are invited to make nominations, at any time. Such persons will automatically be included in the list.
- b) Professionals wishing to be included in the list are invited to put themselves forward. The Secretary will authorize inclusion in the list.
- c) The Secretary may invite professionals to put their name forward, in particular in order to secure wide geographical representation and gender balance, and language proficiency, as well as wide coverage of relevant technical areas, and of relevant experience.

Part III. Information to be provided to the Governing Body by parties to the SMTA

Information required by the Third Party Beneficiary for the purpose of carrying out its roles and responsibilities shall be provided by the parties to the SMTA by:

- A. The Provider transmitting a copy of the completed SMTA,
or
- B. In the event that the Provider does not transmit a copy of the SMTA:
 - i. ensuring that the completed SMTA is at the disposal of the Third Party Beneficiary as and when needed;
 - ii. stating where the Standard Material Transfer Agreement in question is stored, and how it may be obtained; and
 - iii. providing the following information:
 - a) The identifying symbol or number attributed to the Standard Material Transfer Agreement by the Provider;
 - b) The name and address of the Provider;
 - c) The date on which the Provider agreed to or accepted the Standard Material Transfer Agreement, and in the case of shrink-wrap, the date on which the shipment was sent;
 - d) The name and address of the Recipient, and in the case of a shrink-wrap agreement, the name of the person to whom the shipment was made;
 - e) The date on which the Recipient agreed to or accepted the Standard Material Transfer Agreement, and in the case of shrink-wrap, the date on which the shipment was sent;

- f) The identification of each accession in *Annex 1*, and of the crop to which it belongs.

C. The Recipient shall;

- a) when transferring material to a subsequent Recipient, it shall do so in accordance with Articles 6.4 or 6.5 of the SMTA, as appropriate, including notifying the GB of the information stipulated under B above;
- b) submit to the Governing Body, when appropriate, an annual report, in accordance with Annex 2.3 of the SMTA;
- c) in case of opting for the payment modality provided for under Art 6.11h, notify the GB;
- d) make available to the Multilateral System non-confidential information.

Part IV. Information to be provided to the Third Party Beneficiary

Both parties shall provide information stipulated under Article 8.3 of the SMTA.

Except as may be required in the settlement of disputes and for the purposes specified in Article 9 of these Procedures, and unless otherwise agreed by the Parties to the Standard Material Transfer Agreement, information received by the Third Party Beneficiary shall be treated as confidential.

Appendix 2

PROPOSED AMENDMENTS TO THE FINANCIAL RULES PROVIDING FOR THE ESTABLISHMENT OF THE THIRD PARTY BENEFICIARY OPERATING RESERVE WITHIN THE CORE ADMINISTRATIVE BUDGET

Amendments have been made to Rules III.6 and VI.2a. A new paragraph VI.2b has been inserted and the old paragraphs VI.2b and VI.2c have been renumbered accordingly as VI.2c and VI.2d respectively. The Third Party Beneficiary Operational Reserve has been inserted in the Table, "SOURCE OF MONEYS AND TRUST FUND STRUCTURE", in the column, "TRUST FUND STRUCTURE – RULE VI".

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INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

FINANCIAL RULES

Rule I Applicability

- 1.1 These rules shall govern the financial administration of the Treaty.
- 1.2 The Financial Regulations of the FAO shall apply, *mutatis mutandis*, to all matters not specifically dealt with under the Treaty or the present Rules.

Rule II The Financial Period

The financial period shall be two calendar years, coinciding with the financial period of FAO.

Rule III The Budget

- 3.1 The Budget shall cover income and expenditures for the financial period to which it relates, and shall be presented in United States dollars.
- 3.2 The Budget shall include the programme of work for the financial period, and such information, annexes or explanatory statements as may be requested by the Governing Body.
- 3.3 The Budget shall comprise the following parts:
 - a) The Core Administrative Budget, relating to:
 - the amount provided for the Treaty in the Regular Programme of Work and Budget of the FAO under Rule V.1a,
 - the voluntary contributions of Contracting Parties under Rule V.1b,

- the voluntary contributions of States that are not Contracting Parties, of inter-governmental organizations, of non-governmental organizations and other entities, under Rule V.1c, and
 - funds carried over under Rule V.1h, and miscellaneous income, including interest derived from the investment of funds held in trust under Rule V.1i;
- b) Special Funds, relating to additional voluntary contributions by Contracting Parties, and voluntary contributions by States that are not Contracting Parties, by inter-governmental organizations, by non-governmental organizations and other entities:
- for agreed purposes, under Rules V.1d and e;
 - to support the participation of representatives of developing country Contracting Parties and of Contracting Parties with economies in transition in the Governing Body and its subsidiary bodies, under Rules V.1f and V.1g;
- 3.4 The draft Budget shall be prepared by the Secretary and shall be circulated to Contracting Parties not less than six weeks before a regular session of the Governing Body.
- 3.5 The Core Administrative Budget for the financial period shall provide for Administrative Expenditures under the Treaty including expenses of the Secretariat.
- 3.6 The Secretary may make transfers within each of the main appropriation lines of the approved Core Administrative Budget. The Secretary may also make transfers between such appropriation lines up to limits that the Governing Body may set as appropriate.

Rule IV Appropriations

- 4.1 After the Core Administrative Budget has been adopted, the appropriations therein shall, subject to Rule III.6, constitute the authority for the Secretary to incur obligations and make payments for the purposes for which the appropriations were voted and up to the amounts so voted, provided that commitments shall be covered by related contributions received or funds available in the Working Capital Reserve, subject to the provisions of Rule VI.4, and interest earned on funds held in trust.
- 4.2 The Secretary may incur obligations and make payments under Rules V.1d and V.1e, in accordance with guidelines established by the Governing Body, or for purposes specified by agreement between the contributor and the Secretary, from the date at which the contributions are received.
- 4.3 The Secretary may incur obligations and make payments under Rules V.1f and V.1g to support the representatives of developing country Contracting Parties and of Contracting Parties with economies in transition in the Governing Body and its subsidiary bodies, in accordance with relevant decisions of the Governing Body, subject to funds being available.
- 4.4 Any unliquidated prior year obligation relating to voluntary contributions shall at the end of the financial period be cancelled or where an obligation remains a valid charge, retained for future disbursement.

Rule V Provision of Funds

5.1 The resources of the Treaty shall comprise:

a) Upon approval by the Governing Bodies of FAO, the amount provided for the Treaty in the Regular Programme of Work and Budget of the FAO;

b)

Option 1 for V.1b

[Voluntary contributions to the Core Administrative Budget from Contracting Parties based on such indicative scale of contributions as shall be adopted by the Governing Body by consensus, based on the scale of contributions adopted from time to time by the United Nations, adjusted so as to ensure [that no developing country Contracting Party shall be required to pay more than any developed country Contracting Party ensuring] that no Contracting Party contributes less than 0.01 per cent of the total, that no one contribution exceeds 22 per cent of the total and that no contribution from a least developed country Contracting Party exceeds 0.01 per cent of the total];

OR

Option 2 for V.1b

[Voluntary contributions to the Core Administrative Budget from Contracting Parties for the purposes of administration and implementation of the Treaty in general;]¹

- c) Voluntary contributions to the Core Administrative Budget from States that are not Contracting Parties, from inter-governmental organizations, from non-governmental organizations or other entities, for the purposes of administration and implementation of the Treaty in general;
- d) Other voluntary contributions made by the Contracting Parties in addition to those under above to be used in accordance with guidelines established by the Governing Body, or for purposes specified by agreement between the contributor and the Secretary;
- e) Other voluntary contributions made by States that are not Contracting Parties, by inter-governmental organizations, by non-governmental organizations or other entities in addition to those under (c) above to be used in accordance with guidelines established by the Governing Body, or for purposes specified by agreement between the contributor and the Secretary;
- f) Voluntary contributions made by the Contracting Parties to support the participation of representatives of developing country Contracting Parties and of Contracting Parties with economies in transition in the Governing Body and its subsidiary bodies;
- g) Voluntary contributions made by States that are not Contracting Parties, by inter-governmental organizations, by non-governmental organizations or other entities,

¹ *Note by the Secretariat:* There are two drafting texts for Rule V.1b; option 1 foresees voluntary contributions “based on [an] indicative scale of contributions”; option 2 does not foresee such a scale of contributions. Brackets are maintained around Rules V.2, V.4 and V.5, because these depend entirely on which option is adopted for Rule V.1b.

to support the participation of representatives of developing country Contracting Parties and of Contracting Parties with economies in transition in the Governing Body and its subsidiary bodies;

- h) The uncommitted balance of voluntary contributions from previous financial periods carried forward;
- i) Miscellaneous income, including interest derived from the investment funds held in trust, in accordance with Rule V.7;
- j) Mandatory and voluntary contributions pursuant to Article 13.2 of the Treaty, and
- k) Voluntary contributions from any source to implement the Funding Strategy provided for in Article 18 of the Treaty.

[5.2 In respect of contributions made pursuant to Rule V.1b:

- a) Contributions for each calendar year are expected on or before 1 January of that year;
- b) Each Party shall, as far in advance as possible of the date due for the contribution, inform the Secretary of the contribution it intends to make and of the projected timing of that contribution.]²

5.3 Contracting Parties that are not Members of FAO shall contribute towards the amount provided for the Treaty in the FAO Regular Programme of Work and Budget in a proportionate amount to be determined by the Governing Body.

[5.4 For determining the indicative annual contributions of each Contracting Party, the assessed contribution for such Contracting Party for the financial period pursuant to Rule V.1b above, shall be divided into two equal instalments, one of which is payable in the first calendar year and the other in the second calendar year of the financial period.]³

[5.5 At the beginning of each calendar year the Secretary shall inform Contracting Parties of their indicative annual contributions to the budget.]⁴

5.6 All contributions to the Administrative Budget shall be paid in United States dollars or its equivalent in a convertible currency. Where a contribution is paid in a convertible currency other than United States dollars, the applicable rate shall be the bank currency conversion rate in effect on the day the payment is made.

5.7 Contributions not immediately required shall be invested at the discretion of the Director-General of FAO. The resulting income shall be credited to the specific Trust Fund from which the invested moneys derive.

Rule VI Funds

6.1 All contributions and other receipts shall be placed in Trust Funds administered by FAO.

² *Note by the Secretariat:* Rule V.2 would apply in the case of there being no indicative scale of assessment.

³ *Note by the Secretariat:* Rule V.4 would apply in the case of there being an indicative scale of assessment.

⁴ *Note by the Secretariat:* Rule V.5 would apply in the case of there being an indicative scale of assessment.

- 6.2 With respect to the Trust Funds referred to in Rule VI.1, FAO shall maintain the following Funds:
- a) A General Fund, to which shall be credited receipts of all contributions made by Contracting Parties under Rule V.1b, Rule V.1c, and the uncommitted balance of voluntary contributions carried forward under Rule V.1h, subject to Rule VI.2b;
 - b) A Third Party Beneficiary Operational Reserve to be maintained at an amount to be determined for each biennium by the Governing Body, to which shall be credited as priority an adequate part of contributions under Rule V.1b, Rule V.1c, and the uncommitted balance of voluntary contributions carried forward under Rule V.1h; the purpose of the Third Party Beneficiary Operational Reserve shall be to cover all costs and expenses incurred by the Third Party Beneficiary in carrying out its roles and responsibilities, in accordance with the Third Party Beneficiary Procedures.
 - ~~b~~ c) Special Funds, for purposes consistent with the objectives and the scope of the Treaty, to which shall be credited receipts of all contributions made by Contracting Parties under Rule V.1d, and by States that are not Contracting Parties, by intergovernmental organizations, by non-governmental organizations, or other entities, under Rule V.1e;
 - e d) A Fund to support the participation of representatives of developing country Contracting Parties and of Contracting Parties with economies in transition in the Governing Body and its subsidiary bodies, to which shall be credited all contributions made by Contracting Parties under Rule V.1f and by States that are not Contracting Parties, by inter-governmental organizations, non-governmental organizations or other entities, in accordance with Rule V.1g;
- 6.3 In addition, with respect to Rules V.1j and V.1k, upon request by the Governing Body, FAO shall maintain a Trust Account or Accounts, as provided for in Article 19.3f of the Treaty, to implement Article 18 of the Treaty, and to receive the funds foreseen in Article 13.2 of the Treaty.
- 6.4 Within the General Fund there shall be maintained a working capital reserve at a level to be determined from time to time by the Governing Body by consensus. The purpose of the working capital reserve shall be to ensure continuity of operations in the event of a temporary shortfall of cash. Drawdowns from the working capital reserve shall be restored from contributions as soon as possible.

Rule VII Reimbursement

The Trust Funds referred to in Rule VI.1 shall make provision for Project Servicing Costs to reimburse FAO for the administrative and operational support services provided to the Governing Body, its subsidiary bodies, and the Treaty Secretariat, under such terms as may, from time to time, be established by the Governing Bodies of the FAO.

Rule VIII Accounts and Audit

8.1 The accounts and financial management of all funds governed by the present rules shall be subject to the internal and external auditing procedures of FAO.

8.2 During the second year of the financial period FAO shall provide the Contracting Parties with an interim statement of accounts for the first year of the financial period. FAO shall also, as soon as practicable, provide to the Contracting Parties a final certified statement of accounts for the full financial period.

Rule IX Amendments

Amendments to these Rules may be adopted by consensus. Consideration of proposals of amendments to these rules shall be subject to Rule V of the Rules of Procedure and documents on the proposals shall be circulated in accordance with Rule V.7 of the Rules of Procedure, and in no case less than 24 hours prior to their consideration by the Governing Body.

Rule X Over-riding Authority of the Treaty

In the event of any conflict between any provision of these rules and any provision of the Treaty, the Treaty shall prevail.

Rule XI Entry into force

These Rules and any amendments thereto shall come into force upon their approval by consensus by the Governing Body unless, by consensus, the Governing Body decides otherwise.

SOURCE AND USE OF MONEYS, AND TRUST FUND STRUCTURE

REFERENCE IN RULE V	CORE ADMINISTRATIVE BUDGET	TRUST FUND STRUCTURE RULE VI
Rule V.1a	The amount provided for the Treaty's Core Administrative Budget in the FAO Regular Programme of Work and budget	
Rule V.1b	Voluntary contributions by Contracting Parties for the purposes of administration and implementation of the Treaty in general	GENERAL FUND <i>Income in the biennium</i> Rule VI.2a <i>includes the Working Capital Reserve</i> Rule VI.4 <u>THIRD PARTY BENEFICIARY</u> <u>OPERATIONAL RESERVE</u> <u>Rule VI.2b</u>
Rule V.1c	Voluntary contributions by states that are not Contracting Parties, from IGOs, or NGOs or other entities, for the administration and implementation of the Treaty in general	
Rule V.1h	The uncommitted balance of voluntary contributions carried forward	
Rule V.1i	Miscellaneous income, including interest derived from investment of the funds in the General Trust Fund	

SPECIAL FUNDS

Rule V.1d	Other voluntary payments by Contracting Parties, for purposes agreed between the contributor and the Secretary	MULTIDONOR FUND <i>where agreed with donor</i> ----- SEPARATE FUNDS <i>where required by donor</i> <u>Rule VI.2c</u>
Rule V.1e	Other voluntary payments by Contracting Parties, by IGOs, or NGOs or other entities for purposes agreed between the contributor and the Secretary	
Rule V.1f	Voluntary payments by Contracting Parties to support the participation of developing countries	FUND TO SUPPORT THE PARTICIPATION OF DEVELOPING COUNTRIES <u>Rule VI.2d</u>
Rule V.1g	Voluntary payments by contributions by states that are not Contracting Parties, from IGOs, or NGOs or other entities, to support the participation of developing countries	

BENEFIT-SHARING IN ACCORDANCE WITH ARTICLE 13.2 OF THE TREATY

Rule V.1<i>h</i>	Mandatory and voluntary contributions pursuant to Article 13.2d	BENEFIT-SHARING FUND Rule VI.3
Rule V.1<i>k</i>	Contributions from international mechanisms, funds and bodies	