

October 2007



منظمة الأغذية  
والزراعة  
للأمم المتحدة

联合国  
粮食及  
农业组织

Food  
and  
Agriculture  
Organization  
of  
the  
United  
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Organisation  
des  
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pour  
l'alimentation  
et  
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Organización  
de las  
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Unidas  
para la  
Agricultura  
y la  
Alimentación

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**Item 6 of the Provisional Agenda**

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

**SECOND SESSION OF THE GOVERNING BODY**

**Rome, Italy, 29 October – 2 November 2007**

**REPORT BY THE SECRETARY**

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1. Article 20 of the Treaty provides that the Secretary of the Governing Body shall “report on [Treaty] activities to the Governing Body.”<sup>1</sup> This includes reporting on the performance of specific tasks which the Governing Body may decide to assign to the Secretary.<sup>2</sup>
2. At its First Session, the Governing Body requested reports on numerous issues and tasks that the Governing Body had assigned to the Secretary, including reports on the status of ratifications of the Treaty, the implementation and operation of the Standard Material Transfer Agreement<sup>3</sup> and the Multilateral System, the Funding Strategy, the inclusion of civil society and farmers’ organizations in the Treaty process, the possible establishment of a permanent technical advisory committee, the establishment of the Secretariat, governance of the Treaty and functional autonomy of the Secretariat, the Work Programme and Budget of the 2008-09 biennium, and the establishment of cooperation with other international organizations. As requested by the Governing Body, this Report covers all these items.
3. Having taken office four working months prior to this Session of the Governing Body, I am pleased to provide a preliminary report to the Governing Body on progress of activities and implementation of the Treaty in my first four working months, and on the activities undertaken by the Secretariat of the Commission on Genetic Resources for Food and Agriculture, as Interim Secretariat for the Committee before I took over. I would like to thank the FAO and its Director-General for the hospitable reception I have received and the support given to me by the colleagues in the Agriculture and Consumer Protection Department of FAO over the past few months. I would also like to thank the Secretariat of the Commission on Genetic Resources for Food and Agriculture, which carried the Treaty Secretariat for more than half the biennium, and which facilitated the negotiations for the International Treaty with extra-ordinary skill and competence for more than seven years prior to its adoption. Colleagues in other departments, such as the Office of the Director-General and the Legal Office, have also been helpful and supportive.
4. It is to be noted that several assessments in this Report are preliminary in nature, due to my recent arrival and commencement of work. Nevertheless, my aim is to give the Contracting Parties as complete an information base as possible. The report is structured in four parts.
  - *Part One* contextualizes the contents of this document, by outlining general developments that have occurred under the Treaty since the First Session of the Governing Body.
  - *Part Two* provides a technical account of the various items and issues on which the Governing Body had requested reports from the Secretary. These issues include the items listed in paragraph 2 above.
  - *Part Three* outlines the future challenges, opportunities and objectives, and presents a vision for the Treaty, based on the decisions of the Governing Body and consultations with the Bureau during the inter-sessional period. Decisions regarding the implementation of the Treaty lie entirely in the hands of the Governing Body, and for this purpose a strategic planning perspective for Treaty implementation might be required at this early stage of implementation. The basic concepts that are outlined in *Part Three* of this document are fleshed out as a concrete and detailed Work Programme, which elaborates the operational aspects of this vision: this is contained in the document, *Draft Programme of Work and Budget for the 2008-09 Biennium*.<sup>4</sup>
  - Finally, Part Four contains a brief single conclusion.

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<sup>1</sup> Article 20.2c.

<sup>2</sup> Article 20.2b.

<sup>3</sup> See para. 2, Resolution 2/2006, ‘The Standard Material Transfer Agreement’, *Report of the First Session of the Governing Body*, IT/GB-1/06/Report, page 6.

<sup>4</sup> IT/GB-2/07/20.

## I. Introduction

5. The Treaty is now at a critical stage of implementation—at the start-up stage. If we are able to make the Multilateral System (MLS) and Funding Strategy work within the coming biennium, the Treaty will remain an indispensable instrument of public international law for regulating access to plant genetic resources for food and agriculture and benefit-sharing. If we are not able to achieve this within the next three to four years, the Treaty's relevance may be seriously jeopardized.

6. The initial indications are very positive. In the first eight months of operation, almost 100,000 transfers of genetic material have occurred within the Multilateral System of the International Treaty.<sup>5</sup> This is a uniquely successful start-up for the Treaty as an access and benefit-sharing system. It is now taking shape as a day-to-day operational system transferring thousands of genetic resources daily, across many different legal systems, languages, institutional contexts and administrative procedures. Its maintenance on a daily basis in more than 115 countries—while ensuring legal certainty, minimal policy coherence, guaranteed benefit-sharing, low administrative costs, and practical consistency for providers and recipients of material under the System—is a formidable task. This has put massive pressure and a heavy workload on the nascent Secretariat, which was equipped with minimal financial and human resources in the 2006-07 biennium. In fact, the Treaty budget did not foresee any operational implementation activities for the Multilateral System at all, but merely the creation of a small Secretariat and the convening of the Governing Body. In addition, there was a limited and delayed arrival of contributions by Contracting Parties to the Core Administrative Budget, which forced a prudent approach to hiring—first by the Interim Secretariat and then by me—and created a precarious budgetary and operational situation.<sup>6</sup>

7. The Interim Secretariat brought the precarious budgetary situation to the attention of the Bureau at an early stage. The Chairman according wrote to Contracting Parties, by his letter of 6 February 2007,<sup>7</sup> appealing for contributions to the Core Administrative Budget. However, as the budgetary situation had not improved by the time I took office, the grave budgetary state of the Treaty required me to make a further appeal to Contracting Parties at the eleventh session of the Commission on Genetic Resources for Food and Agriculture in June 2007. I stressed the importance of their contributions to the Core Administrative Budget being made rapidly and at levels that supplied the budget that they had adopted. This remains a key and indispensable requirement for the success of the Treaty. I am pleased to report that, following that session of the Commission, Contracting Parties have increased their contributions to the Core Administrative Budget. I am grateful to the Contracting Parties that have made contributions since your First Session. Within the limited time and financial resources available prior to the Second Session of the Governing Body, the Secretariat has done its utmost to establish the operational platforms required to facilitate the coherent functioning of the Multilateral System, and to make it possible to hold this Session of the Governing Body. In this context, the Secretariat of the Commission on Genetic Resources for Food and Agriculture provided its services for a substantial period, without any cost recovery, making a substantial and deliberate contribution to the Treaty. However, the start-up of the Multilateral System, combined with the major short-fall of contributions to the Core Administrative Budget, and the consequent human resource constraints, have inevitably caused certain delays in the preparation of documents for the Second Session of the Governing Body.

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<sup>5</sup> Of this total number, 89,000 are from the Consultative Group on International Agricultural Research alone and most transfers from Contracting Parties have not been included in these statistics. See document IT/GB-2/07/Inf.11.

<sup>6</sup> See document IT/GB-2/07/19.

<sup>7</sup> The Chair's letter, "requesting Contracting Parties, urgently, to make payment of their contributions [or to ...] inform the Secretariat ... as to when they intend to do so" is attached in the Annex of the Chair's Report (IT/GB-2/07/4).

8. From the experience of the past four working months, it thus appears evident and unavoidable that additional financial and human resources will be required in order to deliver the Treaty's Work Programme, while coping with the rapid workload increase resulting from the successful start-up of the Multilateral System and the implementation of the Funding Strategy.

9. The Work Programme and Budget 2008-09 is designed to provide Contracting Parties with a basic analysis and proposal of what the Treaty needs in order to successfully traverse the start-up phase and achieve a fully functional, stable operating mode within the coming biennia. The Draft Work Programme and Budget articulates the operational needs of the Treaty in the form of a concrete and precisely costed Work Programme for the 2008-09 biennium, whereas the present report describes them on a conceptual level, with a broader time-horizon. Thus, the Draft Work Programme and Budget should be read in qualitative terms as a substantive document, and not in purely numeric terms as a mere budget document.

## II. Reports Requested by the Governing Body on Specific Items

### A. STATUS OF RATIFICATIONS OF THE TREATY

10. Since the First Session of the Governing Body, Afghanistan, Armenia, Belgium, Burkina Faso, Costa Rica, Gabon, Iceland, Morocco, Philippines, Senegal and Turkey have ratified the Treaty. This continues the strong momentum of worldwide accessions to the Treaty and gives it the fastest rate of ratification of any Treaty in the history of FAO. As of 13 October 2007, this brings the total number of Contracting Parties and Contracting States to 115. Several governments of states that are not yet Contracting Parties have indicated their interest in acceding to or ratifying the Treaty, or are seriously examining these options. In order to promote further ratifications of the Treaty, specific activities are foreseen in the draft Work Programme and Budget for the 2008-09 biennium.

### B. THE MULTILATERAL SYSTEM OF ACCESS AND BENEFIT-SHARING

11. In Resolution 2/2006 ("The Standard Material Transfer Agreement"), the Governing Body "*request[ed]* the Secretary of the Treaty to review the implementation and operation of the Standard Material Transfer Agreement, and report to the Governing Body at its third session, in particular on the benefit-sharing provisions and the modalities of payment."<sup>8</sup>

12. The first eight months of operation of the Multilateral System, with almost 100,000 transfers conducted under SMTAs, allow several lessons to be learned, based on evidence and growing experience. These include that:

- the establishment of the Multilateral System has proven vastly more laborious, complex and difficult than was foreseen during the drafting stages of the Treaty. This complexity arises because:
  - the System establishes coherent day-to-day operations for thousands of daily transfers, which have to be consistent within the System and which are to be reported to the Governing Body under the SMTA<sup>9</sup>;

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<sup>8</sup> See para. 2, Resolution 2/2006, 'The Standard Material Transfer Agreement', *Report of the First Session of the Governing Body*, IT/GB-1/06/Report, page 6.

<sup>9</sup> See Articles 5e, 6.4b, 6.5c and 6.11h, as well as in *Annex 2*, paragraph 3, *Annex 3*, paragraph 4, and in *Annex 4* of the SMTA.

- the System needs to function coherently in more than 115 countries, with diverse legal systems, languages, institutional contexts and administrative frameworks;
  - there are centrifugal tendencies in the application by stakeholders implementing the System, in light of which the Governing Body will have to take steps to promote basic policy coherence, by providing “policy direction and guidance on the implementation of the Multilateral System”;<sup>10</sup>
  - a large number of Contracting Parties have not yet begun to apply the Multilateral System in any way, and many of them are seeking basic advice and support from the Secretariat, in order to begin;
  - at present, the SMTA, in those countries that have begun implementing the Multilateral System, is not being applied coherently in all cases, according to the information we have received. Therefore, further guidance, interpretation and assistance in the use of the SMTA will be needed, to make the use of the SMTA easy and legally certain for all users. Further inter-sessional work will undoubtedly be required on this issue;
  - at present, there is no systematic, complete and reliable information on what is happening within the System globally. In order to take informed policy decisions on the future evolution of the System, the Governing Body will require a solid and reliable information base on what is happening within the Multilateral System. To establish such a solid and reliable information base is in itself a major exercise.
- there is a user demand, from both Providers and Recipient, for the rapid and effective operationalization of the Multilateral System, due to a wide-ranging need for legal certainty and low transaction costs in the transfer, use and benefit-sharing for plant genetic resources for food and agriculture.

13. An initial review of the operation of the SMTA by the Interim Secretariat produced five results:

- It showed that many countries—particularly smaller countries and developing and least developed countries—are having real difficulties in identifying materials to be included in the System, in identifying the legal and practical measures they will need to take, in consulting other national stakeholders (for example in the environment and trade sectors), in finding ways to encourage private and legal persons within their jurisdictions to bring materials into the System, *etc.* As legal and administrative structures vary considerably from country to country, no “one size fits all” solutions are available, and substantive in-country missions are frequently requested as the only way to unblock the situation.
- At the same time, however, countries and institutions that wish to include their material into the Multilateral System need clear procedures and practical tools to do so without much administrative burden. A need for tools to simplify this process for contributors to the Multilateral System was thus identified.
- It is unfortunately clear that the SMTA is being used incoherently by Providers and Recipients in a number of jurisdictions. Applications of the SMTA are clearly disjointed to a degree where—as the main vehicle of the Multilateral System—this poses a potential

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<sup>10</sup> Article 19.3.

risk to the System, through amplification of technical incoherence, legal uncertainty and policy confusion. A clear need for measures that might standardize the application of the SMTA was identified.

- Potential Providers and Recipients of genetic material, especially in developing and least developed countries, are finding the operation of the SMTA overly complex, difficult and laborious. The need for tools which simplify the application of the SMTA for users who are not used to working with contracts routinely was thus identified.
- At the same time, potential providers and users who have been operating sophisticated genetic resource information technology systems, especially in developed countries and in relevant international institutions with large-scale genebanks, are trying to integrate SMTA operations into their existing systems, but find it challenging to automate the process. They are thus looking for ready-made information technology solutions that they can integrate easily and seamlessly into their existing systems.

14. Consequently, one possible avenue of addressing these needs for making SMTA operations simpler and of managing the potential risk of systemic failure or incoherence was to explore the potential use of possible information technology support tools that can simplify and standardize SMTA operations for MLS users, and integrate SMTA operations easily into existing genetic resource information systems. I wish to emphasize that such support tools should always fulfil three fundamental criteria, namely that:

- they are only voluntary and optional tools to make the use of the system easier for those stakeholders who seek such support. They are not obligatory reporting mechanisms;
- they do not track genetic material that is in the System, but only facilitate the semi-automated generation and conclusion of SMTAs;
- they fully respect the protection of confidential information, as foreseen throughout the world by the law of unfair competition and the legal protection of trade secrets.<sup>11</sup>

15. In order to explore the potential usefulness and practical feasibility of such support, the Interim Secretariat, with the agreement of the Bureau, convened an informal stakeholder consultation to identify ways in which information technology tools can be used to simplify and, as far as possible, automate the transactions involved in the Multilateral System. The consultations resulted in several recommendations regarding information technology tools. Following those consultations and recommendations, I sought to develop and deploy prototypes of the tools identified to cope with the high-speed start-up of the Multilateral System and to support Providers and Recipients in effectively using the SMTA. I undertook this work in collaboration with a range of institutions with appropriate capacity and resources - as I generally intend to work through collaborations and partnerships for the implementation of the Treaty, rather than seeking to undertake all the work in the Secretariat.

16. Given the rapid increase of SMTA operations, I tried, in the short time available before the Second Session of the Governing Body, to advance this work to a stage where initial draft prototypes of potential support tools could be available for users of the Multilateral System to test, and for demonstration to the Contracting Parties at the Governing Body. I am pleased to say that two draft prototypes of potential information technology support tools for users of the Multilateral System will be available as prototypes at this session of the Governing Body.

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<sup>11</sup> See, for example, Article 10*bis* of the Paris Convention and Art. 39 of the TRIPS Agreement.

17. Thus, the Governing Body will receive reports and be able to see live demonstrations of draft prototypes of tools that simply simplify the use of the Multilateral System for Providers and Recipients of material under the System.

### *Progress of Inclusion of Material in the Multilateral System*

18. In order to promote further inclusion of material in the Multilateral System, the Governing Body “requested its Secretary to continue consultations with other relevant International institutions, and to report to it regularly on progress.”<sup>12</sup> Accordingly, I carried out such consultations and am pleased to report that agreements with a number of relevant international institutions under Article 15 of the Treaty have been successfully concluded. Additional agreements are currently in progress, with ongoing consultative work.

19. The most relevant developments concerning progress with inclusion of material in the Multilateral System include the following:

- on 16 October 2006, 11 International Agricultural Research Centres of the Consultative Group on International Agricultural Research signed agreements under Article 15, bringing their *ex situ* collections under the Treaty.
- on 16 October 2006, the Tropical Agricultural Research and Higher Education Centre (CATIE), brought its *ex situ* collections under the Treaty.
- in 2007, two of the hosts of the International Coconut Genebanks brought their collections under the Treaty: Cote d'Ivoire on 5 February 2007 and Papua New Guinea on 9 May 2007.
- on 18 July 2007, the Mutant Germplasm Repository, which is maintained by the Joint Division of FAO and the International Atomic Energy Agency (IAEA) and which collects, conserves and facilitates distribution of induced mutants of important crops, has been included in the Multilateral System, through the conclusion of an Article 15 agreement.
- under Article 11.3, natural and legal persons within the jurisdiction of Contracting Parties who hold plant genetic resources for food and agriculture listed in *Annex I* shall be encouraged to include such plant genetic resources for food and agriculture in the Multilateral System. I have also received indications of interest from private sector seed associations, regarding the applicable procedures for their members to include their material in the system. These expressions of interest will be followed up in the 2008-09 biennium.

20. Under the relevant agenda items, the Governing Body may wish to provide guidance on the practical steps and appropriate procedures for inclusion of material by stakeholders who express their interest for including material in the Multilateral System.

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<sup>12</sup> See para 33, IT/GB-1/06/Report, page 11.

### C. THE FUNDING STRATEGY

21. A further major challenge for the Treaty is the Funding Strategy. The Governing Body itself has stated in Resolution 1/2006 that “an effective Funding Strategy is critical to the implementation of the Treaty”.<sup>13</sup> While the general nature of Article 18 will require strong policy guidance from the Governing Body, the full implementation of the Funding Strategy will be a key requirement for the future balance and functioning of the Treaty. Article 18.1 of the Treaty clearly specifies that the implementation of the Funding Strategy is the responsibility of Contracting Parties. The Secretariat will need guidance as to how it can best play a supporting role in this.

22. The operationalization of the Funding Strategy will be crucial for achieving the appropriate balance in the implementation of the Treaty as a whole.

23. In Resolution 1/2006, the Governing Body “*requests* the Secretariat of the Treaty to positively pursue, with the secretariats of relevant international mechanisms, funds and bodies, means by which they might contribute to the implementation of the Funding Strategy of the Treaty, and the possibility of establishing memoranda of understanding with the Governing Body in this regard.”<sup>14</sup> In the submissions made by Contracting Parties on the Funding Strategy, certain international mechanisms, funds and bodies were specifically identified, such as the Common Fund for Commodities and the Global Environmental Facility.<sup>15</sup> Consequently, I established preliminary contact with several of these international mechanisms, funds and bodies, such as the Common Fund, to raise awareness about the Treaty and its Funding Strategy. The responses I received from the Common Fund were highly positive, and it was agreed to follow them up in the 2008-09 biennium. Some of the experiences and information gained through the broader information gathering exercise include the following:

- Resource allocation, in accordance with Article 18.4a, must be primarily undertaken by the Contracting Parties, not the Secretariat, because only Governments, through their political weight as Members of other international institutions, will be able to take effective measures within those institutions for the allocation of funds to the Funding Strategy of the Treaty. The Secretariat’s role can be to establish and facilitate contacts, raise awareness and conclude administrative arrangements, whereas the role of inducing decisions for allocation of funds to the Treaty’s Funding Strategy has to be undertaken by Governments.
- Donors from those non-governmental sources of funding that are identified in Article 18.4f - namely “the private sector, non-governmental organisations [*e.g.*, foundations] and other sources”<sup>16</sup> – form a professional community, institutional environment and social circle that is quite distinct and detached from the technical expert community that manages plant genetic resources for food and agriculture and the institutional environment of governmental plant genetic resources policy makers. This distance between the professional communities and institutional settings will be an active factor that has to be overcome by the Contracting Parties and the Secretariat, through systematic outreach, positive pursuit of contacts, and awareness-raising about the Treaty;

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<sup>13</sup> See para (iii), Resolution 1/2006, ‘The Funding Strategy’.

<sup>14</sup> See para 10, Resolution 1/2006, IT/GB-1/06/Report, page 4.

<sup>15</sup> See submission of Germany, document IT/GB-2/07/9.

<sup>16</sup> See Article 18.4f.

- Many key decision makers responsible for the non-governmental sources of funding identified by Article 18—rightly or wrongly—view the inter-governmental processes of the United Nations as being overly slow, bureaucratic and political, and are thus less inclined to make voluntary contributions, if fund-raising processes are tied directly to inter-governmental and political processes. While this is merely a perception—and irrespective of whether such a perception has any merit or not—the perception is a reality and will influence the ability of Contracting Parties to raise voluntary contributions from the non-governmental sector. This should therefore be taken into account and proactively addressed.
- The world of fund-raising is highly competitive and constitutes a professional community of its own. Thus, the mobilization of funds requires a highly specialized, professional skill set that lies beyond the regular expertise of the plant genetic resource community, and beyond the normal skills of staff of an international organization. Therefore, the only effective and realistic way of raising voluntary contributions from “the private sector, non-governmental organisations and other sources” is by hiring the services of a professional fund-raiser, as recommended by the *Ad Hoc* Advisory Committee on the Funding Strategy;
- All of the above information on the possibility of voluntary contributions from relevant international institutions, which was gathered from them at the request of the Governing Body, is without prejudice to the provisions of Article 18.4c which provides that Contracting Parties also provide “financial resources for the implementation of this Treaty through bilateral and regional and multilateral channels.” That again is a responsibility of Contracting Parties, which may wish to give the Secretariat information to report periodically on the volumes and purposes of moneys so provided.

24. From the above-mentioned consultations with the Bureau, the *Ad Hoc* Advisory Committee on the Funding Strategy, the Global Crop Diversity Trust, professional fund-raisers, and the institutions identified by the Contracting Parties in their submissions on the Funding Strategy, a concrete action plan has taken shape which may allow Contracting Parties to effectively implement the Funding Strategy and address the above-mentioned challenges, taking into account the information and suggestions received from these stakeholders. This possible action plan is described in document IT/GB-2/07/08 and is listed in Module B of the draft Work Programme and Budget.<sup>17</sup> In addition, as requested by the Governing Body at its First Session, the Secretariat will follow up and positively pursue contacts for the Funding Strategy in the next biennium.<sup>18</sup>

#### **D. POSSIBLE ESTABLISHMENT OF A PERMANENT TECHNICAL ADVISORY COMMITTEE**

25. At its First Session, the Governing Body “requested the Secretary to consider further the possible establishment of a technical advisory committee, including aspects relating to terms of reference, composition and funding needs, and to report back to the second session of the Governing Body.”

26. In considering further this question, the Governing Body may wish to distinguish between a number of elements that—although interlinked—can be considered separate separately: (1) whether, at this stage of the Treaty’s development, a permanent mechanism would be the most

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<sup>17</sup> See document IT/GB-2/07/20.

<sup>18</sup> See document IT/GB-2/07/9 and Annex B, IT/GB-2/07/10.

efficient, or whether *ad hoc* groups might not be more efficient; (2) possible composition and terms of reference; (3) the budgetary implications of whatever solution is chosen.

27. In terms of the first question, the Governing Body has not yet identified matters that it might wish to refer to a *permanent* technical advisory committee. The experience of addressing a variety of questions before the Governing Body through *ad hoc* groups<sup>19</sup>—related, for example, to the Funding Strategy, the SMTA, and potentially other provisions of the Treaty—suggests, according to the reports of those groups, that *ad hoc* committees with the expertise to focus on specific matters referred to them by the Governing Body, may be more efficient. In particular, the Report of the Chairman of the Governing Body, on the work of the *Ad Hoc* Advisory Committee on the Funding Strategy, concludes that, after “the successful and efficient manner in which the Committee conducted its work [... i]t was felt that the format of an *Ad Hoc* Advisory Committee provided a focused, cost-effective, time-efficient and outcome-oriented arrangement for the inter-sessional preparation of technical inputs to the Governing Body.”<sup>20</sup> The experience of the *Ad Hoc* Advisory Committee on the Funding Strategy and the subsequent conclusions of the Chair, based on that experience, suggest that at the current state of development of the Treaty, *ad hoc* arrangements may best meet its needs within the drastic budgetary shortfalls of Contracting Parties’ contributions to the Core Administrative Budget.

28. An *ad hoc* solution allows the Governing Body to tailor both the composition and the terms of reference of a group to its real needs. In the case of the *Ad Hoc* Advisory Committee on the Funding Strategy, its composition was “seven representatives of Contracting Parties, with one representative nominated by each of the FAO Regions”.<sup>21</sup> Should a permanent body be considered, a model that the Governing Body may wish to consider is that provided by the Inter-Governmental Technical Working Groups of the Commission on Genetic Resources for Food and Agriculture, namely “twenty-seven Member Nations from the following regions: 5 from Africa, 5 from Europe, 5 from Asia, 5 from Latin America and the Caribbean, 3 from the Near East, 2 from North America, 2 from Southwest Pacific”.<sup>22</sup>

29. *Ad hoc* solutions cannot be costed generically. The funds provided for the *Ad Hoc* Advisory Committee on the Funding Strategy were US\$ 25,000, provided by individual donors, outside the Core Administrative Budget. The cost of a technical advisory committee established on the model of the Commission’s Intergovernmental Technical Working Groups will depend on three main factors: interpretation; preparation of documents; and the length of the meetings. On the assumption that interpretation into all six Treaty languages is provided (which would only be the case if the composition of the technical advisory committee required this), and on the basis of experience with the Commission’s Intergovernmental Technical Working Groups, the cost of a 3-day meeting in Rome is estimated at \$130 000, and of a 5-day meeting in Rome at \$180 000. This does *not* include any provision for supporting the participation of developing countries.

30. In the 2006-07 biennium, there has been a drastic short-fall of contributions from Contracting Parties to the Core Administrative Budget, which jeopardized even the convening of the Second Session of the Governing Body. The feasibility of creating a permanent subsidiary body thus needs to be examined within the low current rate of contributions from Contracting

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<sup>19</sup> If voluntary contributions to the Core Administrative Budget were to increase and the Governing Body was to decide to establish a Permanent Technical Advisory Committee, the terms of reference of such a Committee could be “to review all issues referred to it by the Governing Body of the Treaty regarding, in particular, the technical, scientific and practical aspects of implementation of the Treaty and to provide the Governing Body with its advice and recommendations on those issues.”

<sup>20</sup> See para 10, IT/GB-2/07/4 Report of the Chair.

<sup>21</sup> See para. 15, Resolution /2006, ‘The Funding Strategy’, *Report of the First Session of the Governing Body*, IT/GB-1/06/Report, page 5Resolution1/2006.

<sup>22</sup> Statutes of the Inter-Governmental Technical Working Groups.

Parties to the Core Administrative Budget. It would seem prudent, until a more regular flow of funds is assured, not to create an additional permanent subsidiary body, when – at the present rate of contributions from Contracting Parties – there were not enough funds to convene the Governing Body itself.

## E. ESTABLISHMENT OF THE SECRETARIAT

31. At its First Session, the Governing Body “*requested* the Secretariat of the Commission on Genetic Resources for Food and Agriculture to continue to act as Interim Secretariat of the Governing Body until the appointment of the Secretary.”<sup>23</sup> Thus, until my appointment, the Interim Secretariat of the Treaty was provided by the Secretariat of the Commission. I should like to thank the Secretariat of the Commission for the excellent work it performed as Interim Secretariat, and note that the provision of Secretariat services that are not charged to the Core Administrative Budget of the Treaty, as was the case during the transitional arrangement, will not be possible in the 2008-09 biennium.

32. In Resolution 4/2006, the Governing Body adopted a staffing table for the Secretariat “as set out in Annex I of [its] Report, recognizing that the precise staffing arrangements are a matter of the normal executive authority of the Secretary.”<sup>24</sup> Due to the slowness of contributions to the Core Administrative Budget, the Interim Secretariat and the Secretariat took a very prudent approach to the staffing of the Secretariat. The filling of the two senior positions has been completed, but further positions have not yet been filled due to the short-fall of the Core Administrative Budget. This means that the Secretary was operating merely with one interim officer and one consultant until September 2007. Urgent needs for human resources in light of the rapid increase of workload for the Secretariat have been met in the short-term through consultancies and personal service agreements, for the Treaty and its Secretariat to survive the most critical and emergency bottlenecks.

33. In addition to the low level of overall contributions, the lateness of contributions creates a serious cash flow problem, making the planning of staffing difficult, creating a most precarious situation, where it may become necessary to lay staff off merely because of late payments by Contracting Parties. In this context, I point out that the only funds that will be available to me on 1 January 2008 will be the sum that the FAO Conference this year decides to allocate to the Treaty. In this context, I appeal for early and substantial contributions from Contracting Parties. I would also request that I be authorized to use the FAO contribution to cover staff costs from the FAO Regular Programme Contribution irrespective of the post type that generates the costs.

34. In the immediate and medium-term, it is evident that the staff will have to be increased, if the Secretariat is to be able to cope with the workload of supporting the operation of the Multilateral System, facilitating the effective implementation of the Funding Strategy of the Treaty, and providing the Contracting Parties with basic services and support for Treaty implementation at national level. It is therefore envisaged that Secretariat staffing will be extended, by adding one P5, one P4 and one P3 post to the staffing table approved by the First Session of the Governing Body. This would constitute a slim and dynamic Secretariat, and a long-term structure for the Secretariat, with short-term activities obtained through consultant services. On this principle, the Secretariat services and resources have been kept to a bare minimum in the proposed budget.

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<sup>23</sup> See para 17(h), IT/GB-1/06/Report, page 9.

<sup>24</sup> See para (g).

## F. GOVERNANCE OF THE TREATY AND FUNCTIONAL AUTONOMY OF THE SECRETARIAT

35. At its First Session, held in Madrid in 2006, the Governing Body “*emphasized* the importance of the autonomy of the Secretary and the Secretariat of the Treaty”.<sup>25</sup> At its third meeting, the Bureau of the Governing Body “considered the issue of the functional autonomy of the Secretariat of the Treaty, as affirmed by the Governing Body at its first session and also recalled that the Terms of Reference of the Secretary, as adopted by the Governing Body, specified that the Secretary and the Secretariat shall enjoy functional autonomy in matters within the mandate of the Treaty and decisions taken by the Governing Body, and be technically accountable to the Governing Body.”<sup>26</sup> The Bureau also decided that “[t]he Chair should raise the issue in his report to the Governing Body”<sup>27</sup> and, consequently, the Chair identified in his Report that such functional autonomy, from a practical point of view, “may address such issues as representation, correspondence, financial and human resource management, reporting, travel, administrative procedures, management and reform processes, and the executive authority of the Secretary.”<sup>28</sup> The Bureau also requested the Secretary to assess, in cooperation with the FAO Legal Office and other relevant departments, what steps could be taken to realize the autonomy: I will thus work with the relevant departments to explore what steps can be taken to address these issues and will report back to the Governing Body.

## G. WORK PROGRAMME AND BUDGET FOR THE 2008/09 BIENNIUM

36. Resolution 4/2006 “*requests* the Secretary to prepare and submit a budget for the biennium 2008/09 for the consideration of the Governing Body at its second session, and to report on progress on income and expenditures, as well as any adjustments made to the budget for the biennium 2006-2007.”

37. I have taken the development of a strategic Work Programme for the Treaty very seriously. A substantive and transparent Work Programme is critical to meet the needs of the Treaty at this formative stage, in a coherent, cost-effective, efficient and focused manner. The first Work Programme for the implementation of the Treaty may have major implications for the long-term future and health of the Treaty. I therefore appeal to Contracting Parties to read the Work Programme and Budget in substantive, rather than purely numeric terms. The development of the Work Programme and Budget is not merely as a quantitative exercise of budget management, but also the qualitative setting of the substantive direction of the Treaty and its future.

38. The Work Programme distinguishes between (1) the Core Administrative Budget on the one hand, as provided for in Financial Rules V.1a and b; and (2) support for start-up technical assistance activities for the launch of the Multilateral System, supported through extra-budgetary resources, contributed outside the Core Administrative Budget, by individual donors, as provided for in Financial Rule V.1e.

- The Core Administrative Budget includes those ongoing activities that form part of the core operational functions of the Treaty System, without which the Treaty cannot properly function and which will continue beyond the current start-up phase of the Treaty. Examples include the convening of the Governing Body and management support for the basic operation of the Multilateral System and the Funding Strategy. This Core

<sup>25</sup> See para 16, IT/GB-1/06/Report, page 8.

<sup>26</sup> See IT/GB-2 Bureau 3/07/Report, p.5.

<sup>27</sup> Ibid.

<sup>28</sup> See IT/GB-2/07/4, para. 20.

Administrative Budget is crucial, and is to be adopted by the Governing Body. It is indispensable for the functioning of the Treaty.

- The start-up activities (funded through the *Trust Fund for Purposes Agreed Between the Contributor and the Secretary*—covered by Financial Rule VI.1b) are related primarily to the launch of the Multilateral System. While they are of high importance in the present phase of Treaty evolution, they may not be required beyond the 2008-09 biennium. I have therefore proposed that the resources needed for these activities be sought through the Multidonor Fund or Trust Funds with individual donors, separate from Contracting Parties' contributions to the Core Administrative Budget.<sup>29</sup> The financial Rules provide for them to “be used in accordance with guidelines to be established by the Governing Body, or for purposes specified by agreement between the contributor and the Secretary”.<sup>30</sup>
- Therefore, those activities are presented in the Work Programme and Budget only for the Governing Body's general endorsement, not for its detailed budgetary approval. This would, I believe, constitute the guidelines foreseen in the Financial Rules, and would allow me to deal with individual donors to raise the necessary funds with the substantive guidance, and political support, of the Governing Body.

39. While these two categories are distinct, a coherent programme description encompassing both components was developed because I wish to seek the Contracting Parties' support and guidance for it, and because I felt it important that the Governing Body give full policy direction on an integrated and comprehensive Work Programme.

40. I wish to stress then that, when adopting the 2008-09 Budget, the Governing Body is requested to adopt only the Core Administrative Budget as set out in the Consolidation Table entitled 'Core Administrative Budget of the International Treaty' on page 9 of document IT/GB-2/07/20.

41. It is through partnerships, close collaboration and collaborative programmes with partners in FAO and other regional and international organizations, which have high technical expertise in the field of the Treaty, that the work envisaged under the Work Programme and Budget would be delivered and undertaken. Thus the Treaty Secretariat neither can nor wishes to directly undertake all implementation work itself. At the same time, it is of utmost importance for the functioning of the Multilateral System that such implementation work, when undertaken by partners, follows the guidance of the Governing Body, in order to ensure coherence within the day-to-day operation of the Multilateral System.

42. Before 2007, the Treaty's operational systems had not reached implementation stage. Work related to the Treaty was thus dispersed across different departments, programme elements and units of FAO. There have been blurred distinctions as to what constitutes Treaty implementation and what does not. I have made a conscious effort to further improve information exchange, coordination and coherence regarding work related to the Treaty, within FAO and with other organizations. Coordination on work related to implementation and representation of the Treaty could be further improved within FAO, and in relation to other international organizations. Other Conventions and international agreements have, in their early implementation stage, set up coordination mechanisms to ensure coherent implementation of operational systems established by those Treaties. Options for similar mechanisms to further improve the coherence of the implementation process are outlined in Module C of the Work Programme. I will continue to

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<sup>29</sup> See the diagram, “Source of Moneys, and Trust Fund Structure” appended to the Financial Rules, as adopted by the FirSt Session of the Governing Body, IT/GB-1/06/Report, *Appendix E*, page 7.

<sup>30</sup> Financial Rules V.1d and e.

make a conscious effort to improve information exchange, coordination and collaboration in the work that relates to the Treaty and is done with other departments, and to ensure that this is driven by your decisions and that your decisions are implemented in practice through my substantive oversight.

## **H. ESTABLISHMENT OF COOPERATION WITH OTHER ORGANIZATIONS**

Article 20 of the Treaty states that “[t]he Secretary shall cooperate with other organizations and treaty bodies, including in particular the Secretariat of the Convention on Biological Diversity, in achieving the objectives of this Treaty.”<sup>31</sup> In the past four months, I undertook missions to promote cooperation with other organizations. Regarding the CBD, I attended the Twelfth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice (Paris, 2 to 6 July 2007), the fifth meeting of the Ad Hoc Open-ended Working Group on Access and Benefit-sharing (Montreal, 8 to 12 October 2007), and, on behalf of the Chair of the Governing Body, the First Meeting of the Chairs of the Scientific Advisory Bodies of Biodiversity-Related Conventions (Paris, 1 July 2007). I also met with the Executive Secretary of the CBD on 1 September 2007 and invited him to attend the Closing Ceremony of the Second Session of the Governing Body. The outcome of these missions is the establishment of a close and positive working relationship between the Treaty Secretariat and the CBD Secretariat, as envisaged in Article 1 of the Treaty.

At the request of the FAO/IAEA Joint Division, I attended a meeting of the Arasia Project on plant genetic resources and discussed with the Joint Division the inclusion of the Mutant Germplasm Repository into the Multilateral System of the Treaty. Subsequent developments following the initial mission, include the coherent implementation of an Article 15 agreement between the Governing Body and the Joint Division; the inclusion of the MGR in the MLS; further collaboration on testing of information technology support for SMTA operations; planned inputs by the Treaty Secretariat into a planned Memorandum of Understanding to be developed by the ARASIA Project and possible case studies on benefit-sharing under the Multilateral System resulting from the inclusion of the Mutant Germplasm Repository.

I also attended the First International Technical Conference on Animal Genetic Resources for Food and Agriculture (1-7 September 2007, Interlaken, Switzerland) and presented the experiences of the International Treaty in regulating access and benefit-sharing for plant genetic resources for food and agriculture. One followup from this mission is the holding of a side-event on animal genetic resources for food and agriculture and the Interlaken Technical Conference during the Second Session of the Governing Body and increased collaboration and coordination between the work on animal and plant genetic resources.

I also attended the eleventh session of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (Geneva, 9 to 11 July 2007) and reported on recent developments and progress with the implementation of the Treaty.

Additional missions were undertaken by the Treaty Secretariat to the Annual Meeting of the European Seed Association (ESA) (Brussels, 14 to 18 October 2007) and to the UPOV West and Central Asian Regional Workshop on Plant Variety Protection (Krygystan, 11 to 14 September 2007). This workshop has strengthened the cooperation with the UPOV in order to ensure complementarities and synergies in mutual respect of respective mandates. It also raised awareness of WCAR countries on the existence of the Treaty and the potential benefits of ratifying it.

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<sup>31</sup> Article 20.5

### III. The future of the International Treaty

43. This is a critical time for the future of the International Treaty. In this formative phase, when long-term decisions and directions are being set, clarity on strategic objectives, priorities and long-term vision is especially important. At this early stage of implementation, it is therefore particularly important that Contracting Parties consider and take their decisions in a broader substantive perspective and on a longer-term time horizon than is usual for routine meetings. In this final part of my Report, I should therefore like to outline what appear to me as the key strategic objectives, priorities and vision for the future of the Treaty, based on the past decisions of the Governing Body. At this early stage of implementation, guidance from the Governing Body should be especially clear, precise and in depth, in order to ensure that the Treaty-related work of various stakeholders and institutions adds up to the coherent implementation and functioning of the Treaty. I therefore wish, in these concluding paragraphs, to map out what appear as the main challenges and opportunities, objectives and priorities for the future.

44. Based on the decisions of the Governing Body and the practical experience so far, it is clear that there are three key objectives for implementation of the Treaty in this phase:

- the *establishment and operation of the Multilateral System* as a day-to-day operational system transferring thousands of genetic resources every day within more than 115 countries with legal certainty, low administrative costs, guaranteed benefit-sharing, and practical consistency and reliability for users of the System; and
- the *implementation of the Funding Strategy* of the Treaty as an operational mechanism which will ensure the availability, transparency, efficiency and effectiveness of financial resources under the Treaty, and which will prioritize programmes for farmers in developing countries who conserve and use plant genetic resources for food and agriculture.

Because the Treaty now needs to jump start the Multilateral System coherently, as a day-to-day operational system in more than 100 jurisdictions, this can in practice only be achieved through a third objective, namely

- *coherent start-up and implementation of the Multilateral System and Funding Strategy at the national and regional levels*, with appropriate support being given to Contracting Parties who are developing countries and countries with economies in transition.

45. If we can achieve these three strategic objectives in practically implementing the Treaty at a world-wide level in the coming biennium, I am convinced that the Treaty will be solidly established as a leading and permanent element of the international legal architecture governing genetic resources, and as a guarantor of food security, agricultural and environmental sustainability, and equity in the utilization of plant genetic resources by all countries and communities. If we are not able to achieve these three key objectives within the next three years, the Treaty might fade to become the dead letter of the Law, as have many international treaties before it.

### IV. Conclusion

46. The Treaty is at a make-or-break stage. At this crucial moment, it lies in the hands of the Contracting Parties at the Governing Body to take the steps necessary to ensure its long-term success.