



The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



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Item 5 of the Provisional Agenda

FIFTH SESSION OF THE GOVERNING BODY

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REPORT OF THE SECRETARY

1. The two years since you last met as Contracting Parties of this Treaty in 2011 have marked a period of intensive change for your Treaty. In this report on the progress and status of the Treaty during these two years, I would like to share some reflections on the challenges I see ahead, and I would like to do so in three parts: first, three broad trends of change that are affecting your Treaty; second, the challenges that I see arising from this changing environment; and, third, the possible elements of solutions that you have already begun developing, after we flagged them early, in your inter-sessional processes.

2. Let me begin by looking ahead at *the extensive changes* which your Treaty must face over the next five to ten years. These can be described in three broad developments:

3. First, the 'dematerialization' of the use of genetic resources. By this, I mean the increasing trend for the information and knowledge content of genetic material to be extracted, processed and exchanged in its own right, detached from the physical exchange of the plant genetic material: value is increasingly created at the level of the processing and use of such information and knowledge. The rise of modern breeding technologies and plant genomics, for example, has shifted the balance of value of material and knowledge. This raises a complex set of questions for the Treaty.

4. The second global change is in the legal environment of access and benefit-sharing, with the entry into force of the Nagoya Protocol and the International Regime on Access and Benefit-sharing. There will need to be increasing operational linkages between the Treaty systems and the Convention on Biological Diversity (CBD) systems, such as the Nagoya Clearing House and our Multilateral System information systems. Close collaboration with the CBD is more important than ever, as your Treaty is explicitly named as an element of the new International Regime. This requires daily joint work by the Secretariats, as foreseen in our Memorandum of Cooperation. As you requested in Resolution 8/2011, we have therefore been rapidly increasing collaboration with the CBD and its Nagoya Protocol. In the draft work programme, we have sought to ensure harmony between CBD and Treaty.

5. The third development is the global financial crisis, which is hitting the Treaty with some time lag. You made courageous decisions at your last Session to protect and stabilize the Core Administrative Budget. But the overseas development assistance of our biggest donors has dropped by 32% from one year to the next, and has entirely stopped for our biggest donor. Contracting Parties have not been able to contribute to the Benefit-sharing Fund, as undertaken

before the crisis, and you have, therefore, accumulated a shortfall in the Benefit-sharing Fund and the Special Funds.

6. As a second part, let me now briefly anticipate the impact which these changes might have for you in years to come. They will create a number of *problems and challenges*, which you need to address now, in your decisions at this critical Session. We have set them out in the working documents, but I would like to summarize them here:

7. Regarding the *dematerialization* of the use of genetic resources, the challenges are the following: Technology is rapidly evolving. Breeding is no longer so focused on plant genetic resources as *raw materials*. Unless you begin now to widen your focus to develop those parts of your Treaty which, even in embryonic form, address the non-material values of genetic resources, such as Article 17, and Articles 13.2a and b, you may, in seven to ten years' time, find yourself with a static museum of raw materials, rather than a dynamic framework which facilitates and governs the ongoing innovative uses of genetic resources, at the level of their epistemic value, i.e. their information and knowledge values, including characterization data, genomic data, traits and even environmental data.

8. Let me give some examples. How can you govern the 'products' of the use of plant genetic resources for food and agriculture (PGRFA) that are intangibles? Is a trait a product under 13.2d(ii)? Other challenges include how the Treaty interfaces with public and private agricultural research and innovation.

9. Further challenges arise from the redrawing of interfaces with intersecting regulatory systems, such as intellectual property; the implementation of existing partnerships and relationships, such as Article 15 agreements with the Consultative Group on International Agricultural Research (CGIAR) Centres and their Intellectual Assets Policy, the relationship agreement with the Global Crop Diversity Trust, and even the relationship with the Nagoya Protocol.

10. With the changing legal environment for access and benefit-sharing, the challenge is to engage proactively, at two levels, with the new International Regime and the Nagoya Protocol: `One level is the *intergovernmental processes* that interpret and govern the implementation of the legal standards set out in the two elements of the International Regime, i.e., the Nagoya Protocol and the Treaty. We have already worked a lot with the CBD Secretariat and other partners. This work needs to be scaled up, for a truly harmonious implementation of the Treaty and the Protoco

11. 1. The coherent interpretation of access and benefit-sharing (ABS) systems being worked out at the intergovernmental level must be supported by close, continuous and direct technical communication between the subsidiary bodies of the Treaty and the Protocol. Your *Ad Hoc* Committee on the Standard Material Transfer Agreement (SMTA) and the Multilateral System (MLS), through which you have already been engaging with the CBD, provides you an established avenue for such cooperation, which is required operationally and statutorily.

12. Another level is *national implementation and daily operation* of the access and benefit-sharing systems of the Treaty and the Protocol in a harmonious and inter-operable manner. Here, the challenge will arise in at least 50 countries simultaneously with the entry into force of the Nagoya Protocol, and rapidly grow with every new shared Contracting Party. This will require operational support and *capacity building*, to keep both systems operating harmoniously. Here, our main constraint is funding for the capacity-building.

13. I appeal to Contracting Parties to anticipate this coming wave of demand, for which we have made provision in the Work Programme and Budget for 2014-15.

14. With the global economic crisis, the Treaty faces the same challenge as all the UN system: a lack of resources.

15. The crisis coincides with the natural lag-time for use-based income to the Benefit-sharing Fund. You have already begun to address this through innovative approaches in your *Ad Hoc* Advisory Committee on the Funding Strategy.

16. Some Contracting Parties have made large financial contributions to the Benefit-sharing Fund, despite the global financial crisis. This is a sign of the commitment of the international community to the Treaty as the major instrument for access and benefit-sharing for agricultural plants. I am profoundly grateful to the European Commission and to Norway, who have, as of day before yesterday, committed a total of almost USD 14 million in the Benefit-Sharing Fund (BSF). This makes possible to launch the third Call for Proposals of the Fund at about double the scale of the second Call for proposals. This will help thousands of farmers in developing country Contracting Parties to conserve their plant genetic resources and adapt to the impact of climate change on their crops. Besides this immediate and practical impact, I believe these large investments should be read as a clear sign of the will of countries to make the Treaty work as the main pillar of the international governance architecture for plant genetic resources for food and agriculture.

17. We flagged these emerging changes and challenges early, so that you could begin developing *elements of solutions* in the current biennium. In this Governing Body, you will have to take crucial decisions to bring the building-blocks together to construct sustainable, long-term and practical solutions that take the Treaty into its next phase.

18. Elements to address the dematerialization of the use of genetic resources are already contained in your Treaty and the existing Work Programme: Article 17, the vision paper, and an on-going consultation process; *Genesys*, which the Treaty co-founded with Bioversity International and the Global Crop Diversity Trust; increasing practical collaboration with the Trust in this area, including through a proposed liaison officer, co-financed by the Trust. All these elements are reflected in your draft Work Programme and Budget. Additionally, a number of Contracting Parties and other stakeholders have launched relevant initiatives, such as a Public-Private Partnership for Pre-breeding, and a Platform for the Co-development and Transfer of Technology, as well as a possible Keystone Dialogue on completing the governance of the Treaty.

19. You can build upon many elements to meet the challenge of the changing environment for access and benefit-sharing (ABS), and reinforce the Treaty's position in the new International Regime. For the harmonious implementation of ABS standards internationally, the key is enhanced collaboration of the two instruments and their Secretariats. In the inter-governmental dialogue, the work of your *Ad Hoc* Committee on the Multilateral System Committee with the Intergovernmental Committee for the Nagoya Protocol and the Protocol's Conference of the Parties (COP)/Meeting of the Parties (MOP) will be critical. Capacity building is the key to harmonious national implementation. Generally, the integration of the Treaty into the CBD's National Biodiversity Strategies and Action Plans, joint work with the Global Environmental Facility (GEF), and other practical activities will be facilitated by the proposed joint liaison officer. All this has been reflected in your draft work programme.

20. Finally, the global financial downturn has affected the Treaty on three fronts, elements of are a big challenge, since most of you are affected by this downturn: First, the Trust Fund for Agreed Purposes, which has in the past supported crucial elements of the Core Work Programme, is almost depleted. It was largely funded by two exceptionally generous donors, who deserve enormous thanks, namely: Spain and Italy. Without new contributions, numerous supporting activities, such as capacity-building, training and technical assistance, and even some core implementing functions, such as the development of Article 17, could shut down completely.

21. Second, unless the Fund to Support the Participation of Developing Countries is replenished soon, you might not have the ability to support developing country participation in the next Governing Body and inter-sessional meetings.
22. Third is the very damaging impact of the global financial crisis on the Benefit-sharing Fund, because this intersects with the Treaty's core systems for balanced access and sharing of monetary benefits. Elements of possible solutions are as follows:
23. It was always clear that use-based income from the current SMTA would have a long incubation time because of the length of the breeding process. It takes at least seven to ten years from access to germplasm to commercialization of products, and payments to the Benefit-sharing Fund. The first studies to model the process on a global scale show that benefits will arise even more slowly than originally expected, under the current SMTA. Moreover, there are reasons to believe that voluntary payments are unlikely to be substantial, and that the use of much germplasm from the Multilateral System will be avoided in order to avoid mandatory payments.
24. In recognition of the long incubation time, at your Third Session in May 2009, you agreed on a *Strategic Plan to Implement the Benefit-sharing Fund*, which relied on donations by Contracting Parties and stakeholders in order to bridge this lag-time. You set yourselves objectives for and working targets. The Strategic Plan was developed in 2008 and 2009 by your *Ad Hoc* Advisory Committee on the Funding Strategy with the advice of a professional fundraisers. You, the Governing Body, welcomed it, before the global financial crisis erupted at the end of 2009. The crisis has resulted in a severe decline in development assistance, and, naturally, has had a significant impact on the donations which Contracting Parties and stakeholders are able to make. So this unfortunate temporal convergence has thwarted your *Strategic Plan* for bridging the natural lag-time of use-based revenue generation.
25. However, because we flagged this challenge early, the *Ad Hoc* Advisory Committee on the Funding Strategy, at your request, has developed a number of innovative approaches that could create predictable and sustained use-based income for the Benefit-sharing Fund. The Co-chairs will report to you in detail, but I would like to focus on their recommendation to create an *Ad Hoc* Working Group to Expand Benefit-sharing and the Coverage of the Multilateral System. Its task would be to: "*develop a package of measures for consideration for adoption to the Governing Body at its Sixth Session, which will: (a) put used-based income to the Benefit-sharing Fund on a sustainable and predictable long-term basis, and (b) expand the scope of the Multilateral System.*"
26. Even if such a package of measures provides an effective long-term solution to the shortfall in the Benefit-sharing Fund, it is clear that until it is implemented, and moneys start to flow, your *Strategic Plan* must continue to be supported with more urgency and effort than ever. Despite the global financial crisis, we have been able to double the funds that can be disbursed in the third Call for Proposals of the Fund later this year, compared to the second Call. I am delighted to say that we have received Euro 5 million from the European Community, Euro 5.1 million from Norway, and contributions from Indonesia, Italy, and Syngenta's "Traitability" online seed trait licensing platform. Some 14.3 million USD is available for monetary benefit-sharing projects as of this Governing Body meeting. I am profoundly grateful to all those Contracting Parties for these contributions, despite the global financial crisis effecting all institutions across the United Nations.
27. I believe that this is an important signal that the Treaty continues to be seen as the most important instrument for agricultural plant genetic resources, because stakeholders are investing in its sustainability, evolution and continued growth, even under very difficult global financial circumstances.

28. A further very welcome development in this biennium has been the widening of the concept of benefit-sharing beyond the monetary, as you requested at your last Session, through the first practical, operational and results-oriented non-monetary benefit-sharing instruments. Several of you have undertaken initiatives for non-monetary benefit-sharing through pre-breeding, technology co-development and transfer, and training as a form of capacity building. Those Contracting Parties will inform you directly of their initiatives to respond to the Governing Body's requests, but the point I would like to highlight here is that, in addition to the quantitative expansion of monetary benefit-sharing, there is also a qualitative expansion of benefit-sharing under the Treaty beyond the monetary, through the non-monetary benefit-sharing stakeholder initiatives I have already mentioned. The point I would like to highlight is that, by doing so, the regulation of value exchange and benefit-sharing under the Treaty is going from the purely monetary, that is economic value-coding of genetic material, towards epistemic value-coding within the global knowledge economy and international innovation markets for genetic resources and related information.

29. I am also pleased to report that we have been able to make the Multilateral System far more transparent and efficient during the current biennium. With the completion and launch of *EasySMTA*, with its multilingual SMTA generation and reporting functions, and with growing integration into *Genesys*, you are receiving much more consistent management information. This year, we have crossed the line of a half million SMTA copies, or equivalent data stored in the secure MLS Data Store at the United Nations Information and Computing Centre in Geneva. The detailed implementation of technical activities in this area and other parts of the Treaty are reflected in the technical working documents under the respective agenda items and in the Financial Report.

30. But the improved information you now have on the Multilateral System has also shown that most Contracting Parties must still take practical steps to make the materials that the Treaty obliges them to make available actually available. The *Study on Benefit Flows* has shown that inclusion of material is a key factor for successful and expedited benefit-sharing under the System. As such, even aside from innovative approaches, it is essential to continue to include materials in the Multilateral System. Every delay diminishes the flow of funds for benefit-sharing. I urge that this be a priority in the next biennium, and the Secretariat be given the means to assist countries, where necessary. It is crucial to move fast, as the Nagoya Protocol comes into force.

31. Before closing, I would like to express my sincere gratitude to our Chairman, Prof. Javad Mozafari, for all the experience, deep technical knowledge and unwavering commitment that he has brought to the Treaty over the course of the biennium. I would like to extend my special thanks to the Bureau of the Fifth Session, who have provided us with invaluable guidance for the preparation of this Session throughout the biennium.

32. I would, above all, like to thank Dr Graziano da Silva, our Director-General, his immediate office and the Legal Office for saving the Treaty last year from various challenges created by parts of the bureaucracy and a complete assimilation into a sub-programme of the FAO regular programme,

33. I would also like to warmly thank Dr. Ren Wang, our Assistant Director-General for Agriculture and Consumer Protection and the Plant Production and Protection Division for their active participation and unwavering support to the Treaty.

34. And, finally, last but by no means least, I want to acknowledge the tireless hard work and professionalism of the staff of the Treaty Secretariat and to thank them for their dedication and hard work. This small but strong team keeps your Treaty going on a day-to-day basis and you owe them adequate recognition and appreciation.

35. In conclusion, I believe that you will have to take decisions this week which will either make or break your Treaty in the medium term. For this enormous responsibility I wish all of you the best of success in your important deliberations, and I urge all Contracting Parties to find consensus to move the Treaty through to the next step in its evolution.