



The International Treaty
ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



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

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

Geneva, Switzerland, 9-11 December 2014

REPORT

ITEM 1. OPENING OF THE SESSION

1. In her opening remarks, Ms Xiangjun Yao, Director, Liaison Office in Geneva of FAO, highlighted that the office will continue to support the work of the Treaty and its stakeholder consultations. Shakeel Bhatti, Secretary of International Treaty thanked FAO-LOG for their on-going support in hosting and enabling these Treaty processes. The meeting was preceded by an information seminar at which the results of the studies requested by the Governing Body, in establishing the Working Group, were reported.

2. The Co-Chairs reported on their discussions with the seed industry at the meetings of the seed associations of Europe and Asia and Pacific. Their discussions with the seed industry representatives in these meetings were constructive and there was general support of the Treaty and its Multilateral System. The Co-Chairs look forward to another opportunity of discussing these issues with the African seed industry at their association meeting in Zimbabwe in March 2015.

ITEM 2. ADOPTION OF AGENDA

3. The Working Group adopted its agenda, as given in *Appendix 1*.

**ITEM 3. ENHANCING THE FUNCTIONING OF THE MULTILATERAL
SYSTEM OF ACCESS AND BENEFIT-SHARING:**

**DEVELOPMENT OF A RANGE OF MEASURES TO INCREASE USER-BASED
PAYMENTS AND CONTRIBUTIONS TO THE BENEFIT-SHARING FUND**

General measures

4. Based on the consultations with stakeholders and the studies prepared by the Secretariat, the Co-Chairs first provided a summary of possible measures on which they believed that agreement can be easily reached. In the process of developing the range of measures, the Working

Group decided to increase incentives for users, and in particular the seed sector, to use the Multilateral System.

5. The Working Group agreed that an enhanced Multilateral System should minimize the administrative burden arising from the SMTA for users while at the same time facilitating the functioning of the Third Party Beneficiary. The Working Group recognized that the seed sector and other users need legal certainty concerning access and benefit-sharing arrangements around plant genetic resources for food and agriculture. The Working Group recognized it would be difficult to introduce a minimum incorporation threshold at this stage, but would still welcome proposals from the seed sector in this regard.

6. The Working Group discussed the possibility of introducing a “termination clause” into the SMTA. It agreed to further discuss the implications of such a clause for the Multilateral System and to give particular regard to any potential revision of Arts. 6.7/6.8 and 6.11 SMTA in this connection, as well as to the relationship between the payment options. For such purpose, the Working Group requested the Co-chairs and the Secretary to elaborate on different options for introducing a “termination clause”, for discussion at its next meeting. The FAO Legal Office informed the Working Group that the clause could be introduced by a decision of the Governing Body.

7. With a view to developing the incentives for users to make use of the Multilateral System by accessing germplasm under SMTAs, the Working Group emphasised inclusion of more germplasm collections that are fully characterized or evaluated, including for specific traits, held in the public domain and by natural and legal persons in the Multilateral System. It was recognized that certain collections have particular value to users in terms of the quality of the holdings, and that special effort should be made to encourage their inclusion. In this context, emphasis should be put on encouraging non-Contracting Parties, to join the Treaty, through awareness raising and provision of information and legal advice.

Measures related to the Benefit-sharing Fund

8. The Working Group had a preliminary discussion where Regional Groups expressed views on average expected annual income to the Benefit-sharing Fund in the future. The Working Group considered it important, in further developing the range of measures to increase user-based SMTA payments and other, voluntary, user-based payments to the Benefit-sharing Fund, to have a common understanding on the relative weight of payments and contributions by the seed sector *vis-à-vis* voluntary contributions by others, in particular from Contracting Parties. Voluntary contributions from the private sector should also be further encouraged and enabled. The Working Group will have a further discussion on these matters at its next Session. In this context, a succinct analysis will be made available at the next Session about the targets, contributions to the Benefit-sharing Fund and to the Global Crop Diversity Trust and their respective resource mobilization strategies. The Working Group also requested from the Secretariat a succinct analysis of the typology of users of the Multilateral System and their regional distribution which should include information on provision to users of PGRFA under development.

SMTA-based measures

9. In discussing SMTA-based approaches in more detail, most of the Members agreed that Articles 6.7, 6.8 and 6.11 should be retained. The Working Group discussed whether it would be in line with the provisions of the Treaty to only keep Article 6.11 of the SMTA and delete Articles 6.7 and 6.8 of the SMTA. The FAO Legal Office was requested to provide further information on the legal implications of only retaining Article 6.11 as the sole option in the SMTA to the next meeting of the Working Group.

10. The Members of the Working Group had different perspectives on whether to make the voluntary payment option under Article 6.8 of the SMTA mandatory or keep such payments voluntary. The Working Group recognized that the Treaty provides for the possibility of applying the mandatory payment requirement in cases where products are available without restriction to others for further research and breeding. It was understood that there would hence be no legal

impediment to make payments under Article 6.8 mandatory should the Governing Body decide to do so. However, there is still no agreement on proposing this kind of change to the SMTA as part of the range of measures being developed. At its next meeting, the Working Group should decide whether:

- payment obligations under Article 6.8 should remain voluntary or be made mandatory,
- a payment rate should be indicated under Article 6.8, regardless of payments being voluntary or mandatory,
- to add a requirement under Article 6.8 for provision of non monetary obligations, such as provision of information and inclusion in the Multilateral System of any material developed, in case that monetary benefit-sharing under Article 6.8 remains voluntary.

11. The improvement of Article 6.11 was another measure agreed by the Working Group, in order to maximise its attractiveness to users. It could be redefined in a number of ways, and it will be important to deal with questions of reducing administrative and reporting burdens and of the rights and obligations surviving termination of 6.11 provisions, including whether the period should cover the period of sale and protection of products, or count a number of years from the date of last use or receipt of material from the Multilateral System.

12. Particular attention was drawn to how to attract users to subscribe to Article 6.11, if payments under Article 6.8 remained voluntary. This question should be dealt with in the documentation for next meeting so that it can be properly addressed by the Working Group.

13. The Working Group agreed to review the payment rates of the SMTA in developing the range of the measures to be proposed to the Governing Body. Adjusting the respective payment rates of Articles 6.7, 6.8 and 6.11 will be important in this context. The lowest rate needs to apply under Article 6.11, with a view to increasing acceptance of this option. Other measures suggested were to differentiate rates based on whether the products are available with or without restriction for further research and breeding, type of user and type of crop. It was recognized that it would be difficult, at this stage, to make concrete proposals for rates to be applied, and it was agreed to continue discussion on the differentiation of payment rates on the basis of product, crop and user categories.

Other user-based measures

14. The Working Group welcomed further analysis to be provided to its next meeting, elaborating the ways in which a subscription model could be implemented in the context of Art. 6.11 of the SMTA or beyond, bearing in mind the need to make such a model attractive to users. Moreover, the Working Group requested the Secretariat to conduct a succinct analysis on the question whether agreements may be made between private sector representatives and the Governing Body or FAO.

15. There was agreement that territorial approaches to raising income for the Benefit-sharing Fund be further explored as part of the range of measures. While some Members believed that such contributions should remain voluntary, others underlined the importance of making them mandatory in order to improve the predictability and sustainability of this income stream.

ITEM 4. ENHANCING THE FUNCTIONING OF THE MULTILATERAL SYSTEM OF ACCESS AND BENEFIT-SHARING: ADDITIONAL MEASURES

4.1 Non-monetary benefit-sharing mechanisms, such as capacity-building, technology transfer and information exchange

16. The Working Group recognized the increased value for all users of plant genetic resources for food and agriculture that have undergone characterization, evaluation or pre-breeding and emphasized the importance of non-monetary benefit-sharing mechanisms, such as capacity-building, technology transfer and information exchange, and the need to increase visibility of initiatives that promote these forms of benefit-sharing. In this regard, Members of the Working Group identified the following actions:

- Support further work of the Platform of Co-development and Transfer of Technology;
- Implement the Global Information System, including DivSeek;
- Dedicate a specific window or specific windows of the Benefit-sharing Fund to support capacity building, technology transfer and information-exchange;
- Explore possibilities of enabling the provision of voluntary contributions to support specific projects of the Benefit-sharing Fund.
- Support the establishment and management of nationally important *in situ* and on-farm conservation heritage sites for plant genetic resources for food and agriculture;
- Develop know-how of *in situ* conservation management;
- Establish new and publicize existing scholarships programmes for training in management and utilization of plant genetic resources for food and agriculture;
- Publicize and adjust existing bilateral capacity development programmes;
- Recognize and increase the exploitability of registered varieties.
- Provide training, where needed, on project elaboration to increase the competitiveness of project proposals from gene bank teams.

4.2 Expansion of the access and benefit-sharing provisions of the International Treaty: initial discussion in preparation of the third meeting

16. Bis The Co-chairs requested the Members of the Working Group to present their views on the possible expansion of the scope of the Multilateral System. The Members of the Working Group had different perspectives on the question whether the Multilateral System should be expanded and, if so, on the way the Multilateral System should be expanded.

17. At the request of the Co-chairs, the FAO Legal Officer reviewed the modalities by which the Governing Body might expand the access and benefit-sharing provisions of the International Treaty. She noted that the coverage of the Multilateral System was specified in Article 11, and was thus an integral part of the Treaty. There appeared to be two modalities by which an expansion could be given effect, and these had implications for the role of individual Contracting Parties.

- The first would be by amendment of the Treaty pursuant to Articles 23 and 24.
- The second would be by adoption of a Supplementary Agreement, such as a protocol, to the Treaty, as provided for under Article XIV of the FAO Constitution, in order to implement the main agreement.

18. Some regions believed that the expansion should implement the full scope of the Treaty to cover all plant genetic resources for food and agriculture. Other regions believed that the expansion of the coverage of the Multilateral System is dependent on measures to increase user-based payments.

19. The Legal Officer agreed to prepare a more detailed analysis of the above questions for the third meeting of the Working Group.

**ITEM 5. THE THIRD MEETING OF THE WORKING GROUP:
ARRANGEMENTS**

20. The representative from Brazil conveyed the offer from his government to host the third meeting of the Working Group in Brasilia. The Working Group noted that the meeting will last for four days, preceded by a day of Regional Consultations from 20 to 24 April 2015. The Working Group warmly thanked the government of Brazil for this offer, and requested the Secretary to work with the government of Brazil to ensure that the necessary arrangements be made in good time. The Working Group requested the Secretary to make sure that the documentation will be made available early enough, so that the Members of the Working Group might take it into consideration when preparing for the meeting.

21. On the basis of the various options identified in the present meeting, for the range of measures to be presented to the Governing Body, the working document for the next meeting should contain the draft resolution to be considered for presentation to the Governing Body. It should also contain, wherever possible, textual elements by which the various options could be implemented.

22. The Working Group invited its Members to submit textual elements for compilation in the document, to the Secretary, two calendar months before the meeting began, so that they might be circulated well beforehand.

ITEM 6. OTHER BUSINESS

23. Based on experience gained at its first and second sessions, the Working Group agreed to conduct its next meeting in English, French and Spanish only, whereas documents shall continue to be made available additionally in Arabic.

24. The Working Group also agreed to have, at its next meeting, the draft report in English only, while interpretation into the other languages will continue to be provided during the report adoption session. This will optimize the use of time on the last day, since no time for the translation process needs to be scheduled.

25. The Working Group further agreed to have an additional working session on the morning of the last day of its next meeting, but without interpretation, in order to optimize the working time.

ITEM 7. ADOPTION OF THE REPORT

26. The Working Group adopted the report of its second meeting.

27. In closing the meeting, the Co-chairs express their intention to play an active role during the inter-sessional period, in order to prepare for the third meeting. The Co-chairs reminded the Working Group of its task to draft and prepare for consideration and decision by the Governing Body a range of concrete measures and invited Members to present such proposals before the next meeting of the Working Group.

Appendix 1

INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE
SECOND MEETING OF THE <i>AD-HOC</i> OPEN-ENDED WORKING GROUP TO ENHANCE THE FUNCTIONING OF THE MULTILATERAL SYSTEM
Geneva, Switzerland, 9-11 December 2014
AGENDA

1. Opening of the meeting
2. Adoption of the agenda and time table
3. Enhancing the functioning of the Multilateral System of Access and Benefit-sharing: development of a range of measures to provide sustainable and predictable income to the Benefit-sharing Fund
 - 3.1 Further development of innovative approaches to be applied and combined in a stacked approach, taking into account the results of the studies mandated by the Governing Body
 - 3.1.1 Approaches
 - a. User-based approaches: SMTA-based
 - b. User-based approaches: not SMTA-based
 - c. Contributions by Contracting Parties
 - 3.1.2 Stacking the payments and contributions of PGRFA users, Contracting Parties and others
 - 3.2 Initial discussion of elements to be included in the range of measures for consideration and adoption by the Governing Body, with a request to the Secretariat to undertake any further technical or legal work necessary
4. Enhancing the functioning of the Multilateral System of Access and Benefit-sharing: additional measures
 - 4.1 Mechanisms for capacity-building, technology transfer and information-exchange
 - 4.2 Expansion of the access and benefit-sharing provisions of the International Treaty: initial discussion in preparation of the third meeting
5. The third meeting of the Working Group: arrangements
6. Other business
7. Adoption of the report

Appendix 2

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