

June 2019



**Food and Agriculture
Organization of the
United Nations**



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

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

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

Rome, Italy, 17–21 June 2019

**ADAPTATION OF THE COVERAGE OF THE MULTILATERAL SYSTEM:
PROPOSAL BY THE CO-CHAIRS**

Executive Summary

The Co-chairs, in this document, provide an overview of the status of negotiations on the adaptation of the coverage of the Multilateral System of Access and Benefit-sharing. This document summarizes four substantive proposals on a possible amendment of *Annex I* of the International Treaty, one of which was presented during the informal consultations. Further supportive measures for facilitating the implementation of the possible adaptation of the coverage of the Multilateral System, such as a provisional application, are reviewed in the document, IT/OWG-EFMLS-9/19/4, *Enhancing the Functioning of the Multilateral System: Note by the Co-chairs*. The Co-chairs suggest structuring the discussions on the adaptation of the coverage of the Multilateral System at the ninth meeting of the Working Group along the four proposals or suggestions presented in this document.

1. Introduction

1. The Governing Body, through Resolution 2/2017, requested the Working Group to elaborate criteria and options for the possible adaptation of the coverage of the Multilateral System, taking into account, *inter alia*, proposals presented at the Seventh Session of the Governing Body.
2. This document contains suggestions and options that the Co-chairs recall or present, respectively, to advance the negotiations on the adaptation of the coverage of the Multilateral System. The suggestions and options build on a formal proposal put forward by the Government of Switzerland to the Seventh Session of the Governing Body and a proposal by the African Group at the Seventh Session of the Governing Body to add an additional sentence to the proposal made by Switzerland, specifying conditions for the expansion in terms of benefit sharing. Based on these two proposals, the Co-chairs also considered and reflected in this document two further options suggested during the informal consultations held in the biennium to advance the enhancement process, which would both be further specifications to the proposal made by Switzerland.
3. The Co-chairs would like again to thank key negotiators and interested stakeholders that have actively and constructively participated in their personal capacities in the informal consultations organised in preparation of the ninth meeting of the Working Group.

2. Initial observations

4. The Co-chairs are pleased to note that, as a component of the package of measures for the enhancement of the Multilateral System, there seems to be no fundamental opposition to an adaptation of the coverage of the Multilateral System by any of the members of the Working Group, despite some reservations by individual Contracting Parties about an expansion. In fact, the Working Group, in its Report to the Seventh Session of the Governing Body, discussed that the wider the coverage of the Multilateral System, the greater the potential for the Treaty to contribute to meet the Sustainable Development Goals and other commitments related to food security, sustainable agriculture and biodiversity, if effective benefit-sharing is attained.¹
5. Therefore, the Co-chairs see consensus, in principle, not only on the possibility to expand the coverage, but also on the potential advantages associated with such expansion.
6. However, the Co-chairs also recall the interlinkages between any expansion of the coverage and effective benefit-sharing arrangements and *vice versa*, which the Working Group reported to the Governing Body and recalled at its eighth meeting.
7. Further consideration and discussion on these interlinkages are needed and the Co-chairs sought to address them in their Note provided in the document, IT/OWG-EFMLS-9/19/4.
8. In this context, the Co-chairs note the key importance that many Contracting Parties and stakeholder groups attribute to a possible expansion of the coverage of the Multilateral System. Several submissions state that the expansion of the coverage is considered to be a core element of the package deal and that without an agreement on the expansion, there will hardly be an agreement in other areas of the package.
9. During the last two biennia, the Working Group held extensive discussions on possible modalities for adapting the coverage of the Multilateral System, as well as on the possible scope of the extended coverage, on the basis of various documents and reports.²

¹ IT/GB-7/17/7, *Report of the Open-ended Working Group to Enhance the Functioning of the Multilateral System*, para. 7

² See for example, [IT/OWG-EFMLS-6/17/6](#), *Expansion of the Access and Benefit-sharing Provisions of the Treaty*; [IT/OWG-EFMLS-2/14/4](#), *Policy and Legal Study on the Feasibility and Effects of Changes to the Multilateral System*; [IT/OWG-EFMLS-3/15/Inf.4](#), *Expansion of the Access and Benefit-sharing Provisions of the International Treaty: Legal Options*; [IT/OWG-EFMLS-6/17/Inf.3 Add.1](#), *Report of the Standing Group of Legal Experts: outcomes of the second meeting*

10. In its Report to the Seventh Session of the Governing Body, the Working Group stressed the need to identify the most effective, clear, simple and rapid modality to give effect to a possible expansion.³ The Co-Chairs would like to reiterate the need to keep with these principles as the Working Group considers its recommendation to the Governing Body for the expansion of the Multilateral System.

3. Basic elements for negotiating the adaptation of the coverage of the Multilateral System: Co-Chairs' proposal

11. Based on the proposals made during the Seventh Session of the Governing Body and inputs received during the informal consultations earlier in the biennium, the Co-chairs grouped four amendment options for the consideration of the Working Group at its eighth meeting: (a) an "all PGRFA amendment", (b) an "all PGRFA amendment" with additional conditions or specifications; (c) an amendment to give the Governing Body the capacity to add further PGRFA; (d) a partial/periodic expansion of Annex I. These options were described in detail in section 5 of document IT/OWG-EFMLS-8/18/4, *Enhancement of the Functioning of the Multilateral System: Note by the Co-Chairs*.

12. At the eighth meeting, suggestions were made on possible additional conditions and specifications, for further consideration. The Working Group also emphasized the need to explore supportive measures to facilitate the implementation of the possible expansion of the coverage of the Multilateral System. At the request from one Region, the Working Group agreed to include a regional statement in the Report of its eighth meeting on the possibility to limit the expanded coverage to plant genetic resources found in *ex situ* conditions, which is presented in more detail below.⁴

13. The Co-chairs are of the view that the starting point for the discussions on the coverage of the Multilateral System is the formal proposal for an amendment of the International Treaty made by the Government of Switzerland to the Seventh Session of the Governing Body and the revision suggested by the African Group to this proposal. In addition, further suggestions were made during consultations held in preparation of the ninth meeting of the Working Group.

14. In the following paragraphs, the Co-Chairs sought to provide a concise overview of the available proposals and suggestions.

A. The proposal for amendment by Switzerland:

15. At its Seventh Session, the Governing Body discussed a formal proposal for an amendment of the International Treaty that had been submitted by the Government of Switzerland. The proposal suggested the following new paragraph to be added in Annex I, below the current list of crops contained in *Annex I*:

"In addition to the Food Crops and Forages listed above, and in furtherance of the objectives and scope of the International Treaty, the Multilateral System shall cover all other plant genetic resources for food and agriculture in accordance with Article 3 of the International Treaty."

B. The additional text proposed by the Africa Region to the proposal by Switzerland:

16. During the discussions at the Seventh Session of the Governing Body, the Africa Region proposed to add to the proposal by Switzerland the following sentence that would establish benefit-sharing conditions on an expansion of the coverage:

"..., when Contracting Parties have taken measures to ensure that annual user-based payments to the Benefit Sharing Fund equal 0.3% of total global seed sales in the previous year, and such income has accrued to the Benefit Sharing Fund for three years."

³ IT/GB-7/17/7, *Report of the Ad Hoc Open-ended Working Group to Enhance the Functioning of the Multilateral System*, para. 8

⁴ IT/OWG-EFMLS-8/18/Report, *Appendix 3*

C. Follow up to the statement by GRULAC to limit the expanded coverage to PGRFA found in ex situ conditions

17. During the eighth meeting of the Working Group, the Latin America and the Caribbean Region (GRULAC) made a statement, which was recorded in the report of the meeting (IT/OWG-EFMLS-8/18/Report, Appendix 3), and included the following suggestion:

“GRULAC would like to point out that, should the Governing Body agree on the amendment of Annex I, and under any modality agreed upon for such an amendment, the amendment will have to refer to plant genetic resources for food and agriculture that are under the management and control of the Contracting Parties, that are in the public domain and that are found in *ex situ* conditions.”

18. There were further discussions on this concept at the informal consultations and the Co-chairs believe that all Regions could agree to consider this specification in the amendment text.

19. The Co-chairs suggest that the Working Group seeks agreement on the concept and possible text of this proposal. As a possible starting point for text-based discussions, the Co-chairs suggest adding one of the following text alternatives after the amendment text proposed by Switzerland, while expressing their preference to draw on the concepts and definitions that are currently used in the Treaty rather than introducing new terms:

“... that are held in *ex situ* collections.”

OR

“... that are found in *ex situ* conditions.”

OR

“... that are maintained outside their natural habitat.”

OR

“... except those found in *in situ* conditions.”

D. Inputs received during the informal meetings for the Resolution adopting the amendment of Annex I

20. During the informal consultations, the participants discussed how the scope of the adapted coverage should be formulated. It could either try to define what should be included in a very specific manner or alternatively try to define what should be excluded. They also discussed ways to ensure that Contracting Parties retain a certain level of flexibility in implementing their obligations to make available material covered by the Multilateral System.

21. As a follow up to these discussions, the Co-chairs invited participants to present draft text for these specifications. The Co-chairs propose that these specifications not be included in the amendment text itself, but rather in the decision of the Governing Body adopting the amendment.

22. At the most recent informal consultation, participants from Brazil made a number of suggestions to be included in the Resolution adopting the amendment of Annex I. Based on these initial interactions, the Co-Chairs suggest the following elements will be part of the Resolution:

1. When ratifying the amendment of Annex I of the Treaty to expand the coverage of the Multilateral System to all plant genetic resources for food and agriculture, Contracting Parties might, exceptionally, list a limited number of species native from their territories, respect to which they reserve the right not to make Material available through the Treaty's Multilateral System.

2. The list must be informed to the Secretariat of the Treaty concomitantly to the deposition of the instrument of ratification and must be made publicly available by the Secretariat.

3. The list of restrictions may be shortened at any time, upon communication to the Secretariat, but shall not be enlarged.
 4. The above does not prevent other Contracting Parties from making available their native species, regardless of being the same or relatives to those listed by other Parties.
 5. The above also does not prevent other Parties from making available any of the restricted species listed by a given Party if already present in their country.
 6. Additionally, Contracting Parties may declare, in the same instrument, their eventual intention of making available the access to autochthonous Materials of species at the moment of ratification listed as exceptions in the amended version of the Annex I, which, otherwise, would not be shared under the Multilateral System.
23. This text is without prejudice of a possible formal proposal by Brazil on this matter.

4. Conclusions

24. The Co-chairs suggest structuring the discussions on the adaptation of the coverage of the Multilateral System at the ninth meeting of the Working Group along these four proposals or suggestions. In order to expedite discussions and make best use of the available time, the Co-chairs suggest discussing on the basis of concrete text proposals.
25. The Co-Chairs would like to reiterate the need to keep with the principle to identify the most effective, clear, simple and rapid modality to give effect to a possible expansion as the Working Group considers its recommendation to the Governing Body for the expansion of the Multilateral System.