

January 2011



The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



Item 11 of the Provisional Agenda

FOURTH SESSION OF THE GOVERNING BODY

Bali, Indonesia, 14 – 18 March 2011

REPORT OF THE FIRST MEETING OF THE *AD HOC* TECHNICAL ADVISORY COMMITTEE ON THE MULTILATERAL SYSTEM AND STANDARD MATERIAL TRANSFER AGREEMENT

Introduction

1. By Resolution 4/2000, the Governing

Request[ed] the Secretary to give priority to assisting users of the Standard Material Transfer Agreement to overcome any implementation problems such as those identified at the First Meeting of Experts on the Standard Material Transfer Agreement, including, subject to the availability of funds, through the convening of an Ad Hoc Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System, taking into account regional representation, according to the terms of reference as contained in the Annex to this Resolution.

According to the *Annex* of this Resolution, the terms of reference of the Committee are to advise the Secretary on implementation questions raised by users of the Standard Material Transfer Agreement, which the Secretary brings to their attention on the basis of questions addressed and forwarded to the Secretary by Contracting Parties, international centres having signed agreements with the Governing Body under Article 15 of the Treaty and other users of the Standard Material Transfer Agreement.

2. The First Meeting of the *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System of the Treaty was held at the FAO headquarters in Rome from Monday, 18 to Tuesday, 19 January 2010. The Committee provided advice on a number of questions raised by users of the Standard Material Transfer Agreement.
3. Based on the advice received from the Committee, the Secretary has assisted users of the Standard Material Transfer Agreement, as a matter of priority, to overcome implementation problems, in accordance with the Resolution adopted by the Governing Body.
4. The Terms of Reference annexed to the Resolution of the Governing Body stipulated that, *The Ad Hoc Advisory Technical Committee will prepare a report at the end of a meeting, with responses to matters brought to its attention, and, where necessary, opinions on specific questions. These reports will be made available as information documents to the Fourth Session of the Governing Body.*
5. The Report of the Meeting is contained in the Annex of this document for the information of the Governing Body.
6. The Governing Body is invited to take note of the report, and to take any decisions necessary.

Annex

IT/AC-SMTA-MLS 1/10/Report

INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE
FIRST MEETING OF THE <i>AD HOC</i> ADVISORY TECHNICAL COMMITTEE ON THE STANDARD MATERIAL TRANSFER AGREEMENT AND THE MULTILATERAL SYSTEM OF THE TREATY
Rome, Italy, 18-19 January 2010
REPORT

Introduction

1. The First Meeting of the *Ad Hoc* Advisory Technical Committee on the Standard Material Transfer Agreement and the Multilateral System of the Treaty was held at the FAO headquarters in Rome from Monday, 18 to Tuesday, 19 January 2010.

Agenda item 1. Opening of the meeting

2. The Secretary of the Governing Body, Mr Shakeel Bhatti, welcomed the members and thanked them for their presence at the meeting. The list of participants is attached in *Appendix 8*. Mr Shakeel Bhatti noted that since the establishment of the Multilateral System, there has been a very successful start-up and rapid uptake of the SMTA by users and, while the Secretariat had done its utmost to facilitate this smooth start-up, a number of technical and operational questions have been raised by the users of the SMTA or other stakeholders of the Multilateral System. He recalled that the Governing Body of the Treaty had requested him to “*to give priority to assisting users of the Standard Material Transfer Agreement to overcome any implementation problems such as those identified at the First Meeting of Experts on the Standard Material Transfer Agreement*”, and that the Secretariat had accordingly already addressed numerous inquiries by SMTA users. However, on a number of legal and technical issues he wished to seek the advice of the experts and he therefore highlighted the importance of this meeting and of the need for the effective operation of the Multilateral System.

3. He pointed out that the Committee was advisory and technical in nature, and as such, members are encouraged to be as objective as possible with the ultimate aim of promoting the effective operation of the Multilateral System. He stressed that the Committee is a valuable mechanism from which he could draw upon for advice from the regions in addressing the questions that the Secretariat receives from stakeholders of the MLS and users of the SMTA on an ongoing basis.

4. Recalling Resolution 4/2009 by which the Governing Body established the Committee, he stated that the *Ad Hoc* Advisory Technical Committee will, therefore, be an important mechanism in the course of providing the assistance to users of the SMTA and Multilateral System in overcoming implementation problems, as mandated by the Governing Body, as well as in the overall implementation of the Multilateral System. He informed members of the Committee that the Secretariat had, subject to the availability of funding, scheduled two meetings of the

Committee in this biennium and that he will report the outcomes of the meeting to the Fourth Session of the Governing Body.

Agenda Item 2 Election of Co-chairs

5. Mr Bhatti drew attention to the need for the meeting to elect its officials. The meeting elected Messrs. Campbell Davidson and Eng Siam Lim as Co-Chairpersons to guide the proceedings of the meeting.

Agenda Item 3 Adoption of the Agenda and Time Table

6. The meeting adopted its agenda, as given in *Appendix 1*.

Agenda Item 4 Status report on the implementation and operation of the Standard Material Transfer Agreement (SMTA) and the Multilateral System

7. Mr Kent Nnadozie, Secretariat of the International Treaty, reported on developments related to the Multilateral System, and highlighted progress and activities that had taken place in the operation of the Multilateral System since the Third Session of the Governing Body in June 2009. He also provided information on the status of ratification of the Treaty. As of 18 January 2010, 123 countries and the European Community had become Contracting Parties.

8. Mr Nnadozie informed the Committee, inter alia, about:

- i) the first reported example of an established chain of SMTA: concluded by a provider, who was previously a recipient having received the relevant material under a different SMTA;
- ii) the new agreements concluded under Article 15 of the International Treaty, which resulted in important collections being included in the Multilateral System;
- iii) the adoption of the *Procedures for the Operation of the Third Party Beneficiary*, and subsequent approval by the FAO, thereby making them now fully operational;
- iv) the Governing Body's emphasis on the importance of assisting developing countries in the implementation of the MLS through the existing Joint Capacity Building Programme for the Implementation of the Multilateral System;
- v) the progress made within the Joint Capacity Building Programme set up by the Treaty, FAO and Bioversity International to provide technical assistance with implementation of the Treaty and in particular the Multilateral System, which was welcomed by the Governing Body; and
- vi) the adoption of Strategic Plan for resource mobilization with funding Target of USD116 million, and the approval of first projects for funding under the Benefit Sharing Fund.

9. Mr Nnadozie noted that the outcomes of the Third Session of the Governing Body were a huge step forward for the implementation of the Multilateral System, and that the implementation of the far-reaching Resolutions adopted in relation to the Multilateral System is now underway and in good progress.

10. He also drew attention of the concern expressed by the Governing Body, at its Third Session, that information on the inclusion of PGRFA in the MLS by natural and legal persons within the jurisdiction of Contracting Parties is not yet available, and the urgency of obtaining the information on collection holders, crops included and total number of accessions, in order to

assess progress in the inclusion of material in the MLS. He pointed out that it is also in this regard that the members of the Committee could be most helpful in making information available to the Secretariat or otherwise assist in obtaining relevant information from their respective regions and institutions.

11. The Committee advised that the Secretary seek to answer as many questions as possible which he receives from SMTA users, so that users obtain answers as quickly as possible and acquire a sense of the responsiveness of the System to their needs. This would build further confidence in the Multilateral System and the SMTA. The experts also advised that the Secretary establish a separate and dedicated email address on the Treaty website to which SMTA users can send full copies of SMTAs, in order to give the Governing Body a full overview of the use of SMTAs in different regions and to enable users to fulfil reporting requirements of the SMTA. They also advised that the Secretary finish the work on the IT support tools for SMTA operations in order to facilitate the use of the SMTA and SMTA reporting.

12. The Committee acknowledged that a number of Contracting Parties still face some difficulties in implementing the Multilateral System in the context of their national policy and legislative frameworks. In that respect, they stressed the importance of initiatives such as the Joint Capacity Building Programme set up by the International Treaty, FAO and Bioversity International in order to provide governments with coherent and well-programmed advice and assistance on national implementation through appropriate legislative and administrative measures.

13. The Secretary, Mr Shakeel Bhatti, explained that users approach the Secretariat with practical and legal questions on a regular basis and that a rolling list of these questions is maintained by the Secretariat. The Committee agreed that it would concentrate its work on questions and issues having major legal and policy implications without the need to provide specific responses to each of the users' questions. In that regard, the Committee noted that the Secretary is in a position to provide answers to questions and assist users with issues of a practical nature, which do not present any major legal or policy implications.

Agenda Item 5.1 Creating legal space for the implementation of the Treaty in the context of access and benefit-sharing

14. The *Ad Hoc* Technical Advisory Committee considered document IT/AC-SMTA-MLS 1/10/3, regarding the need to create legal space for the implementation of the Treaty in the context of access and benefit-sharing, as well as draft legislative clause to achieve this aim, and agreed on the opinions and advice contained in *Appendix 2* of this Report in response to the set of questions and issues identified in that document.

Agenda Item 5.2 Identification of PGRFA under the control and management of Contracting Parties, and in the public domain

15. The *Ad Hoc* Technical Advisory Committee considered document IT/AC-SMTA-MLS 1/10/4, regarding the identification of plant genetic resources for food and agriculture under control and management of Contracting Parties, and in the public domain, and agreed on the opinions and advice contained in *Appendix 3* of this Report in response to the set of questions and issues identified in that document.

Agenda Item 5.3 Legal and administrative measures to encourage natural and legal persons to voluntarily place material in the Multilateral System

16. The Secretariat introduced document IT/AC-SMTA-MLS 1/10/5, *Possible Measures to Encourage Natural and Legal Persons to Voluntarily Place Material in the Multilateral System*.

Based on the discussions that followed, Committee members developed the opinions and advice contained in *Appendix 4* to this Report in response to the set of questions and issues identified in that document.

Agenda Item 5.4 Practical and legal implications for natural and legal persons putting material into the Multilateral System

17. The *Ad Hoc* Technical Advisory Committee considered document IT/AC-SMTA-MLS 1/10/6, *Practical and legal implications for natural and legal persons putting material into the Multilateral System*, and agreed on the opinions and advice contained in *Appendix 5* to this Report in response to the set of questions and issues identified in that document.

Agenda Item 5.5 In situ materials and the Multilateral System: Standards for access

18. The *Ad Hoc* Technical Advisory Committee considered document IT/AC-SMTA-MLS 1/10/5, *In Situ Material and the Multilateral System: Standards for Access*, and agreed on the opinions and advice contained in *Appendix 6* to this report in response to the set of questions and issues identified in that document.

Agenda Item 5.6 Transfer and use of plant genetic resources for food and agriculture under the SMTA

19. The *Ad Hoc* Technical Advisory Committee considered document IT/AC-SMTA-MLS 1/10/8, *Transfer and use of PGRFA under the SMTA*, regarding a number of issues concerning when a movement of PGRFA might amount to “transfer” and “use” within the meaning of the Treaty to require the use of the SMTA, in particular situations where material is transferred to service providers and farmers. The Committee agreed on the opinions and advice contained in *Appendix 7* to this report in response to the set of questions and issues identified in that document.

Agenda Item 6 Draft options and guide on practices, procedures and measures for the implementation of the Multilateral System

20. The *Ad Hoc* Advisory Committee considered document, IT/AC-SMTA-MLS 1/10/9, *Draft options and guide on practices, procedures and measures for the implementation of the Multilateral System*. The *Ad Hoc* Advisory Committee deemed the Options and Guide, which is being developed by the Secretariat, a useful additional tool in the efforts to provide assistance to users of the SMTA and the Multilateral System. Members of the Committee agreed that they would provide whatever inputs and information they could, in the course of the development of the Options and Guide.

Agenda Item 7 Other business and miscellaneous questions

21. The Committee agreed that the Secretariat should make arrangements for additional papers and information on the items identified for further work at the next meeting, and further agreed to include the following questions on the agenda of the next meeting:

- whether, in case of transfer of material under development, it is possible under the SMTA to put restrictions on the further transfer of this material to a third party;
- whether the SMTA shall be used in case of repatriation of material in the country of origin;
- reporting requirements of parties to a SMTA;

- non-food/non-feed uses of material from the Multilateral System.

The Secretariat was requested to provide working documents on the items above.

Cumulative payments

22. The question was raised as to the interpretation of Article 2 of Annex 2 of the SMTA and whether cumulative payments would be required where a Product is commercialized that incorporates more than one PGRFA accessed from the Multilateral System.

23. The Committee noted that the English version of the SMTA provides that where a Product contains a Plant Genetic Resources for Food and Agriculture accessed from the MLS under two or more SMTAs, only one benefit-sharing payment would be required. This could be interpreted as applying only to the case in which a single PGRFA has been accessed on more than one occasion from the MLS. The Committee noted that the Spanish version of the SMTA refers to Plant Genetic Resources for Food and Agriculture in the plural.

24. The Committee was of the opinion that in both cases (a single PGRFA being accessed on more than one occasion and a number of different PGRFA being accessed and incorporated into a single Product), only one payment would be due to the benefit-sharing fund. In neither case would payments be cumulative.

Further work and preparations for next the meeting

25. The Committee requested the Secretariat to add a note to all the working documents of this and future meetings of the Committee stating that any opinion or position therein expressed are to be attributed to the individual author only and, in any case, not to the Secretariat of the International Treaty.

26. Members of the Committee agreed that they will assist in any way they could before the next meeting in providing general advice to the Secretary and comments and inputs on the preparation of the draft Options and Guide.

27. Members of the Committee also agreed to submit further questions to the Secretariat for compilation and for their consideration at the next meeting. They undertook to assist the Secretary at the next meeting in developing appropriate answers to these questions.

28. Members of the Committee expressed satisfaction of the substantial progress that was made during the meeting in actually providing answers for many of the practical questions and issues presented for their consideration.

Agenda Item 8 Date and venue of next meeting

29. Members of the Committee agreed that the Secretary should make arrangements for the date and venue of next meeting and inform them accordingly.

Agenda Item 9 Adoption of the Final Report

30. The meeting adopted this report.

Agenda Item 10 Closing of the meeting

31. Members of the Committee thanked the Secretariat for the excellent preparation it had made and the documentation for the meeting.

APPENDIX 1

INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

FIRST MEETING OF THE <i>AD HOC</i> ADVISORY TECHNICAL COMMITTEE ON THE STANDARD MATERIAL TRANSFER AGREEMENT AND THE MULTILATERAL SYSTEM OF THE TREATY
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Rome, Italy, 18-19 January 2010
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AGENDA

1. Opening of the meeting
2. Election of Co-Chairs
3. Adoption of the Agenda and Time Table
4. Status report on the implementation and operation of the Standard Material Transfer Agreement (SMTA) and the Multilateral System
5. The implementation questions raised by users of the Multilateral System and SMTA:
 - 5.1 Creating legal space for the implementation of the Treaty in the context of access and benefit-sharing
 - 5.2 Identification of PGRFA under the control and management of Contracting Parties, and in the public domain
 - 5.3 Legal and administrative measures to encourage natural and legal persons to voluntarily place material in the Multilateral System
 - 5.4 Practical and legal implications for natural and legal persons putting material into the Multilateral System
 - 5.5 *In situ* material and the Multilateral System: Standards for access
 - 5.6 Transfer and use of plant genetic resources for food and agriculture under the SMTA
6. Drafting of options and guide on practices, procedures and measures for the implementation of the Multilateral System
7. Other business and miscellaneous questions
8. Date and venue of second meeting of the Committee
9. Adoption of the Report
10. Closing of the meeting

APPENDIX 2

**FIRST MEETING OF THE *AD HOC* ADVISORY TECHNICAL COMMITTEE ON THE
STANDARD MATERIAL TRANSFER AGREEMENT AND THE MULTILATERAL
SYSTEM OF THE TREATY**

**OPINION ON
CREATING LEGAL SPACE FOR THE IMPLEMENTATION OF THE TREATY IN
THE CONTEXT OF ACCESS AND BENEFIT-SHARING**

The *Ad Hoc* Advisory Committee considered document IT/AC-SMTA-MLS 1/10/03, which examined possible model provisions that could be included in national laws so as to provide legal space for the implementation and operation of the Multilateral System.

The *Ad Hoc* Advisory Committee noted that

- access and benefit sharing (ABS) measures adopted by a number of countries at the national level may, in some cases, interfere with obligations of these countries under the International Treaty on Plant Genetic Resources for Food and Agriculture; and
- there might be other regulations (for instance, phytosanitary measures) that may impact the operation of the Multilateral System.

In this regard, the Committee expressed the following opinions:

1. Contracting Parties need to ensure that no substantive or procedural rules unduly hinder the functioning of the Multilateral System.
2. In order to avoid that national laws on access and benefit-sharing conflict with the obligations of Contracting Parties under the International Treaty, national laws could include a provision that exempts access to and transfers of PGRFA covered by the Multilateral System from their scope.
3. Such a provision might be drafted along the following lines:

Pursuant to the obligations established by the International Treaty on Plant Genetic Resources for Food and Agriculture, access to and the transfer of plant genetic resources for food and agriculture of the crops covered by the Treaty shall only be subject to the conditions set out in Part IV of the said Treaty.

4. The implementation of the Multilateral System does not and should not exempt providers or recipients of material from the Multilateral System from complying with standard national laws or regulations regarding, for instance, plant health or phytosanitary measures.
5. The *Ad Hoc* Advisory Committee took note of the ongoing negotiations of an ‘International regime’ on access and benefit-sharing, under the auspices of the Convention on Biological Diversity. The Committee encouraged the Secretariat to continue working with the Secretary of the CBD, and to continue monitoring the negotiations. It further stressed that it would be important for Contracting Parties participating in those negotiations, to seek that the international regime does not interfere with any obligations countries have under the International Treaty.

6. The Committee recalled FAO Conference Resolution 18/2009 which invites the Conference of the Parties of the Convention on Biological Diversity and its Ad Hoc Open-ended Working Group on Access and Benefit-sharing to explore and assess options for the International Regime on Access and Benefit-sharing that allow for adequate flexibility to acknowledge and accommodate existing and future agreements relating to access and benefit-sharing developed in harmony with the Convention on Biological Diversity.

APPENDIX 3

FIRST MEETING OF THE *AD HOC* ADVISORY TECHNICAL COMMITTEE ON THE
STANDARD MATERIAL TRANSFER AGREEMENT AND THE MULTILATERAL
SYSTEM OF THE TREATY

OPINION ON

**IDENTIFICATION OF PGRFA UNDER THE MANAGEMENT AND CONTROL OF
CONTRACTING PARTIES AND IN THE PUBLIC DOMAIN**

The *Ad Hoc* Technical Advisory Committee noted that under Article 11.2 of the Treaty all PGRFA of crops and forages listed in Annex 1 of the Treaty that are “under the management and control of the Contracting Parties and in the public domain” are automatically part of the Multilateral System. The Committee also noted that the legal situation as to what should be regarded as material under the management and control of the Contracting Party and in the public domain may well vary from country to country. It recognized the desirability of a coherent approach in the application of these concepts, which are at the heart of the Multilateral System.

In considering the meaning of these concepts, the Committee agreed that the Vienna Convention on the Law of Treaties, which requires a literal interpretation of treaty provisions, should be followed.¹

The Committee was of the opinion that the expression “*under the management*” means that a Contracting Party has the power to undertake acts of conservation and utilization in relation to the material: it refers to the capacity to determine how the material is handled and not to the legal rights to dispose of the PGRFA. The ordinary meaning of “*control*” in this context focuses on the legal power to dispose of the material. In other words, it is not sufficient that the PGRFA be ‘managed’ by a Contracting Party (e.g. through conservation in a genebank); it must also have the power to decide on the treatment to be given to such resources.²

The Committee considered that the expression, “*of the Contracting Parties*”, obviously includes material held by structures of the central national administration, such as government departments and national genebanks. It may or may not cover material held by autonomous or quasi-autonomous entities normally considered to be part of the national plant genetic resources system. Likewise, special issues may arise in the case of Federal States. There is an expectation on the part of Contracting Parties that all such material, that is not automatically included, should be brought within the Multilateral System through positive action.³

The Committee noted that the expression, “PGRFA under the management and control of the Contracting Parties”, encompasses both PGRFA in *in situ* condition and that held *ex situ*.

On the term, “*in the public domain*”, the Committee noted that there were two possible meanings. One meaning is the concept of public property under administrative law. The other

¹ Article 31.1 of the Vienna Convention on the Law of Treaties provides that “[A] treaty shall be interpreted on good faith in accordance with the ordinary meaning to be given to the terms of the Treaty in their context and in the light of its object and purpose.”

² It should be noted that Article 11 does not refer to the “property”, ‘ownership’ or ‘possession’ of the PGRFA. Paragraphs 2 and 3 in Article 11 refer to “holders” and those “who hold”, respectively. In relation to the resources possessed by the CGIAR Centres, the term “held” is also used (article 15.1).

³ The Committee noted that the Governing Body of the Treaty, at its Third Session, had encouraged ‘Contracting Parties, as appropriate, in reporting on their plant genetic resources for food and agriculture in the Multilateral System, to provide information on the collections of legal persons not part of the government, whom they regard as forming part of their national plant genetic resources systems and who are willing to make such information available’, Resolution 4/2009, available at <ftp://ftp.fao.org/ag/agp/planttreaty/gb3/gb3repe.pdf>.

meaning refers to material or information that is not subject to intellectual property rights. The Committee considered that the concept of “public domain”, as used in article 11.2 of the Treaty, should be understood in the context of intellectual property law.

PGRFA under the management and control of the Contracting Parties, and in the public domain, are part of the MLS without any declaration or notification. However, actual use of material depends on information being made public about what materials are available and where they may be accessed, along with related non-confidential information.

APPENDIX 4

**FIRST MEETING OF THE *AD HOC* ADVISORY TECHNICAL COMMITTEE ON THE
STANDARD MATERIAL TRANSFER AGREEMENT AND THE MULTILATERAL
SYSTEM OF THE TREATY**

OPINION ON**LEGAL AND ADMINISTRATIVE MEASURES TO ENCOURAGE
NATURAL AND LEGAL PERSONS TO VOLUNTARILY PLACE
MATERIAL IN THE MULTILATERAL SYSTEM**

Under Article 11.3 of the International Treaty, Contracting Parties agreed “*to take appropriate measures to encourage natural and legal persons within their jurisdiction who hold plant genetic resources for food and agriculture listed in Annex I to include such plant genetic resources for food and agriculture in the Multilateral System*”.

Several Contracting Parties and other stakeholders have asked the Secretariat what sort of measures Contracting Parties could take to encourage natural and legal persons within their jurisdictions to include *Annex I* plant genetic resources for food and agriculture in the Multilateral System.

In the opinion of the *Ad Hoc* Advisory Committee, the decision on what measures to establish under Article 11.3 of the International Treaty is left to the discretion of Contracting Parties. Those measures may include, but are not limited to, financial or fiscal incentives to holders of material (e.g. eligibility for public funding schemes). They might also consist of policy and legal measures, administrative actions setting up domestic procedures for inclusions, or awareness raising efforts (especially at the level of farmers).

The *Ad Hoc* Advisory Committee considered the sample letter of inclusion, currently being used to notify the Secretariat of Contracting Parties’ material in the Multilateral System, or material included by natural and legal persons in the Multilateral System, and agreed to review it at the next meeting. It encouraged the Secretariat to continue to compile the notifications of inclusion of material in the Multilateral System and publish the information contained therein on the website of the International Treaty.

APPENDIX 5

**FIRST MEETING OF THE *AD HOC* ADVISORY TECHNICAL COMMITTEE ON THE
STANDARD MATERIAL TRANSFER AGREEMENT AND THE MULTILATERAL
SYSTEM OF THE TREATY**

**OPINION ON
PRACTICAL AND LEGAL IMPLICATIONS FOR NATURAL AND LEGAL PERSONS
PUTTING MATERIAL INTO THE MULTILATERAL SYSTEM**

The *Ad Hoc* Advisory Committee considered the meaning of “putting material in the Multilateral System”, and agreed that the concept involved (a) making information on the material placed in the Multilateral System public, so that potential recipients might request it, and (b) a commitment to make the material available upon request, in accordance with the provisions of the Treaty and by use of the SMTA. It could also be possible to put material into the Multilateral System by transferring it to the collection of a national genebank of a Contracting Party, or the genebank of an international institution that has concluded an agreement with the Governing Body, under Article 15 of the Treaty.

In regard to natural and legal person wishing to put material in the Multilateral System, the *Ad Hoc* Advisory Committee agreed that there are various effective means by which natural and legal persons could include material in the Multilateral System such as: notification to the Treaty Secretariat or an equivalent public statement, and, in the case of *ex situ* material, by transferring the material to a genebank whose collections are part of the Multilateral System.

With regard to the notification of inclusion, the *Ad Hoc* Advisory Committee raised a number of questions and issues. The Committee agreed that further examination of all these questions was required, and recommended that a further paper be prepared, in collaboration with relevant stakeholders, in particular the industry, which would raise and examine relevant legal issues and practical questions arising from natural and legal persons putting material into the Multilateral System. The paper would form the basis for the preparation of a short, user-friendly and practical explanatory note that might be made available to those considering putting material into the Multilateral System.

The *Ad Hoc* Advisory Committee also recommended that the Treaty Secretariat provide more information, in the paper, on the recipients of project funding from the Global Crop Diversity Trust, or the Benefit-Sharing Fund, as well as the legal provisions requiring such recipients to make material, covered by the project funding, available under the terms of the Multilateral System. An example was given of a Contracting Party, which has followed the same approach, details of which will be provided at the next meeting.

APPENDIX 6

FIRST MEETING OF THE *AD HOC* ADVISORY TECHNICAL COMMITTEE ON THE
STANDARD MATERIAL TRANSFER AGREEMENT AND THE MULTILATERAL
SYSTEM OF THE TREATY

OPINION ON

***IN SITU* MATERIAL AND THE MULTILATERAL SYSTEM:
STANDARDS FOR ACCESS**

Article 12.3h of the International Treaty provides as follows:

Without prejudice to the other provisions under this Article, the Contracting Parties agree that access to plant genetic resources for food and agriculture found in situ conditions will be provided according to national legislation or, in the absence of such legislation, in accordance with such standards as may be set by the Governing Body.

The *Ad Hoc* Technical Advisory Committee noted that these provisions apply to material under the management and control of Contracting Parties and observed that there are sets of concerns in operationalizing the provisions of the Treaty in this regard:

National legislation

- Some authorities are uncertain as to whether additional specific national standards need now be developed. The Committee noted that this was not the case, and that many Contracting already have the capacity with their domestic frameworks to allow access in accordance with the Treaty.
- In many cases, *in situ* materials in the Multilateral System are in protected areas, national parks, *etc.*, managed by other authorities outside the agricultural sector. It is therefore important that Contracting Parties ensure adequate coordination between the agricultural ministry and relevant authorities. The aim of such coordination should be to remove impediments to facilitated access in accordance with the conditions of the Multilateral System.

In this context, the *Ad Hoc* Technical Advisory Committee was of the opinion that:

- Article 12.3h has to be considered in the context of access and benefit-sharing for PGRFA.
- Article 12.3h applies to plant genetic resources for food and agriculture under the management and control of Contracting Parties and in the public domain.
- Many Contracting Parties already have the capacity within their domestic frameworks to provide facilitated access in accordance with the Multilateral System, and Article 12.3h should not be seen as preventing the provision of such access.
- For these materials, national legislation is not a pre-condition precedent in order to provide facilitated access, in accordance with the provisions of Article 12.

Institutional responsibilities

In many cases, *in situ* materials in the Multilateral System are found in protected areas, national parks, *etc.*, managed by other authorities outside the agricultural sector. It is therefore important that Contracting Parties ensure adequate coordination between the agriculture ministry and other relevant authorities. The aim of such coordination should be to remove impediments to facilitated access in accordance the provisions of the Multilateral System.

Standards for access under Article 12.3h

The Committee noted that the Governing Body has not yet decided to initiate the preparation of standards for access to plant genetic resources for food and agriculture found in *in situ* conditions.

The Committee recommended that:

- The Secretary of the Governing Body, in cooperation with the Secretariat of the Commission on Genetic Resources for Food and Agriculture and Bioversity International, identify the elements of possible standards.
- In this exercise, particular attention should be paid to the possibility of referring to relevant provisions of the existing *International Code of Conduct on Plant Germplasm Collecting and Transfer*, as interim standards.
- The results of this work should be presented to the next meeting of the Committee.

The Committee recommended that the Secretary of the Governing Body maintain close coordination with Secretary of the Commission on Genetic Resources for Food and Agriculture on all matters related to standards of relevance to Article 12.3h, recognising the need to avoid duplication of efforts.

The Committee agreed that it would be useful if the Secretariat could prepare a background paper on these issues to facilitate discussions at the next meeting of the Committee.

APPENDIX 7

**FIRST MEETING OF THE *AD HOC* ADVISORY TECHNICAL COMMITTEE ON THE
STANDARD MATERIAL TRANSFER AGREEMENT AND THE MULTILATERAL
SYSTEM OF THE TREATY**

**OPINION ON
TRANSFER AND USE OF PLANT GENETIC RESOURCES FOR FOOD AND
AGRICULTURE UNDER THE SMTA****Transfers to service providers**

The *Ad Hoc* Technical Advisory Committee considered situations wherein Multilateral System material is transferred to services providers who will conduct analyses or any other services on the material, on contract or any other arrangements, for the provider, and not for any other purposes. The *Ad Hoc* Technical Advisory Committee was of the opinion that in cases where materials under the Multilateral System are transferred to service providers, the person transferring them has the obligation to exercise due diligence to ensure that the service provider does not use the material in any ways other than stipulated in the agreement for those services.

In such cases, it would not be appropriate to use the Standard Material Transfer Agreement (SMTA). Instead, the provider of the material should exercise due diligence in order to ensure that the service provider destroys the material or returns the material after the conclusion of the service. If the service provider wishes to use the material further for conservation and utilization for research, training and breeding, it should be made available under the SMTA.

Transfers to farmers

The Committee agreed that ultimately, the use of PGRFA by farmers is the best way of conserving, sustainably using and developing crop and forage diversity. To this end the committee members acknowledged the key importance of farmers being provided access to material through the MLS.

The problem highlighted by the Committee concerned difficulties associated with distributing materials to farmers using a written and signed SMTA, particularly small farmers in developing countries. The SMTA will not be in the language of many of those farmers. And if it were, many of them could not read it in any case. Expecting them to use the SMTA when they themselves pass it on to other farmers seems highly impractical.

The Committee requested the Secretariat to commission a paper on possible ideas on practical ways to pass material to farmers that are consistent with the objectives of the Treaty and the Multilateral System, for consideration at the next meeting.

APPENDIX 8

FIRST MEETING OF THE *AD HOC* ADVISORY TECHNICAL COMMITTEE ON THE
STANDARD MATERIAL TRANSFER AGREEMENT AND THE MULTILATERAL
SYSTEM OF THE TREATY

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