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منظمة الأغذية والزراعة للأمم المتحدة | 联合国粮食及农业组织 | Food and Agriculture Organization of the United Nations | Organisation des Nations Unies pour l'alimentation et l'agriculture | Organización de las Naciones Unidas para la Agricultura y la Alimentación

COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE

FIRST MEETING OF THE EXPERT GROUP ON THE TERMS OF THE STANDARD MATERIAL TRANSFER AGREEMENT

First Meeting

Brussels, 4-8 October 2004

REPORT ON THE OUTCOME OF THE EXPERT GROUP ON THE TERMS OF THE STANDARD MATERIAL TRANSFER AGREEMENT

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I. OPENING OF THE SESSION AND ELECTION OF THE CHAIR

1. Mr. José Esquinas-Alcázar, Secretary of the Commission on Genetic Resources for Food and Agriculture, opened the meeting on behalf of FAO and welcomed the Experts, Advisors and International Organizations present. (The list of participants in the meeting is in *Appendix 4*). He thanked the European Commission, as host Organization, for its generosity, without which the meeting could not have taken place. He also thanked the European Commission for having funded the participation of developing countries, and for having provided them with the opportunity to meet as a group for three days of informal discussions beforehand. He thanked, in particular, Mr. Kay Beese for his personal contribution, in making such effective arrangements.

2. Ms. Janna Husu-Kallio, Deputy Director-General, Directorate of Health and Consumer Affairs, welcomed the delegates. She hoped that the arrangements would be effective. She added her personal thanks to Mr. Kay Beese. The European Commission considered the International Treaty to be very important, and the work of the Expert Group would therefore be highly appreciated. She recognized that the issues were legally and technically complex, and, in this regard, was very pleased to see the many competent Experts and Advisors present. On behalf of the European Commission and of her Director-General, she wished the meeting every success.

3. Mr. José Esquinas-Alcázar recalled the Expert Group's terms of reference. Governments had designated experts on a regional basis. Their task was to examine and report on all options identified, with the associated implications, reflecting all views. He thanked all donor countries to the Treaty process, in particular the United States of America, which had made US$ 50,000 available for this specific meeting, and had agreed that this might now be used for other purposes. He expressed concern that the lack of resources had made it impossible to carry out all the tasks set by the First Meeting of the Interim Committee. He hoped that the necessary funds would, in future, be made available in a timely fashion, to enable the work to proceed expeditiously. The World Food Day would also be celebrated in October 2004. He recalled that more than 25,000 people die each day as a consequence of hunger and malnutrition. One of the objectives of the International Treaty was the sustainable use of plant genetic resources for food and agriculture for food security: while the issues were also of a political and technical nature, he hoped that delegates would keep this in mind, during their work.

4. Mr. Kay Beese thanked FAO for the close collaboration between their two organizations, in the preparation of the Meeting. He introduced his team, which would be at the disposal of the meeting, and explained practical arrangements for the week.

5. The meeting elected Mr. Eng-Siang Lim as its Chair. He thanked the European Commission for its excellent facilities and for the financial support it had provided to the meeting, and in particular for the support to the attendance of developing countries. He intended to establish a Friends of the Chair Group, with each region nominating a member, which would meet every day at 18:00 hours and review the draft report, before sending it to Rome for translation, for distribution on the following day.

II. ADOPTION OF THE AGENDA

6. The Meeting adopted the Agenda, as given in *Appendix 1*.

7. The Chair recalled that Experts had been appointed in their personal capacity, through the regions. He stated that the Report would reflect the terms of reference, and contain options/recommendations, and/or elements for inclusion in the Standard MTA, and views

reflecting the advantages and disadvantages of each option. He reiterated that the Expert Group was not mandated to negotiate any of these options, recommendation, or elements.

III. CONSIDERATION OF QUESTIONS PUT TO THE EXPERT GROUP BY THE FIRST MEETING OF THE INTERIM COMMITTEE

What constitutes commercialization in terms of Article 13.2d(ii) of the Treaty?

Options/recommendations

8. Selling, leasing or licensing of a product for monetary consideration.

Views on this option/recommendation

- It is not clear when selling, and when licensing, would constitute commercialization.
- Licensing revenues typically depend on the volume of sale of seeds.
- There is a need to understand what "product" refers to, in the context of Article 13.2.
- Should the option refer to products for research and breeding only?
- Under Article 13.2d(ii), there is a need to look at where the "benefits arising from commercialization" come from.
- The Treaty uses the term "benefits arising from the use of plant genetic resources for food and agriculture": nowhere in the Treaty is this use restricted to seed sale alone. However, seed sales could be used as an index of use.
- The financial returns from licensing a product are a minor aspect of commercialization.

9. Offering a product for sale, as well as selling the product.

Views on this option/recommendation

- There is a need to understand the mechanisms for "offering a product for sale".
- For finished varieties, catalogues and the like can facilitate monitoring of offering for sale. Such monitoring may not be as easy for products other than varieties, such as genes and breeding lines.
- Offering for sale does not in itself generate benefits.

10. Applications for IPRs should not be included in "commercialization", and should not trigger benefit-sharing.

Views on this option/recommendation

- Application for an IPR is motivated by the desire to commercialize.
- An IPR does not in itself generate any revenue, and so does not constitute commercialization.

11. Offering for sale of the product of a product, and all subsequent products, not just the seed alone.

Views on this option/recommendation

- There is a need to understand the value of plant genetic resources for food and agriculture, in terms of the value of product, including the final product.

- The product of a product, *etc*., is not part of the Multilateral System. Moreover, it is not clear who benefits and who should pay. What is the relationship between the supplier and the user?
- A product of a product is not part of the Multilateral System. Article 12 only allows use for research, breeding and training. The relationship between the supplier and the user needs to be established.
- The developer of the product incorporating material accessed from the Multilateral System only has control over the propagating material, and not subsequent products. To go beyond this would not be administratively feasible and not in line with commercial practice.

12. Making a request for a plant genetic resource for food and agriculture in the Multilateral System, with a view to commercializing a product.

Views on this option/recommendation

- Defining access as commercialization would be inconsistent with Article 12.3b.
- Seed sale volumes did not change with the Green Revolution, though the value of the product of the seed rose very substantially: for this reason, the final product must be taken into account.

This discussion included "What constitutes a product?"

Options/recommendations

13. Varieties, breeding lines, breeding materials, genes, tissue or *in vitro* material; grain is not considered to be a product in terms of Article 13.2.

Views on this option/recommendation

- Grain should not be included, because this has implications for research: there should be no impediment in respect of research.
- Genetic material of potential value should be included in the list.

14. All harvested material also constitutes a product.

Views on this option/recommendation

- This would go beyond the scope of the Treaty.
- This would be contrary to the definitions in the Treaty.
- A distinction is needed between commercialization and the definition of plant genetic resources for food and agriculture.
- Commodities, such as grain, can become seed, and thus plant genetic resources for food and agriculture, in effect, "any genetic material of plant origin of actual or potential value for food and agriculture".
- Article 2 excludes "commodities", which are not plant genetic resources for food and agriculture. This would not include, for example, processed food products.

15. The potential use of genes as plant genetic resources for food and agriculture should also be included. Grain used for consumption is not exploited for its genetic potential.

Views on this option/recommendation

- A product is any product, including plant genetic resources for food and agriculture as defined in the Treaty.
- Any access of plant genetic resources for food and agriculture from the Multilateral System includes access to all genes, because all have potential value.

What constitutes incorporation of material accessed from the Multilateral System?

Options/recommendations

16. The transfer of any part of a genotype from materials accessed from the Multilateral System into a product.

17. There are three possibilities: (1) physical incorporation without taking into account the expression of a trait; (2) incorporation resulting in an expressed trait; (3) incorporation resulting in the expression of a valuable trait.

Views on this option/recommendation

- The advantage of (1) is that it is simple. The advantage of (3) is that it is fair, but it is much more difficult and complex. Options (2) and (3) have problems: (2) would be difficult to determine for multi-genic traits; (3) depends on a value judgement: these options would be very difficult to operationalize.
- Physical incorporation is not sufficient: the value can only be determined by examining expressed traits.
- Given that there is a Multilateral System, the whole genome in crops in the Annex I list is in the Multilateral System.
- "Incorporation" should be a simple, threshold test.

When would a product be considered to be available without restriction to others for further research and breeding?

Options/recommendations

18. When it is in the public domain; or when protected by Plant Variety Protection (as in the case of UPOV or other *sui generis* systems); or by a patent system and made available through royalty-free licences.

Views on this option/recommendation

- Are materials under the different Acts of the UPOV Convention free for use without restrictions? *UPOV explained that the authorization of the rights holder is not required for another person to use UPOV-protected materials for further research and breeding. It also allows exploitation of the product without the authorization of the rights holder, except, in particular, in the case of essentially derived varieties*.
- A variety protected by the UPOV system with a patented resistance to a herbicide or a pesticide may effectively not be able to be available without restriction for further research and breeding. *UPOV explained that the UPOV Convention in itself would allow the use of the variety for further research and breeding. The question of restriction under patent systems is separate. WIPO noted that the nature of restrictions would depend on the claims in the particular patent. Some jurisdictions*

include the research exemption, but existing international standards do not foresee an exemption similar to the UPOV breeder's exemption in patents.

19. When not protected by any IPR system.

Views on this option/recommendation

- If there were no IPRs, there would be no benefits arising.
- It is not possible to generalize all IPR systems, as different types of IPRs have different effects.
- Even a restrictive IPR would allow an owner to waive his rights for research and breeding.
- A patent may put information in the public domain, but still allow protection of the product.

20. When national legislation does not prohibit a commercialized New Material being made available to others for further research and breeding. "New Material" means a product that is a plant genetic resource for food and agriculture and that incorporates material accessed from the Multilateral System.

Views on this option/recommendation

- This wording requires a case-by-case approach. Does it mean that material that is not made available will not result in mandatory benefit-sharing?
- This option encapsulates a way in which a country could introduce legislation in a contract law-based system, in the context of Article 13.2d (ii).
- If there is national legislation that prohibits making a material available, then the mandatory benefits would apply. In the absence of such a prohibition, it is not necessarily the case that the material would be available without restriction, because, for example, of contractual restrictions.
- Would the formulation with "requires to make available" be the same as "does not prohibit"? This option should make it a requirement for the material to be made available.

21. When a product can be used for research and breeding without any legal or contractual obligations that would preclude using it or any future product in the manner specified by the Treaty. Availability is not dependent upon any specific type of IPR claimed for the product, but on how the owner of the IP chooses to make the product available.

Views on this option/recommendation

- Materials under IPRs can still be provided to others without restriction for research and breeding.
- This wording focuses upon availability, and not on IP.
- The last part of the formulation seems to suggest that there is the possibility of a choice, which is not necessarily the case. In a Plant Variety Protection system, for example, the choice does not arise, as the material is freely available.
- The last part of the formulation should be cancelled.

22. When a product can be used for research and breeding without any legal or contractual obligations, or technological restrictions, that would preclude using it or any future product in the manner specified by the Treaty. Availability is not dependent upon any specific type of IPR claimed for the product, but on how the owner of the IP chooses to make the product available.

23. Defining restriction: (1) legal restrictions: (1a) patents granted in legal systems without a research or breeder's exemption, and other IPRs restricting the availability of the product that is a plant genetic resources for food and agriculture to others for further research and breeding; (1b) other legal restrictions, including property rights; (2) contractual Restrictions; (3) biotechnological or technological restrictions.

Views on this option/recommendation

- Material under the UPOV system may not always be available for further research and breeding, for example, because of the restriction on exporting to non-UPOV countries.
- There should be no restriction, whatsoever.

24. A product would be considered to be available when it is accessed free of charge or, if a fee is charged, the payment does not exceed the minimum cost necessary to effect that access.

Views on this option/recommendation

- This, and the preceding option, are complementary, and could be put together as one option.

What should be the level, form and manner of payments in line with commercial practice?

Options/recommendations

25. An annual payment, which is a fixed percentage of net sales of propagating material of the product.

26. Three alternative options: (a) a practical system, in which a certain percent of annual net sales during the period from the first sale to the end date of the IPR protection is paid; (b) a theoretical system, in which a fixed percent of gross profit should be paid, while such profit is generated; (c) an un-fixed-rate system, in which an amount of payment should be calculated on the basis of licence fees, taking into account the contribution rate of the plant genetic resources for food and agriculture to the end product, and the contribution rate of the end product to the licence fee. This system allows each contractor to the Standard MTA to determine the level of licence fee according to his commercial practices.

27. Upfront payment, when incorporating or when offering for sale.

Views on this option/recommendation

- This could be looked at, at different stages: upstream, at the testing phase; or downstream at the time of offering for sale.
- An access fee would run counter the Treaty.
- The option may have the advantage of providing some early benefits for the Multilateral System.

28. A fixed percentage of sales.

Views on this option/recommendation

- A disadvantage is that benefits would only be realized on sale, and it might be difficult to agree on such a fixed percentage. But it might be a fair, equitable and justifiable option.

29. An amount proportional to incorporation.

30. An amount proportional to the significance/value.

31. A set percentage of the net sales of the products obtained from using the plant genetic resources for food and agriculture from the Multilateral System.

Views on this option/recommendation

- If this involves all subsequent products, this option may not be implementable.

32. The natural or legal person holding the license to market a plant genetic resource for food and agriculture accessed through the Multilateral System will pay a fixed percentage of monetary benefits arising from that plant genetic resource for food and agriculture, based on the commercial value of the marketable products produced by that plant genetic resource for food and agriculture.

Views on this option/recommendation

- The commercial value of the products is extremely difficult to identify. This may go beyond the scope of Article 13.2d(ii).

Views on all options on the level, form and manner of payments in line with commercial practice

- The System must be simple, practical and in line with commercial practice. The level of payment should be high enough to make an equitable contribution to the Multilateral System, but not so high as to discourage use. Commercial products will be derived from products from multiple resources, and there is the need for a proportionate approach; however, this might be impractical. Upfront payment is not consistent with the Treaty, and could discourage use. A fixed percentage of sales (preferably net rather than gross) is preferable. The coverage should not extend to commodities, but only to materials within the scope of the Treaty.
- A crop species that is in the Annex I of the Treaty is in the Multilateral System. Any commercialized production from the seed of a crop is easy to estimate. The percentage to be paid should be based on this estimate, and not on the seed sown.
- It would be necessary to decide on whether first recipient only or subsequent users should be included.
- Both upfront and fixed rate payments deserve consideration. Upfront payment could be more productive and beneficial for the Treaty. Fixed rate payments may be better for food security.
- Any kind of system must be consistent with the Treaty. Upfront payment and the inclusion of subsequent products are inconsistent with the Treaty. It must be practical on an everyday basis.

Whether different levels of payment should be established for various categories of recipients who commercialize such products or for different sectors and, if so, what those levels, various categories of recipients and sectors should be?

Options/Recommendations

33. All developers of products using plant genetic resources for food and agriculture from the Multilateral System should pay the same rate.

Views on this option/recommendation

- The payment trigger depends on the product. The system should be simple and fair to everyone: if a profit is made, there should be a payment, based on revenue from sales.
- This option can apply only to categories of recipients meeting the conditions of Article 13.2d(ii).
- The option should be formulated as "…developers who commercialize a product…"

34. There should be two categories: (1) developing countries; (2) developed countries; and two classes of user: (1) seed-producing institutions – companies that produce seed from plant genetic resources for food and agriculture accessed from the Multilateral System, and restrict its use; and (2) farmers, who would not have to make any payment.

Views on this option/recommendation

- One implication of distinguishing between developing and developed countries is that small-scale breeders in developed countries could be disadvantaged in relation to large-scale breeders in developing countries. This could create a loophole, where large-scale breeders move into developing countries to avoid higher payments.
- The distinction between developing countries and developed countries falls outside the scope of the MTA, which is between individuals, and not countries.
- It needs to be made clear that the user of the seed, the farmer, is not the person who should pay to the Multilateral System.

35. The following should be exempted from payment: (1) publicly funded research institutes that are engaged in providing access to plant genetic resources for food and agriculture essential for food security in developing countries; (2) recipients engaged in research and development for purposes of technology transfer to small farmers in developing countries; and (3) recipients in developing countries who provided the plant genetic resources for food and agriculture.

Views on this option/recommendation

- Article 13.2d(ii) provides that recipients should pay when there is a restriction on access.
- There is no reason to exempt public institutions that commercialize a product, when this is not available without restriction for research and breeding. It is the restriction that makes the difference.
- This option is in line with the Treaty's aim to assist developing countries achieve food security. The criterion for payment in this option is commercialization with restriction, which is not the case of public research institutions in many developing countries. Public institutions working for food security should be exempt.
- How does this option relate to public-private partnerships that result in a restricted commercialized product, and how would obligations to pay to the Multilateral System be divided?

36. No categories of recipient are needed.

Views on this option/recommendation

- Not all recipients can be bundled into the same category. This option seems to run counter to the need to distinguish between those who are able to pay and those who are not. Public and private structures should not be subject to the same rates of payment.
- This option starts from the Treaty, as adopted. Article 13 specifies which categories apply for payment. There are four "filters": (1) the product must be a plant genetic resource for food and agriculture; (2) it must use material from the Multilateral System; (3) it must be commercialized and generate benefits; and (4) the product is available without restriction for further research and breeding. These de facto filters exclude many categories, such as small-scale farmers and non-profit institutions. Other categories are not needed. Payment would reflect profit made.
- The Treaty allows the Governing Body to establish different categories of recipient for payment.
- This option already takes into account that small-scale farmers do not usually commercialize a product that is a plant genetic resource for food and agriculture with restrictions.

37. Three categories: (1) small farmers; (2) publicly funded research institutions; (3) those big businesses that are specialized in research and development. The first two categories should be exempted.

Views on this option/recommendation

- The concerns expressed in relation to the second bullet point of paragraph 36 also apply here.

38. Four categories: (1) small-holder farmers, who continue traditional breeding; (2) research and development institutes that develop seeds for these small-holder farmers and are not profit-motivated, but are service-driven; (3) commercial breeders who produce seed that is not prevented from flowing to researchers and breeders, as defined in the Treaty; (4) commercial breeders that restrict the seed they produce. The first two categories should not be required to pay, and the two categories of commercial breeder should have different levels of payment.

Views on this option/recommendation

- The concerns expressed in relation to the second bullet point of paragraph 36 and paragraph 37 also apply here. Obligatory payment for (3) runs counter to the Treaty, (3), since the Treaty provides only for voluntary payment.

39. As the last, but differentiating between developing and developed countries.

Views on this option/recommendation

- The concerns expressed in relation to the first bullet of paragraph 34 also apply here.

40. Payments would not be expected, if the amount to be paid falls below a certain threshold level.

Views on this option/recommendation

- The option is instead of, or in addition to other options. The system to be established should not create disincentives for small-scale developers. The option would reduce administrative costs.
- The threshold level would need to be determined separately in different countries, which could create administrative difficulties.

41. Crops can be divided into two categories for levels of payment: (1) autogamic crops, such as rice; (2) allogamic crops, such as some vegetables; without distinction between public and private sectors.

Views on this option/recommendation

- This is a new concept, which falls outside the provisions of Article 13.2d(ii), and would introduce different categories into Annex I.
- This option is linked to the possible level of profit from individual crops.
- The distinction between open and closed pollinating crops is not useful.
- A clearer drafting would be required: one might talk of cereals, as opposed to vegetables.
- Cereals and vegetables cannot simply be split into autogamic and allogamic crops. The focus should be a proportion of the net sales.
- A fixed percentage of net sales would automatically take into account the different profit rates in crops.
- This option shows the importance of taking into account the commercial value of the harvested crop. A formula is needed.
- It is difficult to include in the value of a seed the value of its use, which depends upon the productivity of the agricultural system.

42. All users who hold commercialization licences for the marketing of plant genetic resources for food and agriculture, including all types of plant genetic resources for food and agriculture, whether a variety or any other form of genetic material.

Views on this option/recommendation

- This proposal is contrary to Article 13.2d(ii), because it does not draw a distinction on the basis of whether or not a product is available without restriction for research and plant breeding.
- Article 13.2d(ii) provides both for mandatory and voluntary payment. The concept of voluntary cannot simply mean that there should be no payment. The expectation of payment goes beyond the mandatory element alone. Moreover, Article 13.6 goes beyond those who use plant genetic resources directly, to encourage voluntary contributions by end users. The MTA should explain to recipients the provisions of Article 13.2d(ii), including the encouragement to make a payment.
- The MTA should not include what type of voluntary payment should be made.
- The meaning of “plant genetic resources for food and agriculture” should not be restricted to seed alone. In addition, in the case of materials under Plant Variety Protection, reliance on voluntary payments could result in little or no benefits for the Multilateral System.
- The overall benefits will depend on the quantity of resources within the Multilateral System. The MTA may not go beyond the provisions of the Treaty, and there should be no false expectations on the benefits that might arise.

Whether to exempt small farmers in developing countries and in countries with economies in transition from the payments, and if so, who qualifies as such as a small farmer?

Options/Recommendations

43. No farmers will be required to contribute to the Multilateral System. Therefore, there is no need to qualify "farmers". The owner of a technology or variety who restricts its use will be responsible to pay into the Multilateral System a percentage of the royalty received from the commercialization of such a product. Farmers who are owners of such technology will pay. Anybody else, who does not restrict the use of a given technology, is encouraged to contribute on a voluntary basis to the Multilateral System.

Views on this option/recommendation

- "To make payments" should be used instead of "to contribute".
- Developers can be farmers, and may therefore have to pay. Those farmers who do not obtain materials from the Multilateral System cannot be expected to pay.
- Article 13.2d(ii) talks of "products", not "technologies". The Treaty is also specific in referring only to small farmers, who may be exempted. The "owner of a technology" would need better definition. The level and manner of payment are not to be addressed here.
- There is a distinction between farming and seed production. Farming is not an activity that should result in a payment to the Multilateral System.
- "Small farmers", in this context, is restricted to those in developing countries and countries with economies in transition.

44. Due to the different level of economic development in different countries, the concept of "small farmer" varies between countries. The amount of land owned, or the level of income, can be used to classify small farmers. Only those classified as small farmers, on the basis of national legislation, can be exempted from payment.

Views on this option/recommendation

- National legislation contains definitions of "small farmer". These pertain to agriculture, not breeding. There is a need to determine whether or not farmers are likely to have got through all of the "filters" and have produced a product for which a payment is required. There should be no loopholes.
- Small farmers should not be discouraged, and therefore an appropriate definition is needed. Adopting a definition of "small farmers" in different countries will be very difficult: a general definition is needed.
- There is a need to understand for what purpose the term, "small farmer", will be used.
- Neither a small-scale nor large-scale farmers should pay, unless they obtain IPRs that restrict access. The definition of "small farmer" varies between countries and within countries. Is it useful to define it?
- It may be easier to establish a threshold for payment, rather than attempt to define "small farmer".
- Most small farmers in developing countries are unable to produce materials that are under IPRs. If they did, they would, in all likelihood, no longer be small farmers, but breeding companies.

45. Small farmers in developing countries and countries with economies in transition are those (1) who produce predominately to meet family needs and the sale of surpluses to meet other livelihood needs; and (2) exist as a unit that resides on the farm, or near a farming area, managed by the family.

Views on this option/recommendation

- Who would investigate whether a particular farmer fulfils these criteria? The intention behind this option could be met by establishing a minimum threshold for payment.

46. No category of recipient should be exempted from compulsory monetary benefit-sharing, if they qualify for such payment according to Article 13.2d(ii). There is no need to define "small farmers".

Views on this option/recommendation

- Some farmers may be asked to make a voluntary contribution, if they make profits. Categories of small farmer should therefore be distinguished, according to: (1) those who need not contribute; (2) those who should be encouraged to do so; and (3) those who should be required to do so.

47. (1) Small farmers, as defined in the option in paragraph 45, should be exempted from payment; (2) those who produce primarily for the market should be requested to pay voluntarily; (3) those who control the seed, commercialize it, and prevent access by others should make mandatory payments.

Views on all options on whether to exempt small farmers in developing countries and in countries with economies in transition from the payments, and if so, who qualifies as such as a small farmer

- The ingenuity of farmers should never be underestimated. It is quite possible to envisage that farmers of any scale could fulfil the conditions for mandatory monetary benefit-sharing. If a profit is made, then a contribution should be made.

How will monetary and other benefits be defined, for the purposes of the Standard MTA?

48. Monetary benefits can be defined as a percentage of royalties received by the owner of the technology. Other benefits arising from commercialization could come from donations and voluntary contributions. Other mechanisms, such as educative measures and marketing strategies, linked to conservation of genetic material, could be used as options for contributions.

Views on this option/recommendation

- If payments are based on a percentage of royalties, these would only represent a small portion of total net sales. Payments may be required where no profits have been made. Payments should therefore be based on a percentage of net sales of propagating materials.
- A Standard MTA is in question, but many of the benefits mentioned in the options here are recognized by the Treaty as obligations of and between the Contracting Parties, and not the parties to the MTA. The Standard MTA leaves no room for bilateral agreements on benefits. Payments have to be made to the mechanism provided for by Article 19.3f, and these benefits must be decided by the Governing Body in relation to the level, form and manner of payment.

49. (1) A seed company that restricts access should compulsorily pay a percentage of its sales. (2) A seed company that does not restrict access should be encouraged to contribute a

certain percentage of its sales. (3) Commercial farmers who are not small farmers (as defined in the option in paragraph 45) should also be requested on a voluntary basis to contribute a certain percentage of their sales. (4) Research and development activities for capacity-building should be carried out in a country that contributes to the Multilateral System and that has been identified by the Governing Body as in need of capacity building. (5) Wherever the research and development for capacity-building takes place, there should be participation of experts from countries that need capacity-building, as identified by the Governing Body. (6) When so requested, free or facilitated access to improved varieties should be provided.

Views on this option/recommendation

- A Standard MTA is in question, but many of the benefits mentioned in the options here are recognized by the Treaty as obligations of, and between, the Contracting Parties to the Treaty, and not the parties to the MTA. The Multilateral System leaves no room for bilateral agreements on benefits.
- The obligations on Contracting Parties should in some way devolve upon users of material from the Multilateral System.
- It is necessary to know the relationship between the Contracting Parties and the recipients under the MTA.
- Article 12.4 is specific to this situation. The MTA is envisaged as a means of channelling the various obligations listed there.

50. One of the ways by which benefits are to be defined is through cash payments to the providers of plant genetic resources for food and agriculture, to support the management and use of the plant genetic resources for food and agriculture of the relevant communities.

Views on this option/recommendation

- According to the Treaty, the payments must be through the mechanism provided for in Article 19.3f, and benefits are therefore not directly linked to the provider.
- It is important to make clear who benefits from the Multilateral System, and how the providers of material to the Multilateral System can receive benefits.
- The MTA is a way of channelling benefits to the providers of plant genetic resources for food and agriculture. The distinction between the Contracting Parties, and the parties to the MTA, should not be used to prevent such benefits flowing. Such a distinction would reduce the MTA to an access agreement only.
- The logic of the MTA in the Multilateral System is that it covers a bilateral transaction, with compulsory benefit-sharing, as defined in Article 13.2d(ii). As soon as a financial advantage appears, payments are made to the mechanism in Article 19.3f. The Governing Body, in accordance with the Treaty's funding strategy, uses these funds in line with the priorities of the *Global Plan of Action for the Conservation and Sustainable Utilization of Plant Genetic Resources for Food and Agriculture*, thereby benefiting farmers in developing countries, without funds being given to them directly, on a bilateral basis. This regulates the Multilateral System.
- Article 13, in addition to monetary benefits, envisages exchange of information, access to and transfer of technology, and capacity-building, as determined by the Governing Body, based on need. The benefits that would have accrued had the system been bilateral now accrue to the Multilateral System. The Governing Body will not have enough resources to direct benefits to those that need them, if the users of the Multilateral System are not willing to provide in-kind benefits. This should be promoted through the MTA.

51. For purposes of Article 13.2d, the benefits of commercialization upon which a payment to the Multilateral System should be based are defined as a percentage of net revenue

received from the sale, lease or licence of a product derived from plant genetic resources for food and agriculture accessed from the Multilateral System.

Views on this option/recommendation

- The question of level, form and manner of payment should be discussed separately, not under this question.

52. For the purpose of the Standard MTA, monetary and other benefits are to be considered according to Article 13.2d(ii). This means that the Standard MTA can only encompass, on a compulsory basis, monetary benefits in line with Article 13.2d(ii).

Views on this option/recommendation

- All of Article 13 should be covered in the MTA.
- Article 13.2d(ii) refers to voluntary contributions, in addition to monetary payments, which should be covered.

53. One of the options for other benefits of commercialization could be equity in the share-holding of a product, through, for example, joint ventures, arising from improvements in the plant genetic resources for food and agriculture accessed from the Multilateral System, in accordance with Article 13.2d(ii).

Views on this option/recommendation

- Joint ventures are typically bilateral, and the Standard MTA leaves no place for bilateral benefit-sharing.
- It is possible for the benefits from joint ventures to accrue to the Multilateral System, with the Governing Body assigning them on the basis of need.

IV. DEVELOPMENT OF RECOMMENDATIONS ON THE TERMS OF THE STANDARD MTA, IN ACCORDANCE WITH ARTICLE 12.4 OF THE INTERNATIONAL TREATY

54. On the basis of a proposal from the Chair, the Meeting decided to discuss the questions: "*By what means will the MTA ensure the application of Article 12.3*?", and "*What terms should be included in the MTA, so that recipients are bound by it on acceptance of the material from the Multilateral System*?", within the context of the "*Development of recommendations on the terms of the Standard MTA, in accordance with Article 12.4 of the International Treaty*". The Chair stressed that the MTA should be simple and effective, and ensure that the principles of ethics and equity guide the implementation of the MTA. He proposed structuring the discussions according to the *Structure and terms of the MTA*, as contained in *Appendix 2*.

55. The meeting identified the following Articles as mandatory for the Standard MTA:

- Article 12.3a,
- Article 12.3d,
- Article 12.3g,
- Article 12.4,
- The benefit-sharing provisions of Article 13.2d(ii).

56. Individual experts identified the following Articles, which might possibly need to be reflected within the Standard MTA:

- Article 6.1,
- Article 8,
- Article 10.1,
- Article 10.2,
- Article 11.1,
- Article 12.1,
- Article 12.3b
- Article 12.3c,
- Article 12.6,
- Article 13.2a,
- Article 13.2b,
- Article 13.2c,
- Article 17.1,
- Article 18.4f,
- Article 21,
- Article 22.

57. It was noted that this list was not necessarily exhaustive.

Views on the development of recommendations on the terms of the Standard MTA, in accordance with Article 12.4 of the International Treaty

- The relevant provisions of the Treaty will need to be formulated in contract language. As a contract, the MTA must be self-contained, complete, clear and understandable. All relevant provisions will need to be expressed as rights and obligations of the parties to the MTA. The obligations of Contracting Parties to the Treaty cannot be included as obligations of the parties to the MTA.
- A general introductory clause should make clear that the MTA operates in the context of the Treaty.
- It is important to separate preambular clauses from operative clauses, and state which Articles are to be reflected in each element of the MTA.
- An annex to the MTA should contain information on the material provided.
- The MTA should include, in addition to monetary benefit-sharing, the exchange of information; access to, and transfer of, technology; and capacity-building.
- A dispute resolution/arbitration mechanism should be included in the MTA. This would be separate and different from Article 21, *Compliance*, and Article 22, *Settlement of Disputes*, which refer to relations between Contracting Parties to the Treaty.
- There should be a clause on responsibility and indemnity for personal use, and reference to commercial use. The redistribution of benefits, in accordance with the Treaty, should be described.
- The agreement will be between parties to the MTA, not Contracting Parties to the Treaty, which means that a number of non-Treaty obligations are needed. For example, any aggrieved stakeholder should be able to call for redress.

***What terms should be included in the MTA, so that recipients are bound by it on acceptance of the material from the Multilateral System*?**

Options/Recommendations

58. Three options were identified: (1) a shrink-wrap contract,[1] (2) a signed contract, and (3) a dual purpose contract, that may be signed, or not, according to the decision of the recipient.

Views on this option/recommendation

- The shrink-wrap option is simple and effective. Signature systems are, in practice, more cumbersome to operate. Even where an MTA is signed, it may be invalid, if the signature is not of a duly authorized person.
- It is necessary for there to be clear arrangements for receipt of material: a signature records receipt and agreement with the provisions of the MTA.
- The option of using a shrink-wrap or signed MTA could be left to national preference or national law.
- In many jurisdictions, signature is required. It was noted that, as MTAs become more important, so signature grows more usual, in those jurisdictions. It was also noted that security measures increasingly involve the opening of the shrink-wrap packaging, before receipt by the addressee.
- The transaction costs of signature, documentation and recording in systems requiring signatures can be high. *The CGIAR reported that it distributed 70,000-100,000 accessions annually with MTAs, under the in-trust agreements with the FAO. The CGIAR initially used a signature approach, and turned to a shrink-wrap approach at the request of users, particularly in developing countries. The shrink-wrap approach greatly speeds up the process. Between 700,000 and 1,000,000 samples have been shipped, since the in-trust agreement with FAO came into force. No recipient has to date questioned the legality of the MTA, on the basis of its form. On very few occasions have questions been raised relative to compliance, and it has never been necessary to go to court*.

***By what means will the MTA ensure the application of Article 12.3*?**

59. There are two ways of addressing this question: (1) to consider how the clauses of Article 12.3, some of which are mandatory and some not, are to be included in the MTA and (2) questions of enforceability. The meeting identified the following elements of Article 12.3:

(a) For mandatory inclusion:

- Article 12.3; this should cover "purpose of use" and be a "condition of transfer", in item 5 of the Chair's Proposed Structure.
- Article 12.3d; this should be an obligation of the recipient.
- Article 12.3g; this should be an obligation of the recipient.

[1] This term is used for a contact included in a sealed package with the product to which it refers, or printed on that package, where the act of opening the package constitutes agreement to the contract.

(b) For possible inclusion:

- Article 12.3b; this should be included under Element 5 of the Chair's Proposed Structure. Whether this should be an obligation of the provider or of the recipient should be defined.
- Article 12.3c should be included under Element 5 of the Chair's Proposed Structure. Whether this should be an obligation of the provider or of the recipient should be defined.
- Article 12.3c should go into "provision of information" in item 4 of the Chair's Proposed Structure, as an obligation of the provider.
- The obligations on the recipient should include the provisions on Article 12.3a, Article 12.3b and Article 12.3c.

60. The following administrative procedures to ensure the application of Article 12.3 were proposed:

- A simple mechanism for monitoring, involving government and civil society in each country, to help follow the use of material.
- A mechanism for negative certification to a party to an MTA, of their non-compliance, both at national and at international level, with provisions for civil sanctions and making good damage resulting from an action.
- The establishment of an authority to manage the MTA.
- Clear definition of the obligations placed upon the recipient of materials.

Views on all options on means by which the MTA will ensure the application of Article 12.3

- In these options, there is a mixture of general guidelines on how the MTAs would be applied with considerations regarding the material transferred. An example is when Article12.3b states that materials need to be transferred expeditiously.
- The previous view would be correct if it related to material from a genebank; when from *in situ* conditions, such conditions make sense in an MTA.
- There was general consensus on the importance of Article12.3b and Article12.3c. These stipulate the obligations of the provider, which are important to ensure the application of Article 12.3, even if not compulsorily incorporated in the MTA.
- If *in situ* material is to be included, the MTA would not be an adequate instrument. Access to *in situ* materials may not be covered by, or be incompatible with, the MTA, because it is difficult to give access to material that is not yet known.
- In relation to Article 12.3b, when material is transferred to a third party, it would be relevant to remind the third party of matters such as how access is granted. Article 12.3h deals with the question of *in situ* materials, and states the role of national law.
- The MTA relates only to known material, which is ready for transfer, from genebanks and field genebanks, but not from *in situ* conditions The MTA cannot violate Article 12.3h, in relation to *in situ* materials.
- Article 12.5 states that the MTA may be enforced under contract law. It refers to applicable jurisdiction requirements, in the case of legal disputes. The dispute settlement mechanism must be within the body of the MTA.
- It is necessary to distinguish between those provisions, which are matters for the Governing Body, rather than the obligations of parties to the MTA.

Development of recommendations on the terms of the Standard MTA, in accordance with Article 12.4 of the International Treaty

61. The Meeting decided to discuss the Draft Structure of the MTA that had been proposed by the Chair (*Appendix 2*). The following options/recommendations refer to provisions that one or more Experts maintained should be included, reflected or referred to in the text. There is a need to translate relevant provisions from Treaty language into MTA language.

1. Preamble

Options/Recommendations

- Article 1 and Article 3.
- Article 1.1 and Article 3.
- Article 1, Article 10.1 and Article 10.2, possibly Article 11.1 and Article 11.2 as a package, and Article 12.4 in relation to the purpose of the MTA.
- Article 1.1, Article 9.1, Article 10.1 and Article 10.2.
- Article 13.2 chapeau should be included at the end, in addition to Article 10.1 and Article 10.2, Article 11.1 and Article 11.2.
- Article 1.1, Article 9.1 and Article13.1.

2. Parties to the MTA

Options/Recommendations

- The parties to the MTA, not the Contracting Parties to the Treaty, that is, the provider and the recipient.
- Natural or legal persons who provide or receive plant genetic resources for food and agriculture that are the subject matter of the MTA.
- The parties to the MTA are the provider and recipient, when the MTA applies to a transfer within one country; when across borders, the provider may be a state, and in any case, the state may need to give its authorization. The recipient can be a legal or natural person.
- Cross-boundary transfers should require the provider to be authorized by the Contracting Party to the Treaty.
- There are two kinds of provider: (1) authorized legal persons, and (2) authorized publicly funded research institutes. There are three kinds of recipient: (1) authorized legal persons or their representatives, (2) natural persons, and (3) authorized publicly funded research institutes.
- Article 12.2 identifies what should be reflected under “parties to the MTA”.
- The characterization of parties to the MTA should contain the name of the authorized signatory of the institution providing the material, and its address.

General Views on Parties to the MTA

- The parties to the MTA should be the provider and recipient of the material. The text then qualifies these persons. The MTA should simply state the names of the provider and recipient.
- Whether it is necessary to qualify “the parties” is uncertain. Only the parties to the agreement are bound by it. Signatories would need to have the authority to sign. Some of the qualifications suggested in the options above go well beyond this, and are not derived from the Treaty. *The Legal Advisor noted that the state exercises its sovereign rights by giving its approval to the Treaty. The Treaty provides for a*

Multilateral System using a Standard MTA to transfer resources. The Governing Body sets the terms of the Standard MTA, to implement the terms of the Treaty. The MTA is then established between the provider and recipient of the resource. The provider can be a natural or legal person and could be, for example, a national genebank, which may well be viewed as part of the state. In the latter case, the state, acting through the national genebank, could be viewed as a provider of a resource. But it is then acting as a legal person providing the resource and thus a party to the MTA, and is not in this sense exercising its sovereignty.

3. Definitions

Options/Recommendations

- Definitions should be considered only after the substantive provisions of the MTA have been drafted.

4. Subject matter of the MTA/Material to be transferred

Options/Recommendations

- The subject matter of the MTA, being "The plant genetic resources for food and agriculture and related information, listed in the Appendix to this MTA".

5. General Provisions

Options/Recommendations

- Article 10.1, Article 10.2 and Article 11.1.
- Article 10.1 and Article 10.2, Article 11.1 and Article 11.2, and a provision linking the MTA with the Treaty.
- Article 10.1 and 10.2.

General Views on the General Provisions

- Article 10.1, Article 10.2 and Article 11.1 need not be included in their entirety.
- The articles cited are obligations of the Contracting Parties to the Treaty, not of the parties to the MTA.
- The articles cited are fundamental and need to be reflected.
- "General Provisions" is a fundamental part of the MTA.
- There is no need for "General Provisions".
- Sovereignty is a legal concept that applies only between states, not between parties to an agreement, and such a concept is difficult to include in the substantive clauses of the MTA. The Preamble could state that the Multilateral System was created by states in the exercise of their sovereign rights. *The Legal Advisor advised that, in legal terms, the sovereignty of states was not a concept to be introduced into substantive clauses of an MTA, which is a contractual agreement between natural or legal persons. It is more appropriately referred to in the Preamble.*
- A paragraph in the General Provisions could state that the provider and recipient recognize the sovereign rights of states.
- It is important to state in the MTA who the owner of the material is, or where it originated.
- It will not be acceptable to identify in the MTA ownership of the material from the Multilateral System.

- "Incorporation of material" would then be difficult to confirm, without identification of origin. Because the material is a species, it needs to be described in terms of its origin.
- It would be possible to identify incorporation of material from the Multilateral System.
- Annex I, and in particular Article 11.2, define the coverage of the Multilateral System.
- The MTA could be linked to the Treaty both under the Preamble and under item 8 of the Chair's Proposed Structure, *Interpretation (Applicable Law/Jurisdiction)*.
- "Sovereignty" is mentioned in the Treaty in Article 10.1, and must be taken into account.
- The MTA should be clearly linked to the Treaty. If sovereignty is not to be covered in the General Provisions, it should be covered elsewhere. If the link is made only through the preamble, which is not binding, this could create administrative problems.

6. Rights and Obligations of the Provider

Options/Recommendations

- Article 12.3b, Article 12.3c, Article 12.3e, Article 12.3f, Article 12.3h, Article 13.2a, Article 13.2b(i), and Article 13.2b(iii).
- Article 12.3b, Article 12.3c, and the third party obligations of Article 12.4.
- Article 12.3b and Article 12.3c.

General views on the Rights and Obligations of the Provider

- The Articles referred to here may include both rights and obligations of the provider, which will need to be distinguished at the time of drafting.
- It is not clear what the obligations of the provider would be, except to provide the material.
- The MTA is being developed in the context of the Treaty, where Contracting Parties have both rights and duties.

7. Rights and Obligations of the Recipient

Options/Recommendations

- Article 10.1, Article 12.4 (the last part), Article 12.3a, Article 12.3c, Article 12.3d, Article 12.3f, Article 12.3g, Article 13.2b, Article 13.2c, Article 13.2d(i) and Article 13.2d(ii).
- Article 12.3a, Article 12.3b, Article 12.3d, Article 12.3g, Article 12.4 (the third party obligation), Article 13.2d(ii), and the bridge to relevant substantive provisions.
- Article 12.3a, Article 12.3b and Article 12.3c (when the recipient passes material on to third parties), Article 12.3d; Article 12.3g, Article 12.4, Article 12.6 and Article 13.2.

General views on the Rights and Obligations of the Recipient

- *Note*: all the views expressed in discussing Agenda Item 3, are to be considered as views on items 5 and 6 of the Chair's Proposed Structure, as well as the views on the sovereign rights of states expressed when considering items 1 and 2 of the Chair's Proposed Structure, above.
- The obligations of Contracting Parties to the Treaty are not the same as the obligations of parties to the MTA.

8. Interpretation (Applicable Law/Jurisdiction)
and
9. Dispute Resolution/Settlement

These items were discussed together.

Options/Recommendations

- If a dispute arises between parties to the MTA, they should first attempt to settle it amicably through negotiation. If they cannot resolve it, they shall name a mutually agreed expert to resolve the dispute. If this fails, the provider will either go to an internal legal forum, in order to execute the Agreement, or will refer the matter to the Treaty's Governing Body. *On request, the Legal Advisor explained that there are two possible ways of dispute settlement, both of which are legally valid under the Treaty. The first of these is reference to national courts or other national legal forums. The second of these is arbitration, including international arbitration. A question to be considered is whether it is desirable to have a number of divergent legal opinions coming from national authorities. International Arbitration would make possible a more consistent interpretation.*
- For the resolution of disputes between parties to the MTA, Article 12.5, Article 21 and Article 22 should be taken into account.
- The applicable law should be the Treaty and the decisions of the Governing Body, as well as possible future protocols to the Treaty. Amicable dispute settlement, if unsuccessful, could be followed by binding arbitration by a Panel of Experts established by the Governing Body. Aggrieved parties should not be limited to providers and recipients alone. All interested natural or legal persons should be able to lodge a complaint.
- For dispute settlement, binding international arbitration, with an opportunity for recourse to mutually agreed experts.
- International arbitration by an existing international arbitration mechanism, such as the International Chamber of Commerce. If the existing international arbitration mechanism lacks the necessary expertise, a panel of experts could be appointed jointly by the existing international arbitration mechanism and the Governing Body of the Treaty. The ruling should be based upon General Principles of Law, the Treaty, and the relevant decisions of the Governing Body. *On request, the Legal Advisor noted that it was up to the Contracting Parties to decide the opportunities for recourse to be made available, including both resort to national courts and arbitration. For the Contracting Parties, in the exercise of their sovereign rights, to provide for binding international arbitration, would not, in his opinion, be contrary to the provisions of Article 12.5. In any case, it would still be open to parties to the MTA to have recourse to national courts to enforce international arbitral decisions, should this prove necessary.*

General views on Interpretation (Applicable Law/Jurisdiction) and Dispute Resolution/Settlement

- Article 21 and Article 22 relate to dispute settlement within the Treaty, and are not relevant here. Recourse to dispute settlement should be limited to parties to the MTA.
- The possibility that recourse to national courts or mechanisms may result in dispersive decisions was highlighted.
- Third parties should be able to initiate dispute settlement. *The Legal Advisor noted that, because there are third party beneficiaries under the MTA, through the*

Multilateral System, it may be advantageous to allow for them to be represented in dispute settlement, which would be easier in international arbitration.

- Both provider and recipient should be mentioned for equity.

10. Additional Items

- A waiver of warranty clause, such as that contained in the current CGIAR MTA, should be included.
- The provider should provide no warranty on phytosanitary status, accuracy, correctness of data, and quality and purity of the material provided.
- Sanitary and phytosanitary conditions should be fulfilled.
- There should be a guarantor, to ensure that the obligations the recipient accepts are fulfilled.
- The recipient should undertake to give back, upon request, a sample of the plant genetic resource for food and agriculture, if still available, should it be needed by the provider.
- A time-frame clause is needed.
- The question of how material will be followed may need to be addressed, in the context of the MTA.
- A clause stating that the MTA is the entire agreement between the parties is needed.

General views on Additional Items

- If the concept of returning the material to the provider is the same as in Article 12.3g, then nothing more is needed. If it is different, it changes the Treaty, which is not possible. Nor is the concept of a guarantor in the Treaty.

11. Signature/Acceptance

Options/Recommendations

The options and views on those options recorded under discussion of "*What terms should be included in the MTA, so that recipients are bound by it on acceptance of the material from the Multilateral System?*" apply here.

12. Appendix

General views on the Appendix

- The list of accessions, and relevant information, would be recorded in the *Appendix*. As the MTA also covers *in situ* material, it may be necessary to supply different relevant kinds of information. Article 12.3h is relevant for this *Appendix*.
- Access to *in situ* material is governed through Article 12.3h. The MTA cannot refer to unknown materials, and hence the MTA cannot be used for *in situ* materials, prior to collection and identification.
- The question of access to *in situ* material of crops in Annex I will require more consideration. Countries, according to the Treaty, will facilitate access to *in situ* materials, in accordance with Article 12.3h.
- Access to *in situ* materials can be from the wild, and from on-farm conditions. Access does not always raise questions of ownership.
- If the provider of access is not the collector, this may be a difficult matter. Article 12.3h is not facilitated access, and national law does not provide for facilitated access.
- Article 12.3h is "without prejudice to the other conditions of this article", and hence in the context of the other clauses of the Article.

- In some countries, national legislation does not allow *in situ* collection.
- Access to *in situ* material should take into account the fact that what is private is not in the Multilateral System, and that *in situ* materials belong to farmers. However, many countries do not have genebanks, and materials can only come from *in situ* conditions. After collection and if there is a transfer, the terms of the MTA will apply.
- The Appendix should include the information referred to Article 12.3c.

V. FURTHER WORK

62. The members of the Expert Group recognized the very valuable process that had allowed the systematic expression of options and views regarding the elements of the Standard MTA. They strongly underlined their commitment and willingness to contribute to the finalization of the Standard MTA, within the framework that had been proposed by the Chair of the Expert Group, as soon as possible. A variety of views were expressed on how the work might be carried forward.

Views on further work

- The Interim Committee might wish to constitute a Contact Group to Draft the Elements of the Standard MTA, to work in parallel during its second meeting.
- Developing countries would find it hard to participate in parallel sessions. It would therefore be crucial to have a separate meeting of the Contact Group, at another time, or to ensure that funds were available to facilitate the participation of an adequate number of developing country representatives.
- The Chair of the Expert Group should chair the Contact Group.
- It would be useful for as many members of the Expert Group as possible take part in the Contact Group.
- It was suggested that the Secretariat prepare a table, identifying the overlap between the options that had been proposed, and the differences between them.
- Reformatting of the options would not be useful.
- In some regions, such as the South West Pacific, some thought needed to be given as to how the many developing countries involved could best be represented, including possibly through the South Pacific Commission, and their participation supported in the meeting.
- In drafting the Standard MTA, the Contact Group should take into account the various options identified.
- Governments should nominate members to the Contact Group who had adequate technical, policy and legal skills.
- The Contact Group should comprise 24 members, and an equal number of advisors, on the same regional basis that had been used for the Expert Group, experts and advisors having an equal right to speak.
- The CGIAR, WIPO and UPOV should be invited to participate in the Contact Group under the same terms as they had in the Expert Group.
- An Open-ended Working Group might be better than a Contact Group.
- To be effective, the Contact Group should not be too large.
- The Interim Committee would need to decide whether or not observers should be allowed in meetings of the Contact Group, and, if so, on what basis.
- There should be a video link from the Contact Group.
- The Secretariat, under the guidance of the Chair of the Expert Group, should prepare elements of a draft MTA for the first meeting of the Contact Group.
- No draft should now be prepared, before guidance is provided by the Interim Committee.

- The timing of further work should be considered and made clear, in order that delegations could prepare themselves adequately.

VI. RECOMMENDATIONS OF THE EXPERT GROUP

63. The Expert Group recommended that:

- The Interim Committee establish a Contact Group to draft the elements of the Standard MTA, for consideration by the Governing Body.
- The Interim Committee decide on the preparation of the first draft of elements of the Standard MTA, which would reflect all options and views identified by the Expert Group, taking into account any guidance from the Interim Committee.
- The Contact Group meet as soon as possible.

64. The Secretariat of the Interim Committee for the Treaty noted the importance of adequate extra-budgetary financial resources being made available on a timely basis, without which it would be impossible to move forward. Despite the recognition by the Interim Committee that substantial extra-budgetary funds would be required in the interim process, resources had been pledged very slowly. For this reason, it had not yet been possible to convene the Open-ended Working Group on the Rules of Procedure of the Governing Body, the Financial Rules of the Governing Body, and on Compliance. The meeting of the Expert Group on the Standard MTA had been made possible only through the great generosity of the European Commission. It was stressed that all financial resources in hand, including those from the FAO Regular Budget, would be exhausted by the Second Meeting of the Interim Committee. Nothing is currently available for further work up to, and including, the First Meeting of the Governing Body itself.

65. The Meeting expressed its great appreciation to the European Commission for its generosity in hosting the meeting, supporting the participation of the developing countries, and providing the resources for developing countries to meet beforehand and discuss their positions. The facilities and hospitality provided were most appreciated. The Expert Group thanked, in particular, Mr. Kay Beese and his staff for the efficiency with which they had made arrangements. They thanked the interpreters for their excellent support. They thanked the Secretariat of the Interim Committee for the Treaty, for the continued excellence of their services.

66. The meeting recorded a vote of thanks to its very able Chair, who had guided its deliberations to such a degree of success, which would make it possible, it was hoped, for the Interim Committee to conclude the drafting of the Standard MTA in time for consideration and adoption by the first meeting of the Governing Body.

Appendix 1

AGENDA OF THE MEETING

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1. Election of the Chair
2. Adoption of the agenda and timetable
3. Consideration of questions put to the Expert Group by the first meeting of the Interim Committee:
   - 3.1 What should be the level, form and manner of payments in line with commercial practice?
   - 3.2 Whether different levels of payment should be established for various categories of recipients who commercialize such products or for different sectors and, if so, what those levels, various categories of recipients and sectors should be?
   - 3.3 Whether to exempt small farmers in developing countries and in countries with economies in transition from the payments, and if so, who qualifies as such as a small farmer?
   - 3.4 What constitutes commercialisation in terms of Article 13.2d(ii) of the Treaty?
   - 3.5 What constitutes incorporation of material accessed from the Multilateral System?
   - 3.6 When would a product be considered to be available without restriction to others for further research and breeding?
   - 3.7 How will monetary and other benefits be defined, for the purposes of the standard MTA?
   - 3.8 By what means will the MTA ensure the application of Article 12.3?
   - 3.9 What terms should be included in the MTA, so that recipients are bound by it on acceptance of the material from the Multilateral System?
4. Development of recommendations on the terms of the Standard MTA, in accordance with Article 12.4 of the International Treaty
5. Further work
6. Other business
7. Adoption of the Report to the Second Meeting of the Interim Committee.

Appendix 2

CHAIR'S PROPOSAL FOR THE STRUCTURE AND TERMS OF THE STANDARD MTA

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1. Preamble
2. Parties to the MTA
3. Definitions
4. Subject matter of the MTA/Material to be transferred
5. General Provisions
6. Rights and Obligations of the Provider
7. Rights and Obligations of the Recipient
8. Interpretation (Applicable Law/Jurisdiction)
9. Dispute Resolution/Settlement
10. Additional Items
11. Signature/Acceptance
12. Appendix

Appendix 3

LIST OF DOCUMENTS

CGRFA/IC/MTA-1/04/1	Draft Provisional Agenda
CGRFA/IC/MTA-1/04/2	Provisional Annotated Agenda and Time-Table
CGRFA/IC/MTA-1/04/3	Terms of Reference for the Expert Group on the Terms of the Standard Material Transfer Agreement.
CGRFA/IC/Inf.1	Vienna Convention on the Law of Treaties Section 3: Interpretation of Treaties
CGRFA/IC/Inf.1 Add.1	Vienna Convention on the Law of Treaties

Appendix 4

LIST OF PARTICIPANTS TO THE FIRST MEETING OF THE EXPERT GROUP ON THE TERMS OF THE STANDARD MATERIAL TRANSFER AGREEMENT

EXPERTS AS NOMINATED BY THE CHAIRS OF THE FAO REGIONAL GROUPS

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