

March 2011



The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



RESUMED THIRD MEETING OF THE *AD HOC* THIRD PARTY BENEFICIARY COMMITTEE

Bali, Indonesia, 9 March 2011

REPORT

Agenda Item 1. Opening

1. The Chair of the *Ad Hoc* Third Party Beneficiary Committee (the Committee), Mr Javad Mozafari Hashjin (Near East), opened the meeting and welcomed the members of the Committee. The list of participants is attached as *Appendix 2* of this report.
2. The Secretary also welcomed the members of the Committee and reported on recent developments related to the Third Party Beneficiary Procedures. In particular, the Secretary received a number of enquiries about the list of experts for the consideration of parties to a Standard Material Transfer Agreement (SMTA) and the Third Party Beneficiary in appointing mediators and arbitrators in dispute settlement under Article 8 of the SMTA. Furthermore, the work on the information technology tools to support the operation of the Third Party Beneficiary is well underway and a progress report is to be presented at the Fourth Session of the Governing Body. The Third Party Beneficiary Operational Reserve also received additional allocation following on a number of contributions by Contracting Parties. A report in this regard is contained in the financial report before the Governing Body at its Fourth Session.

Agenda Item 2. Adoption of the Agenda

3. The Committee adopted its agenda, as given in *Appendix 1* of this report.

Agenda Item 3. Consideration of the issue of the application of the Third Party Beneficiary provisions and procedures to transactions related to non-Annex I material transferred with the SMTA

4. At its previous meeting, the Committee had considered document IT/TPBC-3/10/2, *Consideration of the issue of the application of the third party beneficiary provisions and procedures to transactions related to non-Annex I material transferred with the SMTA*. At this meeting, it decided to proceed along the same lines and consider the document, together with a submission by the European Regional Group, which was made available to the members.
5. The Committee did not reach any consensus on the issue of the application of the Third Party Beneficiary Procedures to transactions related to non-Annex I material. Some members were of the view that the Third Party Beneficiary Procedures should not be applicable to transfers by

For reasons of economy, this document is produced in a limited number of copies. Delegates and observers are kindly requested to bring it to the meetings and to refrain from asking for additional copies, unless strictly indispensable.

Meeting documents are available on Internet at <http://www.planttreaty.org>

the International Agricultural Research Centers (IARCs) of the Consultative Group on International Agricultural Research (CGIAR) of non-*Annex I* plant genetic resources whether or not an SMTA with the interpretative footnotes is used. Other members were, however, of the view that the procedures would apply to such transactions, taking into account the provisions of the agreement entered into between the Governing Body and the IARCs of the CGIAR Centres, and other relevant international institutions under Article 15 of the Treaty, as well as the decision of the Governing Body allowing the CGIAR Centres to use the SMTA text with the interpretative footnotes. The Committee therefore agreed that it would be a matter for the Governing Body to resolve.

6. The Committee, however, agreed that there was no obligation on the part of any Contracting Party to use, nor does anything prevent a Contracting Party from using, an MTA with similar text as the SMTA, for the transfer of non-*Annex I* plant genetic resources. The understanding of the Committee was that the use of any such MTA does not establish any obligation on the part of the Governing Body or the Third Party Beneficiary, acting on its behalf, to intervene in the case of any dispute.

7. A representative of the CGIAR, Mr Michael Halewood, upon the invitation of the Committee, provided further background information on the issue. He noted that the IARCs of the CGIAR have been utilizing the MTA approved by the Governing Body at its Second Session for both *Annex I* and non-*Annex I* material, and have, so far, not experienced any significant difficulties in so doing. The Committee thanked Mr Halewood for his updates and explanations to the Committee.

Agenda Item 4. Draft Business Plan of the Governing Body as related to the operations of the Third Party Beneficiary

8. The Committee agreed that it could only consider those sections of the draft Business Plan that were relevant to its work, namely Goal 3, “Framework for the Operations of the Third Party Beneficiary”, under Target 1, “Consolidating the establishment of the core systems and processes of the Multilateral System”.

9. The Committee observed that virtually all of the proposed activities regarding the operation of the Third Party Beneficiary have already been achieved well ahead of the targets. Taking into account the significant progress made to date, by the Governing Body and FAO, as well as the outputs of the Committee’s work since its establishment, the Committee suggested a number of amendments to the relevant text of the draft Business Plan. The resulting text of Goal 3 is contained in *Appendix 3* of this report. The Committee requested the Secretary to bring the text to the attention of the Bureau of this Fourth Session.

Agenda Item 5. Future work of the Committee and recommendations to the Governing Body

10. The Committee noted that, in its three meetings, it had been able to develop the Third Party Beneficiary Procedures, which the Governing Body approved at its Third Session, and the draft Mediation Rules, which are before the Governing Body at its Fourth Session. In addition, the Committee provided advice to the Governing Body and the Secretary on a number of issues connected with the effective implementation of the Procedures and the operations of the Third Party Beneficiary. The issues included the maintenance and operation of the information system in support of the Third Party Beneficiary functions, and the establishment of the Third Party Beneficiary Operational Reserve.

11. The Committee noted that it had fully accomplished all the tasks assigned to it by the Governing Body since the establishment of the Committee. Having successfully achieved its mandates, the Committee agreed that it did not foresee any immediate outstanding work that would require the extension of its mandate, but stood ready to undertake any further work the Governing Body may wish to further assign to it.

Agenda Item 6. Other Business

12. The Committee discussed no other business.

Agenda Item 7. Adoption of the Report

13. The Committee adopted its report.

Closing of the meeting

14. The Committee thanked and commended the Secretariat for the excellent work it had done in preparing and organizing all the meetings of the Committee. In particular, the Committee acknowledged the high quality of the various working documents and background materials prepared by the Secretariat, including the technical expertise put at its disposal, which facilitated the successful completion of the Committee's various tasks.

Appendix 1

Item 2 of the Draft Provisional Agenda
RESUMED THIRD MEETING OF THE <i>AD HOC</i> THIRD PARTY BENEFICIARY COMMITTEE
Bali, Indonesia, 9 March 2011
DRAFT PROVISIONAL AGENDA

1. Opening of the meeting
2. Adoption of the agenda
3. Consideration of the issue of the application of the Third Party Beneficiary provisions and procedures to transactions related to non-*Annex I* material transferred with the SMTA
4. Draft Business Plan of the Governing Body as related to the operations of the Third Party Beneficiary
5. Future work of this Committee and recommendations to the Governing Body
6. Other business
7. Adoption of report

Appendix 2

LIST OF PARTICIPANTS

AFRICA Region	<p>Ms Maria Antonieta COELHO Associate Professor Faculty of Law, University A. Neto Centro Nacional de Recursos Fitogenéticos Prédio Centro Nacional de Investigação Scientífica Luanda, Angola Cell: +244 92 505 2060</p>
ASIA Region	<p>Mrs Erna Maria LOKOLLO Indonesian Agency for Agricultural Research and Development Bogor,Indonesia Phone: +62 251 8325 177 or +62 251 8333 964 ext 113 Cell: +62 0813 100 25690 Fax: +62 251 8314 496 Email: emlokollo@yahoo.com</p>
EUROPEAN Region	<p>Ms Susanna PAAKKOLA Senior Adviser, Legislative Affairs Ministry of Agriculture and Forestry Department of Agriculture Mariankatu 23, Helsinki, Finland P.O. Box 30, FI- 00023 Government Tel. +358 9 160 52331 Fax. +358 9 160 52472 Email: susanna.paakkola@mmm.fi</p>
LATIN AMERICA and the CARIBBEAN Region	<p>Ms Mónica MARTÍNEZ MENDUIÑO Dirección General de Política Multilateral y Gestión en Organismos Internacionales Av. 10 de Agosto y Carrión Ministerio de Relaciones Exteriores, Comercio e Integración Quito, Ecuador Email: monicaun@hotmail.com mmartinez@mnrree.gov.ec</p> <p><i>Alternate</i></p> <p>Ms Maria Cecília B. CAVALCANTE VIEIRA Environment Division - Ministry of External Relations Esplanada dos Ministérios, Bloco H, Anexo I, sala 439 ZIP: 70.170-900, Brasilia, Brazil Phone: + 55 61 34 11 68 96 Fax: + 55 61 34 11 84 46 Email: mceciliavieira@gmail.com</p>

<p>NEAR EAST Region</p> <p>Chairperson</p>	<p>Mr Javad MOZAFARI HASHJIN Head of National Plant Gene Bank of Iran Seed and Plant Improvement Institute (SPII) P.O. Box 31585-4119 Mahdasht Ave. Karaj, Iran Phone: +98 261 2701260 Fax: +98 261 2716193 Email: jmozafar@yahoo.com</p>
<p>NORTH AMERICA</p>	<p>Mr Campbell Davidson Canada</p>
<p>SOUTH WEST PACIFIC Region</p>	<p>Mr Raj PATIL Executive Officer Multilateral Policy Trade and Market Access Department of Agriculture, Fisheries and Forestry 18 Marcus Clarke Street, GPO Box 858 Canberra City ACT 2601, Australia Phone: +61 2 6272 3058 Fax: +61 2 6272 4600 E-Mail: Raj.Patil@daff.gov.au</p>

**SECRETARIAT OF THE INTERNATIONAL TREATY ON PLANT GENETIC
RESOURCES FOR FOOD AND AGRICULTURE**

<p>Mr Shakeel BHATTI</p>	<p>Secretary International Treaty on Plant Genetic Resources for Food and Agriculture Food and Agriculture Organization of the United Nations Viale delle Terme di Caracalla 1 00153 Rome, Italy Phone: +39 0657053441 Fax: +39 0657056347 Email: shakeel.bhatti@fao.org</p>
<p>Mr Kent NNADOZIE</p>	<p>Senior Treaty Support Officer International Treaty on Plant Genetic Resources for Food and Agriculture Food and Agriculture Organization of the United Nations Viale delle Terme di Caracalla 1 00153 Rome, Italy Phone: +39 0657052465 Fax: +39 0657053057 E-mail: kent.nnadozie@fao.org</p>
<p>Mr Daniele MANZELLA</p>	<p>Treaty Support Officer International Treaty on Plant Genetic Resources for Food and Agriculture</p>

	Food and Agriculture Organization of the United Nations Viale delle Terme di Caracalla 1 00153 Rome, Italy Phone: +39 0657056180 Fax: +39 0657053057 E-mail: daniele.manzella@fao.org
Mr Clive STANNARD	Consultant Rue St. Mary 10 04300 Forcalquier France Phone: +33 492 75 46 94 Email: clive.stannard@mac.com

Appendix 3

Goal 3: Framework for the Operations of the Third Party Beneficiary

The Standard Material Transfer Agreement makes provision for a Third Party Beneficiary.

The establishment of the procedures for the Third Party Beneficiary as well as of the mediation rules attached to the procedures concluded the basic foundational tasks in this area. However, at the opening of this planning period, it remains necessary to focus on the practical implementation of these procedures, in particular as they relate to the movement and effective maintenance of information.

- *Priority Objectives*

- ❖ **Management of information provided by the parties to standard material transfer agreements for use by the Third Party Beneficiary.** Effective dispute resolution is highly dependent on the availability of information and the more that this information can be made available to the Third Party Beneficiary using the services of a customised information system, the more **cost-effective and efficient** the dispute resolution process is likely to be. Ensuring that, when requested, the **confidentiality of sensitive information is guaranteed** is also of utmost importance as a measure that promotes confidence in the System.
- ❖ **Review of the implementation of the Third Party Beneficiary Procedures and the operations of the Third Party Beneficiary when appropriate.** The Third Party Beneficiary acts on behalf of the Governing Body and the Treaty, based on the Third Party Beneficiary Procedures. In order to ensure confidence in the System and good governance, it is imperative that the **Governing Body periodically review the implementation of the Third Party Beneficiary Procedures and the operations of the Third Party Beneficiary** to ensure that they contribute to fulfilling the objectives of the Treaty and the relevant decisions of the Governing Body, and that adequate resources are provided to that effect.

- *Partnerships and Responsibilities*

Once the procedures are applied, **the Governing Body**, supported by **the Secretary**, will collate and maintain information required by the **Third Party Beneficiary** and submitted by the parties to standard material transfer agreements as required for cost-effective and efficient Third Party Beneficiary operations. **The Governing Body** will review the implementation of the procedures and the operations of the Third Party Beneficiary to ensure that the established procedures and the operations are effective in meeting the Governing Body's policy objectives. The Governing Body may in particular make recommendations on improvement of the customised information system that is maintained by the Secretary.

- *Resources*

It is not projected that more than minimal staff time will be needed to maintain the Third Party Beneficiary function, although substantive additional research and administrative support

might be required in the event of a dispute. Financial resources will be needed to maintain and improve the customised information system. The Third Party Beneficiary Reserve that is established under Financial Rule 6.5, may, depending upon events, be used and replenished as required.

Estimated overall resource requirements for the planning period: USD_____

- *Outcomes*

By the close of the planning period the procedures of the Third Party Beneficiary and their application, including the necessary collection and maintenance of information, should be implemented in a routine manner.