



## **SUMMARY OF THE SECOND SESSION OF THE COMMISSION ON GENETIC RESOURCES FOR FOOD AND AGRICULTURE ACTING AS INTERIM COMMITTEE FOR THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE: 15-19 NOVEMBER 2004**

The second session of the Commission on Genetic Resources for Food and Agriculture (CGRFA) acting as Interim Committee for the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR) was held from 15-19 November 2004, at the headquarters of the UN Food and Agriculture Organization (FAO), in Rome, Italy. Convened immediately following the tenth regular session of the CGRFA (CGRFA-10), the meeting was attended by approximately 280 participants, representing 85 countries, inter-governmental and non-governmental organizations, and international agricultural research centers (IARCs).

The meeting addressed a heavy agenda, reflecting the amount of work necessary to prepare for the first meeting of the ITPGR Governing Body. Delegates considered: the draft rules of procedure and financial rules for the Governing Body; draft procedures and mechanisms for compliance; the draft funding strategy for Treaty implementation; the draft work programmes and budgets for the Interim Committee and the Governing Body; and draft agreements to be signed between the Governing Body and the IARCs of the Consultative Group on International Agricultural Research (CGIAR). They agreed to establish an open-ended inter-sessional working group to address the rules of procedure and financial rules for the Governing Body, the funding strategy and procedures for compliance. Delegates heard a report from the Expert Group on the terms of the standard Material Transfer Agreement (MTA) and agreed on the terms of reference (TORs) for an inter-sessional contact group to draft the standard MTA for Governing Body consideration. They also heard a progress report on inter-sessional activities, including the ITPGR entry into force, and a report on cooperation with relevant international bodies.

The lengthy agenda placed a heavy burden on delegates, particularly since an inter-sessional working group, established by the first session of the Interim Committee to address the draft rules of procedure and financial rules for the Governing Body and compliance, did not meet due to lack of funds. These items are indispensable for the operation of the Governing Body and, furthermore, they are explicitly identified as priorities in the Treaty text. At the same time, stressing internal coordination as a prerequisite for negotiations and accommodating the

needs of one-person delegations, developing countries required a considerable amount of time for regional consultations and opposed any negotiation in parallel or small groups. To the frustration of many, the plenary discussed at length its organization of work on a daily basis. Negotiations were difficult and slow, and the meeting managed to produce only heavily bracketed text on the rules of procedure and the financial rules for the Governing Body, two items which, according to many, could easily be resolved in a small group of legal experts. In the end, a last-minute late night and early morning negotiating session, and a constructive Friends of the Chair group produced a compromise text on the TORs for an inter-sessional contact group on the terms of the standard MTA, allowing for work on the MTA, the main concern of most developed countries, to continue. Agreement was also reached to establish another inter-sessional working group to deal with legal issues and the funding strategy, a priority item for developing countries. While the results of the meeting can be described as satisfactory – at least for laying down the foundation to prepare for the first session of the Governing Body – much depends on inter-sessional work and the extra-budgetary resources needed to ensure the successful completion of that work.

### **IN THIS ISSUE**

A Brief History of the ITPGR .....	2
Report of the ITPGR Interim Committee.....	2
Terms of the Standard MTA .....	3
Draft Rules of Procedure for the Governing Body.....	3
Draft Financial Rules for the Governing Body.....	4
Draft Procedures and Mechanisms for Compliance.....	5
Draft Funding Strategy .....	5
Work Programme and Budget for the Interim Committee .....	5
Draft Work Programme and Budget for the Governing Body .....	6
Draft Agreements between the Governing Body and the IARCs.....	6
Cooperation with International Organizations .....	6
Closing Plenary .....	6
A Brief Analysis of the Meeting.....	7
Upcoming Meetings .....	8



## A BRIEF HISTORY OF THE ITPGR

The FAO Commission on Plant Genetic Resources was established in 1983. Its mandate was broadened in 1995, to cover all components of agricultural biodiversity of relevance to food and agriculture, including plant, animal, forestry, fishery and microbial genetic resources. It was then renamed the Commission on Genetic Resources for Food and Agriculture. The Commission currently comprises 167 countries and the European Community. Its main objectives are to ensure the conservation and sustainable use of genetic resources for food and agriculture, as well as the fair and equitable sharing of benefits derived from their use.

**PLANT GENETIC RESOURCES:** The development of the Global System on Plant Genetic Resources began in 1983. The Global System contains two key elements: the Report on the State of the World's PGRFA and the Global Plan of Action (GPA) for the conservation and sustainable utilization of PGRFA. The first Report on the State of the World's PGRFA was presented at the fourth International Technical Conference held in Leipzig, Germany, in 1996. The GPA, adopted through the Leipzig Declaration, comprises a set of activities covering capacity building and *in situ* and *ex situ* conservation of PGRFA. The Global System also includes: the non-binding International Undertaking on PGRFA (IU); the International Code of Conduct for Plant Germplasm Collecting and Transfer; gene bank standards and guidelines; the draft code of conduct on biotechnology; crop and thematic networks; the international network of *ex situ* collections; and the World Information and Early Warning System.

**ITPGR:** The International Treaty on Plant Genetic Resources for Food and Agriculture negotiations, which began in 1994, were based on the revision of the non-binding IU. The IU was originally based on the principle that PGRFA should be "preserved ... and freely available for use" as part of the "common heritage of mankind." This principle was subsequently subjected to "the sovereignty of States over their plant genetic resources," according to FAO Resolution 3/91. In April 1993, the CGRFA decided that the IU should be revised to be in harmony with the Convention on Biological Diversity.

Negotiations spanned more than seven years. From 1994 to 1998, the CGRFA met in five extraordinary and two regular sessions to develop the structure of and refine a draft negotiating text. From 1999-2001, a contact group chaired by Amb. Fernando Gerbasi (Venezuela) held six sessions to address contentious issues, including the list of crops to be included in the MS, benefit-sharing, intellectual property rights (IPRs) to materials in the MS, financial resources, genetic materials held by the IARCs, and definition of key terms. CGRFA's sixth extraordinary session (Rome, June-July 2001) attempted to conclude negotiations, but delegates did not reach agreement on: the definitions of PGRFA and genetic material; the application of IPRs to materials in the MS; the IU's relationship with other international agreements; and the list of crops to be included in the MS. The session adopted the text and transmitted outstanding issues to the FAO Council. The 121st FAO Council and an Open-ended Working Group held under its auspices (Rome, October-November 2001) resolved outstanding issues, and on 3 November 2001, the 31st FAO Conference adopted the ITPGR by a vote of 116 in favor, zero against and two abstentions.

The ITPGR entered into force on 29 June 2004, ninety days after the deposit of its 40th instrument of ratification. Sixty-one countries and the European Community have now ratified the Treaty, a legally binding instrument that targets the conservation and sustainable use of PGRFA and equitable benefit-sharing for sustainable agriculture and food security. The Treaty establishes a Multilateral System (MS) for facilitated access to a specified

list of PGRFA, balanced by benefit-sharing in the areas of information exchange, technology transfer, capacity building and commercial development. The list of crops in Annex I defines the Treaty's scope and includes 35 crop genera and 29 forage species.

The Interim Committee was convened to: prepare draft rules of procedure and draft financial rules for the ITPGR Governing Body, and a budget proposal; propose procedures for compliance; prepare draft agreements to be signed by the IARCs and the Governing Body; draft a standard Material Transfer Agreement for facilitated access, including terms for commercial benefit-sharing; and initiate cooperative arrangements with the CBD COP.

### FIRST MEETING OF THE ITPGR INTERIM

**COMMITTEE:** During the first meeting of the CGRFA acting as the ITPGR Interim Committee (Rome, October 2002), delegates adopted the rules of procedure for the Interim Committee and established an Open-ended Working Group to propose draft rules of procedure and financial rules for the Governing Body, and draft procedures for compliance. They also adopted the terms of reference for an Expert Group to address the terms of the standard MTA.

**CGRFA-9:** The ninth session of the CGRFA (Rome, October 2002) addressed issues related to animal and plant genetic resources, including the Report on the State of the World's Animal Genetic Resources, and implementation and monitoring of the GPA. Delegates also revised the interim MTA between the IARCs of the CGIAR and the FAO, and considered the status of the draft code of conduct on biotechnology.

**CGRFA-10:** The tenth session of the CGRFA (Rome, November 2004) marked the twentieth anniversary of the CGRFA and the entry into force of the ITPGR. Delegates addressed items relating to animal and plant genetic resources and general issues, and held a dialogue session with civil society. The Commission decided to hold an international technical conference on animal genetic resources in 2007, to mark the completion of the first report on the State of the World's animal genetic resources. Regarding its future work, the Commission requested the Secretariat to prepare a multi-year programme of work for submission to CGRFA-11, including a study on the status and needs of forestry, fishery and microbial genetic resources, biodiversity for food and agriculture, the agro-ecosystem approach to genetic resource conservation and cross-sectorial matters, with a view to implement the Commission's full mandate in the medium and long term.

### REPORT OF THE ITPGR INTERIM COMMITTEE

On Monday, 15 November 2004, Fernando Gerbasi (Venezuela), Chair of the first session of the Interim Committee of the International Treaty on Plant Genetic Resources for Food and Agriculture, opened the meeting highlighting ITPGR's entry into force on 29 June 2004, and Spain's offer to host the first meeting of the Governing Body. Noting the rapid ratification of the Treaty, Louise Fresco, FAO Assistant Director-General for Agriculture, recalled that the first meeting of the Governing Body should convene no later than two years after the Treaty's entry into force. Stressing the fact that the inter-sessional working group on the rules of procedure and the financial rules for the Governing Body, and on compliance, did not convene due to lack of funds, she highlighted: progress made by the Expert Group on the standard Material Transfer Agreement (MTA); establishment of the Global Crop Diversity Trust as an essential element of the Treaty's funding strategy; and the need for an inter-sessional work programme to prepare for the first meeting of the Governing Body, taking into account financial considerations.



Delegates then elected the meeting's Bureau. Upon a proposal by Portugal, on behalf of Europe, North America and Southwest Pacific, delegates elected Bryan Harvey (Canada) as Chair of the meeting, and Anders Christiansen (Denmark) and Kristiane Herrmann (Australia) as Vice-Chairs. Panama, on behalf of the Group of 77 and China, nominated Carlos Pozzo Bracho (Venezuela), Champak Chatterji (India), Javad Mozafari (Iran) and Elizabeth Matos (Angola) as Vice-Chairs, and Modesto Fernández Díaz-Silveira (Cuba) as the meeting's rapporteur.

José Esquinas-Alcázar, Secretary of the Commission on Genetic Resources for Food and Agriculture (CGRFA), presented a report on progress and activities since the first meeting of the Interim Committee (CGRFA/MIC-2/04/Inf.2). He noted that, due to the early entry into force of the ITPGR, the FAO budget and work programme do not provide for funds for the activities of the Interim Committee and preparation of the Governing Body, and called for extra-budgetary resources. He further stressed that only the countries who submit their instrument of ratification 90 days before the first session of the Governing Body will be able to attend that meeting as Parties.

Delegates then considered the provisional agenda and timetable (CGRFA/MIC-2/04/2), including two alternatives: addressing all issues in plenary; or establishing a group to work in parallel to the plenary for the first two days of the meeting. Noting the need to finalize issues on the agenda for the first session of the Governing Body, the Netherlands, on behalf of the European Community and its Member States (EU), the US, Japan and Australia supported meeting in two parallel sessions. Colombia, on behalf of the Latin America and the Caribbean Group (GRULAC), Zambia, on behalf of the African Group, and many other developing countries opposed, noting that many delegations cannot participate in two parallel sessions. Following regional consultations, delegates adopted the agenda and decided to proceed in a plenary session with a flexible time schedule to allow for regional coordination.

Delegates met in plenary sessions throughout the week. On Wednesday, Chair Harvey established an informal group to discuss the terms of reference (TORs) for the inter-sessional contact group on the standard MTA. On Thursday, the group was suspended, due to opposition by the G-77/CHINA to negotiate in a small group, and negotiations on the TORs continued in plenary. A Friends of the Chair group convened on Friday to agree on the TORs of the contact group, the work programmes and budgets for the Interim Committee and Governing Body, and inter-sessional work before the first meeting of the Governing Body. The closing plenary met at 11:20 pm on Friday to adopt the report of the meeting (CGRFA/MIC2/04/REP - PART 1 and 2).

This report outlines discussions and summarizes the outcomes on each agenda item.

#### **TERMS OF THE STANDARD MTA**

On Monday, Eng-Siang Lim (Malaysia), Chair of the Expert Group on the terms of the standard MTA, introduced the group's report (CGRFA/IC/MTA-1/04/Rep), presenting: options for the terms of the MTA; associated implications; country views; and recommendations on future work. Most delegates supported the establishment of an inter-sessional contact group to draft the terms of the MTA, for consideration and adoption by the Governing Body. The US suggested adopting the TORs of the contact group. Noting with concern the limited participation of developing countries in the Expert Group meeting, delegates discussed ways of ensuring a more participatory and multi-disciplinary approach for the contact group, without reaching agreement.

On Tuesday evening, Chair Harvey circulated a Chair's text on the TORs for the contact group, and on Wednesday, he established an informal group to further discuss the text.

On Thursday, Chair Harvey suggested that the informal group meet during the lunch break and continue working during the time allotted for G-77/China coordination. Many developing countries opposed, and the informal group was suspended. In the afternoon, the US offered to host the meeting of the contact group in early 2005. Discussion on the TORs continued in an evening plenary session, on the basis of a text drafted by G-77/China and incorporating suggestions from other regions. Contentious issues included: language to ensure consistency with the Treaty; composition of the contact group, including regional representation and participation of advisers; and organizations to be invited. On Friday, a Friends of the Chair group met to finalize a compromise text on the TORs, which was approved by acclamation in an afternoon Plenary.

**Final Outcome:** In the report of the meeting (CGRFA/MIC-2/04/REP-PART II), the Interim Committee established a contact group to develop a draft standard MTA for consideration by the Governing Body. The TORs, included in an appendix to the report, provided that:

- the contact group will be composed of 12 countries or representatives per region, with the exception of North America and Southwest Pacific, which will have six representatives each. A maximum of three advisers per country, with no speaking rights, may be present in the meeting room;
- the contact group shall be chaired by the Expert Group Chair;
- the Consultative Group on International Agricultural Research (CGIAR), the Convention on Biological Diversity (CBD), the World Intellectual Property Organization (WIPO) and the Union for the Protection of New Varieties of Plants (UPOV) are invited to send one representative each;
- the Secretariat will prepare the first draft of the MTA; and
- the contact group may be held in the first half of 2005, subject to availability of extra-budgetary resources.

The Interim Committee welcomed the offer by the US to provide support for the meeting in 2005.

#### **DRAFT RULES OF PROCEDURE FOR THE GOVERNING BODY**

On Monday, Chair Harvey introduced the draft rules of procedure for the Governing Body (CGRFA/MIC-1/02/4 and Corrigendum), noting that they are based on the rules in force for the FAO Interim Commission on Phytosanitary Measures. He suggested establishing a small group to work on the item, which was supported by the EU and opposed by many developing countries. Many developing countries stressed the need to convene an inter-sessional working group, as agreed upon at the first session of the Interim Committee.

On Tuesday, delegates discussed the draft rules of procedure for the Governing Body in plenary, suggesting additional rules and holding lengthy discussions on: membership, officers, secretary, sessions, agenda and documents, decision-making procedures, observers, records and reports, subsidiary bodies, expenses, and amendment and suspension of the rules. Delegates did not reach agreement on a range of issues, including:

- composition and term of office of the Bureau;
- appointment and functions of the Secretary;
- representation of Parties at Governing Body sessions;
- preparation of the agenda and documents;
- the role of the FAO Director-General and of the Secretary in the Governing Body operations;
- decision-making and voting procedures;
- participation of observers;
- membership in subsidiary bodies;
- expenses of developing country representatives;
- amendment and suspension of the rules; and
- the application *mutatis mutandis* of FAO General Rules to all



matters not specifically dealt with under the rules.

The draft rules of procedure remain bracketed. On Friday, following discussion in a Friends of the Chair group, the plenary decided to continue work in an inter-sessional open-ended working group.

**Final Outcome:** In the report of the meeting (CGRFA/MIC-2/04/REP – PART II), the Interim Committee decided that the draft rules of procedure for the Governing Body should be forwarded to an open-ended working group, prior to submission to the first session of the Governing Body. The draft rules are contained in an annex. The entire text is bracketed.

Under Rule I (Membership), membership in the Governing Body is composed of all Parties to the Treaty. Rule II (Officers) includes several alternatives regarding the number of Vice-Chairs, their links to the FAO regions, and the term of office of the Bureau. Rule III (Secretary) includes alternative language regarding the appointment of the Secretary of the Governing Body, and its functions and responsibilities.

Rule IV (Sessions) contains provisions regarding: holding regular sessions at least once every two years and special sessions as necessary; communication of the date and place at least two months before each session; communication of delegation members; meetings held in public; and the majority constituting a quorum. Bracketed provisions refer to the role of the FAO Director-General, the Bureau and the Secretary in convening the sessions, and to voting rights at Governing Body sessions.

Rule V (Agenda and Documents) addresses preparation, circulation and modifications of the provisional agenda. Bracketed text includes language regarding: the role of the Chair and the Bureau; timing for circulation of additional items; timing for circulation of, and amendments to, the agenda; and the role of the FAO Director-General versus the Secretary.

Rule VI (Decision-making and voting procedures) contains different bracketed alternatives addressing decision making by consensus only, or by another method reached by consensus on certain measures, or on specific issues by a two-thirds majority of the Parties present and voting.

Rule VII (Observers) contains bracketed alternative language regarding participation of observers, including international organizations.

Rule VIII (Reports and Records), addressing adoption of a report embodying the decisions and conclusions of the Governing Body, includes bracketed language regarding recording individual Party statements or minority views, and specifying the roles of the FAO Director-General and the Secretary.

Under Rule IX (Subsidiary Bodies) on establishment of, and participation in, subsidiary bodies, bracketed language addresses participation of observers and individuals in their personal capacity.

Rule X (Expenses) contains bracketed language stating that the expenses of developing country delegates shall be met by the core Treaty budget.

Rule XI (Languages) addresses the official languages of the Governing Body and interpretation from other languages.

Rule XII (Amendment and Suspension of the Rules) includes bracketed language regarding the timing and conditions for amendments of, or addition to, the rules, and suspension of rules by consensus. Rule XII *bis* (Application of General FAO Rules) provides for the *mutatis mutandis* application of FAO General Rules to matters not specifically dealt with under the rules. Rule XII *ter* (Overriding Authority of the Treaty) notes that in the event of any conflict, the provisions of the Treaty shall prevail.

Rule XIII (Entry into Force) provides for entry into force of the rules upon approval by consensus by the Governing Body.

## DRAFT FINANCIAL RULES FOR THE GOVERNING BODY

On Wednesday, delegates discussed the draft financial rules for the Governing Body (CGRFA/MIC-2/04/8). Controversial issues included: nature, preparation and elements of the budget; provision of funds; Party contributions; and FAO contribution through its core budget.

The draft financial rules remain bracketed. On Friday, following discussion in a Friends of the Chair group, the plenary decided to continue work in an inter-sessional open-ended working group.

**Final Outcome:** In the report of the meeting (CGRFA/MIC-2/04/REP – PART II), the Interim Committee decided that the draft rules of procedure for the Governing Body should be forwarded to an open-ended inter-sessional working group, prior to submission to the first session of the Governing Body. The draft rules are contained in an annex. The entire text is bracketed.

Rule I (Applicability) states that the rules shall govern the financial administration of the Treaty and contains bracketed language regarding the application *mutatis mutandis* of FAO financial rules and procedures to other matters.

Under Rule II (Financial Period), bracketed alternatives include a financial period of one or two years.

Rule III (Budget) outlines budget coverage and elements, provisions and transfers. Bracketed language addresses: the Administrative Budget, relating to Parties' contributions or also to the amount reserved for the Treaty in the FAO budget; a special fund relating to other funds made available; and a timeline for circulation of the draft budget to Parties.

Rule IV (Appropriations) details rules on appropriations and use of unliquidated prior year obligations, containing bracketed language regarding the authority of either the Secretary or the Governing Body, and retaining unliquidated obligations for future disbursement, or transferring them against current appropriations.

Rule V (Provision of Funds) details the resources of the Treaty. It includes numerous bracketed alternatives on, *inter alia*: voluntary contributions based on an adjusted or not indicative scale of contributions adopted by the Governing Body by consensus or majority decision; mandatory contributions; income deriving from commercial benefit-sharing; the amount reserved for the Treaty in the FAO budget; predictable and agreed contributions from relevant international mechanisms; an agreement to be signed between the contributor and the FAO; the timing for Party contributions; and contributions by Parties that are not FAO members.

Rule VI (Funds) states that all contributions and other receipts shall be placed in a trust fund administered by FAO. Two bracketed alternatives detail the funds maintained by FAO with respect to the trust fund, regarding the amount reserved for the Treaty in the FAO budget and/or all Party contributions.

A bracketed Rule VI *bis* (Reimbursement) states that the Governing Body shall reimburse FAO for the administrative and operational support services provided to the Governing Body, subsidiary bodies and the Treaty Secretariat.

Rule VII (Accounts and Audit) subjects all accounts and funds to the FAO internal and external audit process and provides for an FAO statement of accounts.

Rule VIII (Amendments) states that the financial rules can be amended by the Governing Body by consensus or in accordance with the rules of procedure. Bracketed Rules IX (Entry into Force) and X (Overriding Authority of the Treaty) state that the rules shall enter into force upon approval by the Governing Body and that in the event of any conflict, the Treaty provisions shall prevail.

**DRAFT PROCEDURES AND MECHANISMS FOR COMPLIANCE**

On Thursday, the Secretariat introduced a compilation and analysis of governments' views on compliance with the Treaty (CGRFA/MIC-2/04/3), noting that ITPGR Article 21 (Compliance) requires that the Governing Body consider and approve compliance mechanisms at its first meeting. Delegates commented on possible principles and modalities of the compliance system, with some suggesting an inter-sessional working group meeting to further work on the issue.

The EU suggested establishment of a compliance committee and requested the Secretariat to prepare a draft to facilitate the working group meeting. The US, supported by Australia and Canada, invited further submission of views to gather experience on country needs. Australia and Canada proposed that compliance be a standing item on the Governing Body agenda. On Friday, Chair Harvey presented the plenary with a compromise reached in the Friends of the Chair group, providing for continued work in an inter-sessional open-ended working group.

**Final Outcome:** In the report of the meeting (CGRFA/MIC-2/04/REP-PART II), the Interim Committee:

- stressed that the mechanisms and procedures for compliance should be positive, transparent, cooperative and non-adversarial;
- agreed that countries could submit further views on compliance to the Secretariat for compilation; and
- decided that draft procedures and mechanisms for compliance be forwarded to the open-ended working group, prior to submission to the first session of the Governing Body.

**DRAFT FUNDING STRATEGY**

On Wednesday, the Secretariat presented a document on the preparation of the draft funding strategy for Treaty implementation (CGRFA/MIC-2/04/4), including a review of the nature of the strategy, the mobilization of resources, the use of those resources, and the role of the Global Plan of Action (GPA). Delegates also welcomed the report delivered by Amb. Fernando Gerbasi, Chair of the Interim Panel of Eminent Experts, on the activities of the Global Crop Diversity Trust (CGRFA/MIC-2/04/5), which is an essential element of the funding strategy.

Delegates then discussed the preparation of the draft strategy, resource mobilization, and periodic establishment of a funding target. Malaysia, the EU and the US proposed that the Secretariat prepare a first draft of the strategy for submission to the Governing Body, with Brazil, supported by many, suggesting an open period of time for submitting country views to the Secretariat. On resource mobilization, the EU prioritized the FAO regular budget and voluntary contributions by Parties over other voluntary contributions and commercial benefit-sharing. Several countries called for a financial review to be prepared by the Secretariat.

On Friday morning, Colombia, on behalf of the G-77/China, introduced a proposal on the funding strategy, highlighting that the standard MTA and the funding strategy are equally important for ITPGR implementation. He outlined steps for preparing the draft text of the funding strategy, including submission of views by Parties to the Secretariat and preparation of a study on a range of issues regarding:

- the status of ITPGR Article 18.4 (funding strategy) with regard to financial resources available to the Treaty;
- resource availability mechanisms;
- status of allocation of funds by developed countries;
- status of national, bilateral, regional and multilateral resources;
- prediction of monetary benefits derived from commercialization;

- estimation of a funding target to be achieved during the next five to ten years and strategies to achieve that target; and
- estimates of a funding target required to cover Treaty activities and operational costs.

The EU agreed on using the G-77/China proposal for further development of the funding strategy by the Secretariat, requesting that their suggestions also be taken into account. Japan supported the proposal, on the understanding that drafting the funding strategy does not slow down the MTA process. The US suggested addressing the item in the first session of the Governing Body. Iran and Cuba stressed the need for an inter-sessional working group to address the rules of procedure and the funding strategy. In the afternoon, Chair Harvey presented the plenary with a compromise reached in the Friends of the Chair group, providing for continued work in an inter-sessional open-ended working group, on the basis of a combination of the G-77/China and EU proposals.

**Final Outcome:** In the report of the meeting (CGRFA/MIC-2/04/REP-PART II), the Interim Committee requested that the Secretariat conduct a study on the nature, criteria and possible contents of the funding strategy, on the basis of written comments from countries, and decided that the strategy be forwarded to an open-ended working group, prior to its submission to the first session of the Governing Body. It further requested the Interim Panel of Eminent Experts to continue to oversee the Global Crop Diversity Trust, until the Executive Board of the Trust has been constituted, and recommended that the Governing Body formalize its relationship with the Trust at its first meeting.

**WORK PROGRAMME AND BUDGET FOR THE INTERIM COMMITTEE**

On Wednesday, the Secretariat introduced a draft work programme and budget for the Interim Committee (CGRFA/MIC-2/04/7), stressing the need for financial and human resources. On Thursday, delegates discussed the work programme, with many developed countries prioritizing completion of the standard MTA. Spain offered to host the first meeting of the Governing Body, and the Plenary debated whether to schedule it for 2005 or 2006. The US offered to provide support for the meeting of an inter-sessional contact group on the MTA in early 2005. Colombia requested confirmation that an open-ended inter-sessional working group on compliance and the funding strategy will be convened. On Friday, Chair Harvey presented the plenary with a compromise reached in the Friends of the Chair group, which was approved. Brazil reiterated the opposition of developing countries to holding parallel working group meetings.

**Final Outcome:** In the report of the meeting (CGRFA/MIC-2/04/REP-PART II), the Interim Committee recognized the priority to have adequate staff resources, and agreed to convene:

- a one-week meeting of the contact group on the MTA;
- a one-week meeting of the open-ended working group, depending on availability of extra-budgetary funds, to address, after a first day devoted to regional meetings: rules of procedure, financial rules, compliance, and the funding strategy; and
- a one-week meeting of the Governing Body with the following priorities: rules of procedure, financial rules, work programme and budget of the Governing Body; standard MTA; compliance; funding strategy; appointment of Secretary; and implementation of ITPGR Article 6 (Sustainable Use of Plant Genetic Resources for Food and Agriculture).

The Interim Committee unanimously welcomed the offer by Spain to host the first session of the Governing Body in 2005 or 2006, and requested the Secretariat to prepare the budget.



## **DRAFT WORK PROGRAMME AND BUDGET FOR THE GOVERNING BODY**

On Wednesday, the Secretariat introduced a draft work programme and budget for the Governing Body (CGRFA/MIC-2/04/6). On Thursday, delegates discussed: prioritization of activities in the work programme; the possible establishment of trust funds and of subsidiary bodies; participation in the meetings of the Governing Body; and the size of the core budget. The EU and Iran supported having annual meetings of the Governing Body. Whereas most countries agreed to prioritize finalization of the rules of procedure and financial rules, delegates did not reach agreement on the process for finalizing them. Developed countries suggested holding parallel working groups during the first meeting of the Governing Body and developing countries proposed an open-ended working group to be convened back-to-back with the Governing Body. The EU also prioritized adoption of the MTA and compliance mechanism, with the US suggesting that compliance be dealt at a later stage. On Friday, Chair Harvey presented the plenary with a compromise reached in the Friends of the Chair group, which was approved.

**Final Outcome:** In the report of the meeting (CGRFA/MIC-2/04/REP-PART II), the Interim Committee recommended that a budget for the Governing Body should be drafted for the period 2006-7, and that two sessions of the Governing Body should be convened in the first biennium. It considered that staffing requirements and consultancy are necessary for the effective implementation of ITPGR, and that the Secretariat should prepare the budget and work programme taking into account the funds from the FAO regular programme for the ITPGR Secretariat. It agreed that no *ad hoc* subsidiary bodies should be established or additional activities approved before the identification of core implementation tasks, and a trust fund should be established immediately to receive voluntary contributions to support developing country participation.

In addition, the Interim Committee requested that the Secretariat prepare a paper on the sources and amounts of financial resources available to support the activities of the Governing Body, and a paper on the options for the Secretary and level and placing of the Secretariat within FAO, for consideration by the Governing Body.

It further requested the FAO Secretariat:

- to collect information on existing funding sources in support of projects for the protection and sustainable use of PGRFA, and on GPA implementation; and
- to prepare an analysis of the overall work of FAO and other international organizations on PGRFA, including implementation of ITPGR, GPA, Facilitating Mechanism, CGIAR System and Global Crop Diversity Trust, to identify financial and human resources to enable the Governing Body to take decisions on human and financial needs.

## **DRAFT AGREEMENTS BETWEEN THE GOVERNING BODY AND THE IARCS**

On Thursday, the Secretariat presented an overview of the consultations with the International Agricultural Research Centres (IARCs) of the CGIAR on the agreements to be signed with the ITPGR Governing Body (CGRFA/MIC-1/02/8). He indicated that the agreements aim to bring CGIAR's *ex situ* collections under the authority of the ITPGR. Stressing that the text of the agreement fully reflects ITPGR Article 15 (*Ex Situ* Collections held by the IARCs), a CGIAR representative highlighted: perpetual duration of the agreement; amendments by parties by mutual agreement; and periodic consultations with the Secretariat on implementation of the agreements. He also proposed that disputes be settled by arbitration according to ITPGR Annex II. Delegates then addressed the text of the draft

agreement. Many expressed their support. Colombia suggested that facilitated access to PGRFA under the Multilateral System (MS) and observer status to the Governing Body are rights of the IARCs, rather than obligations of the Governing Body. He also opposed stating that the Governing Body shall encourage Parties to provide IARCs signing the agreement with access to PGRFA not included in the MS.

**Final Outcome:** In the report of the meeting (CGRFA/MIC-2/04/REP-PART II), the Interim Committee decided that the draft model agreement contained in an appendix to the report should be submitted to the first session for Governing Body consideration.

The draft agreement includes a preamble and provisions on: application and interpretation of the agreement; basic undertaking; PGRFA received after the Treaty coming into force; bracketed alternatives on rights of the Centre or obligations of the Governing Body; consultations regarding implementation; amendment; duration of the agreement; settlement of disputes; depositary; and coming into force.

According to the agreement, applied in a manner consistent with the Treaty provisions, the Centre agrees to place the *ex situ* collections held in trust with the purview of the Treaty, in accordance with terms and conditions, including: making available PGRFA under the MS in accordance with the Treaty provisions; making available PGRFA outside the MS according to the provisions of the MTA currently in use; and following policy guidance from the Governing Body. PGRFA outside the MS received after the Treaty's entry into force shall be available for access under mutually agreed terms between the Centre and the country of origin. Bracketed language provides for observer status in the Governing Body sessions and for facilitated access to PGRFA under the MS, further encouraging Parties to provide the Centre with access under mutually agreed terms to PGRFA outside the MS. The agreement also provides for periodic consultations between the Centre and the Secretary for effective implementation. A provision on dispute settlement by arbitration, in case the dispute cannot be settled by negotiations, remains bracketed.

## **COOPERATION WITH INTERNATIONAL ORGANIZATIONS**

On Monday, a CBD representative noted that CGRFA-10 succeeded in strengthening the collaboration between FAO and the CBD. Highlighting the work of the CBD Working Group on access and benefit-sharing, he emphasized the key role that FAO and the CGRFA can play in integrating biodiversity considerations within the food and agricultural sector for poverty alleviation.

On Wednesday, a WIPO representative gave an overview of WIPO activities regarding: a policy platform for the protection of traditional knowledge; defensive protection of traditional knowledge; and the impact of intellectual property rights on the availability of genetic materials stored in *ex situ* collections.

On Thursday, the Secretariat presented the report on activities regarding cooperation with relevant international bodies (CGRFA/MIC-2/04/Inf.2). He highlighted participation of the Secretariat in numerous international fora, including meetings of the CBD, WIPO and the UN Conference on Trade and Development. He also underscored preparation of a memorandum of cooperation between the Secretariat and the CBD.

## **CLOSING PLENARY**

The closing Plenary convened at 11:20 pm on Friday night. Delegates expressed their deep appreciation, with standing ovations, to CGRFA Secretary José Esquinas-Alcázar and CGRFA Senior Liaison Officer Clive Stannard for their invaluable and enthusiastic contribution to the work of the



Commission and the Treaty negotiations. The Interim Committee then adopted the report (CGRFA/MIC-2/04/REP-PART I and II), with minor amendments and corrections. The EU highlighted aspects of the week's processes that have not been productive, stressing that the absence of parallel working groups should not become a precedent and suggesting regional coordination meeting preceding the session of the Governing Body. He expressed his appreciation to Chair Harvey, the Secretariat and the *Earth Negotiations Bulletin* for their contribution to the meeting. Chair Harvey gavelled the meeting to a close at 12:20 am.

### A BRIEF ANALYSIS OF THE MEETING

It was with great relief that Chair Harvey put the gavel down on what had been a difficult and long second session of the ITPGR Interim Committee. The standing ovations for José Esquinas and Clive Stannard not only honored their tireless work for the Treaty, but renewed the cooperative spirit that marked the adoption of the ITPGR and led to its speedy entry into force.

During the session, delegates faced the challenge of laying the groundwork for the first session of the ITPGR Governing Body by addressing a number of procedural and substantive issues. The Treaty requires that the Governing Body, at its first session, adopt its rules of procedure and financial rules, and approve a compliance mechanism. The Governing Body will also need to decide on some of the core elements of the standard Material Transfer Agreement (MTA), an item that was clearly prioritized by developed countries. Conversely, considering the difficulty in resource mobilization for Treaty implementation, developing countries gave priority to the funding strategy, which also has to be finalized at the first session of the Governing Body. This resulted in a tight agenda, placing a heavy burden on delegates, particularly since an inter-sessional working group on legal issues, established at the Interim Committee's first session, did not convene due to lack of funds.

Heated debates in plenary temporarily raised concerns about the Committee's ability to progress. However, a last-minute late night and early morning session, and a constructive Friends of the Chair group enabled delegates to pave the way for the first session of the Governing Body. The outcome of the meeting is a work plan for inter-sessional activities on rules of procedure and financial rules for the Governing Body, compliance, the funding strategy and the standard MTA. For some delegates this is below expectations, but for others, the result is understandable given the lack of funding and the limited time available for evaluation of the Treaty's impact on national and regional priorities.

This brief analysis outlines progress achieved in preparing for the first meeting of the Governing Body, in light of time constraints, financial limitations, and uncertainties about country positions.

### TACKLING AN OVERLOADED AGENDA

If delegates, inspired by the progress achieved by the Expert Group on the standard MTA, came to the meeting with the expectation that they would make quick progress on this and other substantive issues, they soon realized that finding common ground on many items was harder than expected. From the start, the G-77/China repeatedly requested additional time for regional consultations, allowing less time for plenary sessions, and strongly opposed the establishment of any parallel working groups, to accommodate the inability of small delegations to participate in such groups. With the realization that the plenary alone could not sufficiently address all outstanding issues, several delegates expressed concern about the slow pace of the meeting and cautioned that the absence of parallel working groups should not become a precedent for future work under the Treaty. In that

regard, the most tangible outcome is the work plan for inter-sessional activities, which includes substantive issues, such as compliance and the funding strategy that momentarily faced the risk of being left behind, and responds to the need for regional coordination before inter-sessional meetings.

The preparation of draft rules of procedure and financial rules for the Governing Body is indispensable for a smooth first session. A lengthy discussion in plenary led to a compilation of alternative proposals, entirely bracketed, rather than a compromise text. While some delegates welcomed this process as a participatory exercise, allowing for expression of all views and therefore assisting in building confidence in the process, others, concerned about the workload and limited time left, noted that most issues could have easily been resolved by a group of legal experts. In any case, the outcome was forwarded to the inter-sessional working group, which will have to reach agreement not only on technical but also substantive issues, such as decision-making procedures, and sources and nature of contributions to the Treaty budget.

Notwithstanding the successful inter-sessional Expert Group meeting, the debate on the standard MTA did not progress any further than preparing the TORs for a contact group that is expected to draft the standard MTA. While some delegates had high hopes that they would identify the terms of the MTA, at the end they were satisfied with merely finalizing the TORs, after an arduous debate on representation and participation issues.

### THE DOWNSIDE OF RAPID RATIFICATION?

What may be the downside of the Treaty's rapid ratification, one of the fastest within the FAO framework, is that the Organization did not provide the human and financial resources needed for progress towards implementation. The FAO Council failed to anticipate such speedy entry into force and it falls on this year's Council meeting, starting on 22 November, to readjust priorities and hopefully allocate the required resources.

Furthermore, many countries may not have yet defined their priorities, and others may still have to decide whether to ratify or not. Evaluating the impact of the Treaty implementation on national policies and other international obligations, such as those under the CBD, UPOV, WIPO and WTO, is time and resource-consuming and requires keeping an eye on the entire, rapidly changing, genetic resources agenda. In addition, the Treaty requires decisions by the first meeting of the Governing Body on items on which there is much uncertainty about possible options and their impact on Treaty implementation. The case of compliance illustrates this problem. The structure of the Treaty requires a unique compliance mechanism that allows both monitoring the general performance of the Multilateral System and addressing specific cases arising under MTAs. There was disagreement as to whether the MTA should be included in the compliance mechanism, but even if agreement is reached on this point, other difficulties may arise. For instance, the compliance mechanism will need to address issues of exchange of genetic resources between nationals of Parties and non-Parties to the ITPGR.

### FUNDING HUNTING

Due to severe lack of funding, the inability to convene the inter-sessional working group on rules of procedure, financial rules and compliance established by the first session of the Interim Committee resulted in an overloaded agenda for this session. Now, with a similar referral of issues to inter-sessional work, the success of the first session of the Governing Body is critically dependent on the availability of adequate resources. While some generous pledges for funding came forward during the meeting, the financial future of the Treaty is far from clear.



One reason for this uncertainty is the insufficient allocation of funding to the Treaty from the FAO core budget, another reason being the heavy dependence of the Treaty on extra-budgetary resources. The Treaty outlines diverse funding sources, including commercial benefit-sharing and contributions from Parties, other countries, the private sector and civil society. However, most of them are subject to the finalization and operationalization of the funding strategy and the standard MTA.

### THE ROAD AHEAD

The transitory phase between entry into force and the first meeting of the Governing Body, a common scenario in multilateral agreements, is often marked by uncertainties regarding specific country positions and availability of funds. In the case of the Treaty, there seems to be a "vicious circle" as the availability of funding depends on decision making on substantive issues, and vice versa. A clear indication of FAO commitment to future contribution to Treaty operations would break that circle by covering urgent needs and sending a positive signal on the Treaty's future. Nevertheless, political will to resolve outstanding issues and provide the necessary extra-budgetary funds, is equally needed.

Beyond preparation of the first session of the Governing Body, the Treaty will play a role in the negotiation of an international regime on access and benefit-sharing (ABS) under the CBD. The standard MTA is expected to be the first contractual agreement for facilitated access and benefit-sharing with global application, and may influence developments under the CBD. The initiation of the CBD negotiations on ABS in early 2005 may clarify some questions regarding the relationship between the two processes and assist countries in fully defining their position.

The likely delay of the first session of the Governing Body to 2006 may imply two different scenarios. It can either negatively affect the momentum gained through the Treaty's adoption and entry into force, or provide an opportunity to identify regional positions, flexible enough to reach consensus, and address the necessary groundwork for Treaty implementation, pending since the first meeting of the Interim Committee. The challenge still lies ahead.

## UPCOMING MEETINGS

**127TH FAO COUNCIL:** The 127th session of the FAO Council will convene from 22-27 November 2004, in Rome, Italy. For more information, contact: Stephen Dowd, Conference, Council and Liaison Officer; tel: +39-06-570-53459; e-mail: [stephen.Dowd@fao.org](mailto:stephen.Dowd@fao.org); internet: [http://www.fao.org/unfao/bodies/council/cl127/cl127\\_en.htm](http://www.fao.org/unfao/bodies/council/cl127/cl127_en.htm)

**INTERNATIONAL CONFERENCE ON BIODIVERSITY:** Sponsored by UNESCO and organized by the French Ministry of Research, this conference will be held from 24-28 January 2005, at UNESCO Headquarters, in Paris, France. For more information contact: the Conference organizing committee; e-mail: [biodiv2005paris@recherche.gouv.fr](mailto:biodiv2005paris@recherche.gouv.fr); internet: <http://www.recherche.gouv.fr/biodiv2005paris/en/index.htm>

**SBSTTA-10:** The tenth meeting of the Subsidiary Body on Scientific, Technical and Technological Advice of the Convention on Biological Diversity (CBD) is scheduled to convene from 7-11 February 2005, in Bangkok, Thailand. For more information, contact: the CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: [secretariat@biodiv.org](mailto:secretariat@biodiv.org); internet: <http://www.biodiv.org/doc/meeting.aspx?mtg=SBSTTA-10>

**ABS-3:** The third meeting of the CBD *Ad Hoc* Open-ended Working Group on Access and Benefit-sharing is scheduled to meet from 14-18 February 2005, in Bangkok, Thailand. For more information, contact: the CBD Secretariat; tel: +1-514-288-2220;

fax: +1-514-288-6588; e-mail: [secretariat@biodiv.org](mailto:secretariat@biodiv.org); internet: <http://www.biodiv.org/doc/meeting.aspx?mtg=ABSWG-03>

**MINISTERIAL MEETING AND 26TH SESSION OF THE FAO COMMITTEE ON FISHERIES:** The 26th session of the FAO Committee on Fisheries will convene from 7-11 March 2005, in Rome, Italy. It will be followed by a Ministerial Meeting on Fisheries, to be held on 12 March 2005. For more information, contact: Benedict Satia, COFI Secretary; tel: +39-06-570-52847; fax: +39-06-570-56500; e-mail: [benedict.satia@fao.org](mailto:benedict.satia@fao.org); internet: [http://www.fao.org/fi/NEMS/events/detail\\_event.asp?event\\_id=24536](http://www.fao.org/fi/NEMS/events/detail_event.asp?event_id=24536)

**MINISTERIAL MEETING AND 17TH SESSION OF THE FAO COMMITTEE ON FORESTRY:** The 17th meeting of FAO Committee on Forestry will convene from 15-19 March 2005, in Rome, Italy. It will be preceded by a Ministerial Meeting on Forestry, to be held on 14 March 2005. For more information, contact: Michael Martin, Director, Forestry Policy and Information; tel: +39-06-570-53302; fax: +39-06-570-55137; e-mail: [michael.martin@fao.org](mailto:michael.martin@fao.org); internet: <http://www.fao.org/forestry/site/cofo/en>

**WIPO IGC-8:** The eighth session of WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore will convene from 6-10 June 2005, in Geneva, Switzerland. For more information, contact: the IGC Secretariat; tel: +41-22-338-8161; fax: +41-22-338-8120; e-mail: [grtkf@wipo.int](mailto:grtkf@wipo.int); internet: <http://www.wipo.int/meetings/en/>

**FIRST MEETING OF THE WORKING GROUP ON LIABILITY AND REDRESS:** The first meeting of the *Ad Hoc* Open-ended Working Group on Liability and Redress under the Biosafety Protocol is scheduled to meet from 8-10 June 2005, in Montreal, Canada. For more information, contact: the CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: [secretariat@biodiv.org](mailto:secretariat@biodiv.org); internet: <http://www.biodiv.org/meetings/>

**SECOND MEETING OF THE PARTIES TO THE BIOSAFETY PROTOCOL:** The second Conference of the Parties to the CBD serving as the Meeting of the Parties to the Cartagena Protocol on Biosafety is scheduled to meet from 13-17 June 2005, in Montreal, Canada. For more information, contact: the CBD Secretariat; tel: +1-514-288-2220; fax: +1-514-288-6588; e-mail: [secretariat@biodiv.org](mailto:secretariat@biodiv.org); internet: <http://www.biodiv.org/meetings/default.aspx>

**FIRST SESSION OF THE ITPGR GOVERNING BODY:** The first session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture will be held in 2005 or 2006, in Spain. For more information, contact: José Esquinas-Alcázar, CGRFA Secretary; tel: +39-06-570-52753; fax: +39-06-570-56347; e-mail: [Jose.Esquinas@fao.org](mailto:Jose.Esquinas@fao.org); internet: <http://www.fao.org/ag/cgrfa>

**CGRFA-11:** The eleventh regular session of the Commission on Genetic Resources for Food and Agriculture will be held in autumn 2006, in Rome, Italy. For more information, contact: José Esquinas-Alcázar, CGRFA Secretary; tel: +39-06-570-52753; fax: +39-06-570-56347; e-mail: [Jose.Esquinas@fao.org](mailto:Jose.Esquinas@fao.org); internet: <http://www.fao.org/ag/cgrfa>