

SUMMARY OF THE FIRST SESSION OF THE GOVERNING BODY OF THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE: 12-16 JUNE 2006

The first session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty or ITPGR) convened from 12-16 June 2006, in Madrid, Spain. The session gathered over 400 participants, ranging from parties, other governments, intergovernmental and non-governmental organizations and industry.

The session successfully addressed a number of issues that the Governing Body was required by the Treaty to consider at its first meeting to make the ITPGR fully operational. Among these, the most prominent was the standard Material Transfer Agreement (MTA), which is the instrument for implementing the Multilateral System of access and benefit-sharing at the core of the Treaty. The Governing Body adopted a standard MTA that includes provisions on: the UN Food and Agriculture Organization as the third party beneficiary; a fixed percentage of 1.1% that a recipient shall pay when a product is commercialized yet not available without restriction to others for further research and breeding; and 0.5% for the alternative payments scheme.

The Governing Body further adopted: the rules of procedure, including decision making by consensus; financial rules with bracketed text on an indicative scale of voluntary contributions; the funding strategy; a resolution establishing a compliance committee; the relationship agreement with the Global Crop Diversity Trust; a model agreement with the International Agricultural Research Centers of the Consultative Group on International Agricultural Research and other international institutions; the budget and work programme for 2006-2007; arrangements for the appointment of the Secretary; agreement to consider internationally the establishment of a technical advisory committee; and the relationship between the Governing Body and the Commission on Genetic Resources for Food and Agriculture.

A BRIEF HISTORY OF THE ITPGR

Concluded in the framework of the UN Food and Agriculture Organization (FAO), the ITPGR is a legally binding instrument that targets the conservation and sustainable use of plant genetic

resources for food and agriculture (PGRFA) and equitable benefit-sharing, in harmony with the Convention on Biological Diversity (CBD), 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 of coverage and includes 35 crop genera and 29 forage species. The Treaty entered into force on 29 June 2004, ninety days after the deposit of its 40th instrument of ratification. One hundred and two countries and the European Community have now ratified the Treaty.

The Treaty's negotiations were based on the revision of the non-binding International Undertaking on PGRFA (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 Commission on Genetic Resources for Food and Agriculture (CGRFA) decided that the IU should be revised to be in harmony with the CBD.

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Negotiations spanned seven years. From 1994 to 1998, the CGRFA met in five extraordinary and two regular sessions to develop 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 International Agricultural Research Centers (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, or 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.

As part of the interim arrangements, the CGRFA, acting as the ITPGR 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 (MTA) for facilitated access, including terms for commercial benefit-sharing; and initiate cooperative arrangements with the CBD Conference of the Parties (COP).

FIRST MEETING OF THE ITPGR INTERIM COMMITTEE: During the first meeting of the CGRFA acting as the ITPGR Interim Committee (Rome, Italy, 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 monitor the terms of the standard MTA.

MTA EXPERT GROUP: The expert group on the terms of the standard MTA (Brussels, Belgium, October 2004) discussed a series of issues forwarded by the first meeting of the ITPGR Interim Committee, including: definition of terms; level, form and manner of payment; and a potential exemption for developing country small farmers. The group considered options on the terms of the standard MTA, discussed its draft structure, and recommended that the Interim Committee establish an intersessional contact group to draft the elements of the standard MTA.

SECOND MEETING OF THE ITPGR INTERIM COMMITTEE: At its second meeting (Rome, Italy, November 2004), the ITPGR Interim Committee agreed to establish an open-ended intersessional working group to address the rules of procedure and financial rules for the Governing Body, the funding strategy and procedures for compliance, since a previous intersessional working group, established by the first session of the Interim Committee, did not meet due to lack of funds. Delegates heard a report from the Expert Group on the terms of the standard MTA and agreed on the terms of reference for an intersessional contact group to draft the standard MTA for the

Governing Body's consideration. They also heard a progress report on intersessional activities, including the ITPGR entry into force, and a report on cooperation with relevant international bodies.

FIRST MEETING OF THE MTA CONTACT GROUP: The first meeting of the Contact Group for the Drafting of the Standard MTA (Hammamet, Tunisia, July 2005) resolved many non-controversial issues and set out the basic structure of the agreement. A number of issues remained outstanding, such as: dispute settlement, including whether arbitration would be binding or not; the benefit-sharing mechanism and payment; and an African proposal to add a legal person representing the Governing Body, as a third-party beneficiary, as part of the MTA to monitor its execution.

SECOND MEETING OF THE MTA CONTACT GROUP: The second meeting of the Contact Group for the Drafting of the Standard Material Transfer Agreement (Alnarp, Sweden, April 2006), tasked with finalizing the draft to be considered and adopted by the first session of the Treaty's Governing Body, agreed on a draft standard MTA to be used for exchange of material covered by the MS established by the Treaty. However, a number of issues remained unresolved. While delegates recognized the need for a third party beneficiary, an institution representing the Governing Body and the MS, questions regarding third party beneficiary rights remained unresolved. Text also remained bracketed on: the definitions of "product" and "sales," and the formula for benefit-sharing; obligations of the recipient in the case of subsequent transfers of material; dispute settlement; and applicable law. Contact Group Chair Eng Siang Lim (Malaysia) established an intersessional Friends of the Chair group, to attempt to resolve pending issues prior to the first session of the Treaty Governing Body.

GOVERNING BODY REPORT

The first session of the ITPGR Governing Body opened on Monday, 12 June 2006. During the opening ceremony, Elena Espinosa, Spanish Minister of Agriculture, Fisheries and Food, outlined recent national efforts to legislate the conservation and management of plant genetic resources, and encouraged delegates to achieve consensus on outstanding matters, such as the standard MTA and funding strategy, to operationalize the Treaty.

Jacques Diouf, the Director-General of the UN Food and Agriculture Organization (FAO), reflected on the recent successful history of the Treaty, called upon delegations to work together to build policy synergies, and emphasized that the Treaty represents a framework to discuss all aspects of plant genetic resource issues. He emphasized that poverty eradication is the overriding aim of plant genetic resource policy, and that access to a secure food source is a basic human right.

Teresa Fernández de la Vega, Spain's Deputy Prime Minister, noted Spain's bridging function in the global plant genetic resources for food and agriculture exchange and emphasized her government's commitment to the Treaty's implementation. She stressed that cooperation is an ethical obligation of the international community, noting that the Treaty is a tool to guarantee food security and quality, and to combat hunger and poverty by providing benefit-sharing and development opportunities to the underprivileged.

ORGANIZATIONAL MATTERS: The plenary agreed to use the rules of procedure of the Interim Committee and, if necessary, the general rules of procedure of the FAO. Delegates elected Francisco Mombiela Muruzábal (Spain) as Chair of the meeting, and Sugiono Moeljopawiro (Indonesia), Godfrey Mwila (Zambia), Ali A. Al-shurai (Yemen), Modesto Fernández Díaz-Silveira (Cuba), Bryan Harvey (Canada), and John Madden (Australia) as Vice-Chairs. They also appointed Yohannes Tensure (Eritrea) as Rapporteur.

Delegates adopted the agenda and timetable of the meeting (IT/GB-1/06/2), and nominated Bryan Harvey (Canada) and Ahmad Dimiyati (Indonesia) to chair Working Groups I and II, respectively. Canada, Central African Republic, Denmark, Guatemala, India, Kiribati and Sudan were appointed to the Credentials Committee.

CGRFA Secretary José Esquinas Alcázar reported on the status of the Treaty's ratification (IT/GB-1/INF.2/Rev.1). Africa, supported by the Latin American and Caribbean Group (GRULAC), India, Yemen, Malaysia, Kuwait, Indonesia and Pakistan, suggested that countries that have ratified the Treaty, but are not yet parties at the present session of the Governing Body because they did not deposit their instrument of ratification or accession at least 90 days before the opening of the session, should nevertheless be able to participate fully in the meeting as parties. Europe cautioned against exceeding the legal parameters set by the Treaty in this regard. Canada, supported by Australia and Europe, proposed allowing such countries to participate in discussions as parties, without allowing them to vote, block consensus or hold office. Following lengthy discussions, Chair Mombiela assured participants that efforts will be made to reach consensus and limit voting, and delegates eventually agreed to Canada's proposal.

Following the opening plenary, delegates met in working groups from Monday afternoon to Friday afternoon, and a ministerial segment was held in parallel on Tuesday. Working Group I (WG-I) addressed: the rules of procedure; the standard MTA; compliance; the relationship with the CGRFA; and cooperation with international organizations. From Tuesday through Friday afternoon, a contact group, established by WG-I, considered the standard MTA. Working Group II (WG-II) considered: the financial rules; the funding strategy; the appointment of the secretary; the establishment of a technical advisory committee; implementation of Article 6; the relationship with the Global Crop Diversity Trust; assessment of progress in the inclusion of PGRFA in the MS; and an agreement with IARCs. From Monday to Thursday, a contact group, established by WG-II, met to discuss the financial rules. A budget committee convened from Tuesday to Thursday. On Thursday night, plenary reconvened to consider the budget and work programme for 2006-2007 and the date and venue of the Governing Body's second session. On Friday afternoon, the working groups approved their respective reports. The closing plenary met on Friday evening to conclude the work of the first session and adopt the reports of the working groups.

MINISTERIAL SEGMENT

On Tuesday, a Ministerial Segment, held in parallel with the first session of the Governing Body, adopted a Ministerial Declaration.

Elena Espinosa, Spanish Minister of Agriculture, Fisheries and Food, opened the Ministerial Segment, and emphasized the Treaty's importance for the conservation of PGRFA, food security, and achieving the Millennium Development Goals (MDGs). FAO Director-General Jacques Diouf called on participants to adopt a draft ministerial declaration and reflect the Treaty's objectives in national programmes and legislation as well as development strategies. Upon a motion by Minister Espinosa, participants adopted the declaration by acclamation.

Several participants acknowledged the interconnectedness of global food security, farmers' rights, poverty alleviation, the MDGs and benefit-sharing. Developing country representatives called for international support for traditional farming methods, including the development of regional networks to facilitate the transfer of knowledge and skills, and emphasized the need for financial and technical transfers to build the capacity of their PGRFA-related national institutions. Developed country representatives underscored the importance of financial support for the Treaty's implementation, with Bernd Hermelingmeier, Germany's Federal Ministry of Food, Agriculture and Consumer Protection, pledging 1.5 million euros to the Global Crop Diversity Trust over five years. Some speakers highlighted the role of the private sector in the funding strategy, while another called attention to the special contribution of women farmers. Ministers and other participants were united in calling for the immediate operationalization of the Treaty.

Ministerial Declaration: In the Ministerial Declaration on the Implementation of the ITPGR, ministers:

- express concern about world hunger;
- are convinced of the importance of the MDGs;
- are aware of the responsibility of present and future generations to conserve the world's diversity of PGRFA;
- recognize that the Treaty will contribute to enhanced food security;
- recall the contribution by indigenous communities to PGRFA conservation and development; and
- recognize the importance of implementing farmers' rights.

They commit themselves to fully implement the Treaty, in particular by: embodying the objectives and provisions of the Treaty in national plans and programmes; building national capacity; implementing the funding strategy of the Treaty; and considering modalities to promote voluntary contributions for the funding strategy. Finally, ministers urge all governments that have not yet done so to accede to the Treaty.

WORKING GROUP I

RULES OF PROCEDURE: The rules of procedure (IT/GB/06/3 and Add.1) were discussed by Working Group I on Wednesday and, following informal consultations, on Friday. The plenary adopted the rules on Friday night.

The main point of contention concerned the rule of procedure on decision-making. Europe and Africa preferred making decisions on procedural matters by simple majority, and by consensus on substantive issues, or by a two-thirds majority as a last resort when consensus cannot be achieved. On the other hand, GRULAC, the Southwest Pacific, Asia and North

America called for consensus-based decision making or, for another method of arriving at a decision on certain measures, agreed to by consensus, with the exception that consensus should always be required for ITPGR Articles 23 (Amendments to the Treaty) and 24 (Annexes). During Friday's late night plenary, Europe agreed to the rule on consensus decision-making, as part of a compromise package including the establishment of the compliance committee.

Discussions also focused on a proposed rule concerning the use of the core budget for developing country representatives' and independent experts' participation in the meetings of the Governing Body and its subsidiary bodies. North America, the Southwest Pacific and Europe, opposed by Africa, GRULAC and Yemen, proposed deleting this rule, arguing that this topic should be discussed in deliberations on financial rules. On Friday, in Working Group I, delegates questioned whether such funding should come from the "core administrative budget" or just "the budget" without reaching agreement. During Friday's late-night plenary, Canada presented compromise text stating that "provision shall be made to support the participation of developing country parties and parties with economies in transition in the GB and its subsidiary bodies in the financial rules through a special fund."

Final Outcome: The rules of procedure of the ITPGR Governing Body concern: scope, bureau, secretary, sessions, agenda and documents, decision making, observers, records and reports, subsidiary bodies, expenses, languages, amendment of the rules, application of the FAO General Rules, overriding authority of the Treaty and entry into force.

Among other rules, the Governing Body provides for:

- the FAO Director-General to appoint, with the Governing Body's approval, a Secretary of the Governing Body;
- the Governing Body to hold regular sessions at least once every two years, as far as possible back-to-back with the regular sessions of the CGRFA;
- the provisional agenda to be circulated at least twelve weeks before the opening of the session, with the subsequent inclusion of specific items on the agenda by parties no later than two weeks beforehand;
- decisions by the Governing Body to be taken by consensus unless by consensus another method of arriving at a decision on certain measures is reached, except that consensus shall always be required for ITPGR Articles 23 (Amendments to the Treaty) and 24 (Annexes);
- the Governing Body to establish subsidiary bodies when necessary, subject to the availability of funds in the approved budget;
- provision of funds to be made to support the participation of developing country parties and parties with economies in transition in the sessions of the Governing Body and its subsidiary bodies in the financial rules through a special fund; and
- the working languages of the Governing Body to be the six UN official languages.

STANDARD MATERIAL TRANSFER AGREEMENT: The MTA was discussed: in WG-I on Monday; in a contact group, chaired by Godfrey Mwila (Zambia) and limited to regional representatives, on Tuesday, Wednesday late into the night and Thursday; in informal groups on Wednesday and Thursday; and in a Friends of the Chair group, chaired by Bryan Harvey

(Canada), on Friday. Delegates agreed to base negotiations on the draft standard MTA forwarded by the second meeting of the intersessional MTA Contact Group (IT/GB-1/06/6), using, when necessary, elements from MTA Contact Group Chair Lim's report on the work of the Contact Group and subsequent developments (IT/GB-1/06/INF.15). The final MTA and its resolution was presented to plenary and adopted with amendments on Friday.

Debates on the MTA were lengthy, as there were many points of contention among regional groups, including: the relationship between MTA parties and ITPGR parties; the role of the third party beneficiary; applicable law; obligations of the recipient; the definition of "product," and its links to benefit-sharing payments; and rates and modalities of payment.

Relationship between the MTA and ITPGR parties:

GRULAC proposed and resiliently supported text stating that MTA parties recognize and accept the applicable legal measures and procedures adopted by ITPGR parties. GRULAC linked negotiation of its proposal to preambular text proposed by the EU on recognizing the diversity of legal systems of ITPGR parties and their national and regional obligations over arbitration procedures and rules. GRULAC's proposal was strongly opposed by the Southwest Pacific and North America, stating that entities entering into the MTA cannot accept other countries' legal measures. They preferred that either these measures be "acknowledged," or that the parties recognize and accept that the MTA is also entered into within the framework of the applicable legal measures and procedures adopted by the ITPGR parties. Delegates eventually agreed to text stating that the MTA is entered into within the framework of the MS, and shall be implemented and interpreted in accordance with the objectives and provisions of the Treaty; and that MTA parties recognize that they are subject to the applicable legal measures adopted by the ITPGR parties in conformity with the Treaty.

Third party beneficiary: Delegates discussed the role of the third party beneficiary and its limits. North America, Europe and the Southwest Pacific argued for limiting its role to dispute settlement, while GRULAC and Africa pushed for the third party beneficiary to also have the right to monitor MTA execution. Europe countered that if the third party beneficiary were to have monitoring rights, these would be limited to its obligations regarding dispute settlement. In the end, delegates agreed that the third party beneficiary will have the right to request the appropriate information on dispute settlement as well as on notifications of transferred materials and MTAs entered into, and on annual reports by recipients.

Applicable law: GRULAC initially opposed a reference to the International Institute for the Unification of Private Law (UNIDROIT) Principles of International Commercial Contracts, but others insisted that it was necessary to specify which general principles of law were applicable, and after lengthy debate GRULAC accepted its retention. GRULAC, opposed by others, requested taking into account the decisions of the Governing Body in considering the applicable law. Eventually, delegates agreed to do so "when necessary for interpretation."

Rights and obligations of the recipient: The Southwest Pacific and North America, opposed by Africa, GRULAC and the Near East, requested deletion of text on reporting intellectual property rights obtained by the recipient to the third party beneficiary. In the end delegates agreed to its deletion.

On the obligations of transferring PGRFA under development to another person or entity, the Near East opposed text stating that the transfer, whether or not subject to payment, shall not constitute commercialization that would trigger benefit-sharing obligations. Delegates later agreed to delete the clause.

Definition of “product:” There was extensive debate on the definition of “product” due to its implications for benefit-sharing payments. The debate centered on two issues: limiting the definition to propagation materials; and linking broad and narrow definitions to different payment rates before choosing a harmonized definition.

The Near East opposed limiting the definition of “product” to propagation material, but Europe and GRULAC insisted on retaining the reference, emphasizing the need to specify which materials are subject to payments. Delegates eventually agreed to limit the definition to PGRFA ready for commercialization, “excluding commodities and other products for food, feed and processing.”

To facilitate the discussion, Europe put forward two proposals for the definition, one broad and one narrow, corresponding to lower and higher rates of payment, respectively. Both definitions referred to “product” as a PGRFA that incorporates material from the MS, excluding commodities, that is ready for commercialization as propagation material; but the narrow definition specified that the PGRFA has commercial value added to it through the incorporation of material from the MS. The definitions and their corresponding payment rates were discussed over several days, before delegates agreed to a broader definition early Friday morning.

Rates and modalities of payment for benefit-sharing: Discussions focused on two modalities for benefit-sharing payment, payment upon commercialization with restriction (draft Article 6.7) and a proposed alternative system of discounted payments, as well as the payment rates involved.

Africa put forward a well-received proposal for an alternative system of payments. The proposal entails making payments at a discounted rate on all products belonging to one of the crops under ITPGR Annex I, irrespective of whether it is available without restriction or whether the product has been developed from material originating from the MS or from other sources; in return the recipient shall be relieved of any payment obligation under the draft MTA Article 6.7 (payment upon commercialization with restriction). Discussion on this proposal focused on its voluntary nature, having an opt-out option, and the recipient’s requirement to notify the Governing Body if this modality of payment was chosen over the default option. The terms and conditions of this payment scheme were finalized on Friday.

Regions presented their proposals for the fixed percentage a recipient shall pay when a product is commercialized yet not available without restriction to others for further research and breeding (payment under draft Article 6.7). Initially, delegates’ proposals corresponded to the different proposed definitions of “product” and for the alternative payment system proposed by Africa. For the broad definition, developed country regions proposed 0.1% of product sales. Africa stated that a higher rate was appropriate considering the increased value of genetic resources, and that the seed industry had previously proposed a

figure of 1% on all seed sales. The Southwest Pacific noted the need for a lower rate to balance the flow of funds with the use of the MS.

By Friday morning, the contact group on the draft MTA had agreed on all text except for the rate and modalities of payment and the terms and conditions of the alternative payment scheme proposed by Africa. A Friends of the Chair group was convened all day to finalize these outstanding issues and agreement was not reached until late in the evening. The group agreed to a rate of 1.1% of product sales for commercialization with restriction and 0.5% for the discounted rate of the alternative scheme.

During Friday’s evening plenary, France made an interpretative declaration stating that the MTA’s provisions on MTA parties being subject to legal measures adopted by ITPGR parties, and on third party beneficiary rights with regard to dispute settlement, must be interpreted recognizing the diversity of parties’ legal systems, in as much as these concern access to justice and contractual freedom.

Delegates agreed that the FAO will be the legal representative of the Governing Body of the multilateral system. Australia, supported by Europe and India, while not objecting to the appointment, expressed concern about making such important decisions in such haste.

GRULAC introduced new text to the resolution on the standard MTA ensuring that MTA parties subject to the jurisdiction of ITPGR parties comply with the obligations of the Treaty. After Europe’s quick objection, GRULAC withdrew this proposal. GRULAC further proposed inviting the FAO to carry out its role prescribed in the MTA under the direction and control of the Governing Body, with delegates eventually agreeing that the FAO would carry out its role “under the direction of the Governing Body.” Finally, delegates agreed to new text proposed by GRULAC and amended by India, stating that the Governing Body decides to periodically review the level of payments, starting at its third session.

Delegates adopted the resolution on the adoption of the standard MTA, and the MTA contained in the annex, with these amendments.

Final Outcome: In the resolution on the adoption of the standard MTA, the Governing Body:

- adopts the annexed standard MTA;
- requests the ITPGR Secretary to review the implementation and operation of the MTA and report to the third session of the Governing Body, in particular on the benefit-sharing provisions and payment modalities;
- urges ITPGR parties to take necessary measures to implement the MTA;
- urges all other holders of Annex I PGRFA to include these in the MS;
- invites the FAO, as the third party beneficiary, to carry out the roles and responsibilities as prescribed in the MTA, under the direction of the Governing Body, in accordance with procedures to be established by the Governing Body at its next meeting; and
- decides to review the levels of payment periodically, starting at its third session.

The annexed MTA states that the Agreement is between the provider and the recipient; and that parties to the Agreement agree to the MTA provisions.

Definitions: The MTA defines, *inter alia*, the following:

- “available without restriction” means a product that is available for further research and breeding without any legal or contractual obligations, or technological restrictions, that would preclude using it in the manner specified in the ITPGR;
- “PGRFA under development” means material derived from MS material that is not yet ready for commercialization, which the developer intends to further develop or to transfer to another entity for further development;
- “product” means PGRFA that incorporate MS material or any of its genetic parts or components thereof that are ready for commercialization, excluding commodities and other products used for food, feed and processing; and
- “to commercialize” means selling a product for monetary consideration, noting that commercialization shall not include any form of transfer of PGRFA under development.

General provisions: The MTA states that, *inter alia*:

- the MTA is entered into within the framework of the MS and shall be implemented and interpreted in accordance with the objectives and provisions of the ITPGR;
- the parties recognize that they are subject to the applicable legal measures and procedures adopted by the ITPGR parties, in conformity with the Treaty;
- the parties agree that the entity designated by the Governing Body is the third party beneficiary under the MTA; and
- the third party beneficiary has the right to request the appropriate information as required in Articles 5(e) (Notification of MTAs entered into), 6.5(b) (Notification of transferred materials), 8.2 (Dispute settlement) and Appendix 2.3 (Annual reporting) of the MTA.

Rights and obligations of the provider: The MTA states that the material is transferred in accordance with Treaty provisions on, *inter alia*:

- making available all passport data and other non-confidential descriptive information with the PGRFA provided;
- access to PGRFA under development being at the discretion of its developer;
- access to PGRFA protected by intellectual and other property rights being consistent with relevant international agreements and national laws; and
- periodically informing the Governing Body about the MTAs entered into. The information shall be made available by the Governing Body to the third party beneficiary.

Rights and obligations of the recipient: The MTA states that:

- the material shall not be used for chemical, pharmaceutical and/or other non-food/feed industrial use;
- the recipient shall not claim intellectual property or other rights that limit facilitated access to the material in the form received from the MS;
- if the recipient conserves the material supplied, the recipient shall make it available to the MS;
- if the recipient transfers the material supplied under the MTA to another person or entity, it shall be done under the terms and conditions of the standard MTA, through a new agreement. The recipient would then have no further obligations regarding the actions of the subsequent recipient;
- if the recipient transfers PGRFA under development to another person or entity, it shall be done under the terms and conditions of the standard MTA, through a new agreement.

The recipient shall specify that the material transferred was derived from MS material, shall notify the Governing Body, and shall have no further obligations regarding the actions of the subsequent recipient. Entering into an MTA such as this shall be without prejudice to the right of the parties to attach additional conditions, including the payment of monetary consideration;

- if the recipient commercializes a product that is a PGRFA and incorporates MS material, and this product is not available without restriction to others for further research and breeding, the recipient shall pay a fixed percentage of the sales into the mechanism established by the Governing Body for this purpose, as indicated in the appendix to the MTA;
- if the product is available without restriction, the recipient is encouraged to make voluntary payments into the mechanism;
- the recipient shall make available to the MS all the non-confidential research and development information;
- after the expiry of the restriction period, the recipient is encouraged to place a sample of the product into an MS collection;
- payment obligations shall be transferred to subsequent recipients in the case of transferring intellectual property or other rights; and
- the recipient may opt for an alternative payment scheme, as indicated in the appendix to the MTA, which entails making payments at a discounted rate on all products belonging to one of the crops under Annex I of the Treaty, irrespective of whether it is available without restriction and whether the product has been developed from material originating from the MS or from other sources. In return the recipient shall be relieved of any payment obligation under MTA Article 6.7 (Payment upon commercialization with restriction).

Applicable law: The MTA states that the applicable law shall be the general principles of law, including UNIDROIT Principles of International Commercial Contracts 2004, the objectives and the relevant provisions of the ITPGR, and, when necessary for interpretation, the decisions of the Governing Body.

Dispute resolution/settlement: The MTA states that:

- dispute settlement may be initiated by the provider, the recipient or the third party beneficiary;
- the third party beneficiary has the right to initiate dispute settlement procedures, and the right to request that the appropriate information, including samples as necessary, be made available by the provider and the recipient; and
- disputes shall be resolved by either amicable dispute settlement, mediation or arbitration. In the case of arbitration, any party may submit the dispute for arbitration under the arbitration rules of an international body as agreed by the parties to the dispute, or failing such agreement, by the Rules of Arbitration of the International Chamber of Commerce. Either party may appoint its arbitrator from a list of experts the Governing Body may establish for this purpose. The result of the arbitration is binding.

The MTA also contains provisions on: the lack of a warranty on materials or information provided; the MTA remaining in force so long as the ITPGR remains in force; and as three methods of acceptance an option for: signature; shrink-wrap (the provision of the Material by the provider and the recipient’s acceptance and use of the Material constitutes acceptance of the

terms of the agreement); or click-wrap (the recipient reads the terms and conditions online and clicks on an "I agree" check-box in an electronic form for requesting Material).

The MTA contains four appendices: a template for listing materials provided under the MTA; rate and modalities of payment under MTA Article 6.7, including a rate of 1.1% of the sales of a product, less 30%; terms and conditions of the alternative payments scheme, including a discounted rate of 0.5% of the sales of products, as defined in the MTA, and other products that are PGRFA belonging to the same crop; and an acceptance option for this crop-based payment mechanism.

COMPLIANCE: Draft procedures and operational mechanisms to promote compliance and address issues of non-compliance (IT/GB-1/06/7) were discussed in Working Group I and in informal consultations from Wednesday to Friday. On Friday evening, the plenary adopted the resolution and forwarded the annex on procedures and mechanisms as the basis for negotiations to the second session of the Governing Body.

Discussion mainly focused on whether to establish a compliance committee at the first session of the Governing Body. Europe, Africa and the Near East supported the immediate establishment of a compliance committee, with Europe adding a proposal to work in the interim with provisional procedures, and approve the committee's procedures and mechanisms at the Governing Body's second session. The Southwest Pacific, Asia and GRULAC proposed that the establishment of the committee be considered at the Governing Body's second session. The US said that a compliance committee would be premature, instead urging parties to mandate the Governing Body to address compliance issues.

On Friday, Working Group I attempted to reach agreement, and eventually decided to forward bracketed text on the establishment of the compliance committee and its provisional procedures. During Friday night's plenary, Europe presented a compromise package, and the plenary adopted a resolution establishing a compliance committee with no mandate or terms of reference, postponing consideration of its procedures and operational mechanisms to the second session of the Governing Body, and providing provisional procedures and operational mechanisms, allowing parties to raise issues of compliance in advance of the Governing Body's sessions.

During the week, delegates also discussed an annex containing the draft procedures and mechanisms on compliance, focusing in particular on the frequency of the committee's meetings and its procedures. Canada, the Southwest Pacific, Europe, Africa, India and Brazil proposed that the committee meet on a needs basis, suggesting different modes of linking its meetings to those of the Governing Body. Yemen proposed that the committee meet "once a year, unless it decides otherwise." Europe specified that the committee's rules of procedure should include rules on confidentiality, conflict of interest and electronic decision making. Three formulations on procedures were presented: the Southwest Pacific suggested that the committee only receive submissions from parties with respect to themselves; Europe preferred that parties also submit information on other parties; and Yemen proposed that the Governing Body should also submit information. On the basis of the compromise package proposed by Europe during the closing plenary, delegates

decided to use the annex containing the procedures and mechanisms as the basis for negotiations at the second session of the Governing Body.

Final Outcome: In the resolution on compliance, the Governing Body:

- establishes a compliance committee, which will commence its work following the approval of cooperative and effective procedures and operational mechanisms;
- decides to consider and approve at its second session procedures and mechanisms on compliance, on the basis of the annex to the resolution;
- decides that compliance be included in the Governing Body's agenda; and
- decides, to provide for provisional procedures and operational mechanisms, that in advance of the Governing Body's sessions, a party may raise any matter related to its compliance with the Governing Body, which will consider the matter and decide the appropriate approach to address it.

The bracketed annex to the resolution contains draft procedures and mechanisms for compliance, including sections on: objectives, principles, institutional mechanisms, functions of the committee, procedures, information, measures/mechanisms/actions to promote compliance and address cases of non-compliance, review of procedures and mechanisms, reporting and monitoring.

RELATIONSHIP WITH CGRFA: The relationship between the Governing Body and the CGRFA (IT/GB-1/06/15) was discussed in WG-I on Thursday. The discussion was reflected in the session report, which was adopted by plenary on Friday.

All regions thanked the CGRFA for its contribution to the Treaty's negotiation, emphasizing the importance of future cooperation and calling for holding back-to-back meetings of the Governing Body and the CGRFA. Switzerland proposed creating an independent Treaty website to increase its visibility.

Final Outcome: In the report of the second session, the Governing Body: stresses the need to develop close cooperation with the CGRFA; agrees that future sessions of the Governing Body should, as far as possible, be held back-to-back with sessions of the CGRFA; encourages CGRFA members that have not yet become ITPGR parties to do so immediately; and recommends the establishment of a website for the Treaty.

COOPERATION WITH OTHER INTERNATIONAL ORGANIZATIONS: The report on the status of cooperation with other international organizations (IT/GB-1/06/Inf.4) was discussed in WG-I on Thursday. On Friday, WG-I approved the relevant section of its report without amendment and the plenary adopted it.

The Intermediate Technology Development Group/Practical Action, supported by North America, Africa and Norway, called for increased involvement of civil society organizations, especially farmers' organizations, in Governing Body sessions. Europe and North America urged the Governing Body to accept a CBD invitation to participate in the Joint Liaison Group of Biodiversity-related Conventions.

Final Outcome: In the report of its first session, the Governing Body:

- notes that cooperation with other international organizations is of particular importance for the Treaty;
- notes the need to extend its cooperation with a wide range of organizations, especially the CBD, including in the

implementation of the cross-cutting initiative on biodiversity for food and nutrition and the participation of its Secretariat in the Liaison Group of the Biodiversity-related Conventions and welcomes the CBD COP-8 invitation to this effect; and

- welcomes the decision of the IARCs of the Consultative Group of International Agricultural Research (CGIAR) to sign agreements with the Governing Body.

WORKING GROUP II

FINANCIAL RULES: Financial rules (IT/GB-1/06/4Add.1) were discussed in Working Group II on Monday and Tuesday and in a contact group on Monday through Thursday. The Secretariat clarified that the proposed financial rules concern not only the Governing Body sessions, but also relate more broadly to the financial administration of the Treaty. The most contentious issue related to whether the voluntary contributions should be purely voluntary, or based on an indicative scale. Africa, GRULAC, Switzerland, Norway, India, Chad and Côte d'Ivoire supported an indicative scale of voluntary contributions, with Argentina cautioning against setting a precedent of strictly voluntary contributions. Canada, Japan and the Southwest Pacific preferred strictly voluntary contributions, with Japan warning that a scale of voluntary contributions may deter future ratifications of the Treaty. The US noted that the suggested 25% cap of the proposed scale of contributions does not conform to the cap adopted by the UN System. On Friday night, the plenary agreed that this issue could not properly be debated due to time constraints, and adopted the financial rules with text on the indicative scale of contributions remaining bracketed, pending further discussions at the second session of the Governing Body.

Final Outcome: In the financial rules, the Governing Body provides for:

- the financial period to be two calendar years;
- the budget to comprise the core administrative budget relating to voluntary contributions of countries and intergovernmental and non-governmental organizations, and special funds relating to additional voluntary contributions;
- the draft budget to be prepared by the Secretary with resources comprising: the amount provided for the Treaty in the FAO regular work programme and budget, voluntary contributions to the core administrative budget from states that are not parties, intergovernmental and non-governmental organizations or other entities for Treaty administration and implementation purposes, and miscellaneous income including interest deriving from investment funds held in trust;
- the Secretary to be able to incur obligations and make payments to support representatives from developing countries and economies in transition;
- all contributions and other receipts to be placed in Trust Fund administered by FAO; and
- within the general fund, to maintain a working capital reserve at a level to be determined from time to time by the Governing Body by consensus;

Paragraphs on provision of funds related to the indicative scale of contributions, amendments and entry into force remain bracketed.

FUNDING STRATEGY: Delegates discussed the draft funding strategy of the Treaty (IT/GB-1/06/5) in WG-II and in informal consultations throughout the week, and in plenary

on Friday. They considered a draft resolution, with an annex containing the funding strategy and a list of proposed provisional annexes to the strategy.

Delegates debated the establishment of an advisory committee on the funding strategy. While Europe proposed establishing an *ad hoc* advisory committee, Australia and Canada repeatedly opposed the establishment of any type of committee, citing budgetary constraints. GRULAC, India and Brazil stressed the need for intersessional work to develop the provisional annexes. Europe conceded language on possible further development of these annexes, but requested deletion of provisional annexes on targets for funding and a strategy for promoting voluntary contributions, which was agreed.

On resources outside the Governing Body's direct control, Australia suggested that developed countries "may" provide financial resources. Europe, supported by Uganda and opposed by GRULAC and India, proposed that such funds can be used for non-Annex I crops. GRULAC and Africa proposed that resources arising from benefit-sharing should be used "primarily" to improve the conservation and sustainable use of genetic resources covered by Annex I, but Europe objected, arguing that such benefits should be used solely for Annex I resources.

On provision of information, Europe repeatedly proposed that the Secretariat compile and post all submitted information online. On providing information to the Secretariat regarding the provision of bilateral funding from sources within their country, GRULAC, supported by Sudan, argued that only developed countries should provide such information. Australia and Canada objected, stressing the need for a uniform requirement for all countries, and opposed a subsequent GRULAC proposal to eliminate the paragraph. Supported by Angola, Chad and India, they also argued that all countries, rather than only developing countries, should report on capacity-building programmes. GRULAC, opposed by Canada, Egypt and Chad, proposed deleting the entire paragraph.

On Friday afternoon, WG-II agreed on compromise text on: establishing an "*ad hoc*" advisory committee on the funding strategy; deleting a provisional annex on the modalities of a strategy to promote voluntary contributions; and adopting text stating that resources outside the Governing Body's direct control may be allocated to non-Annex I crops, in particular underutilized crops. On Friday night, the plenary adopted the resolution on the funding strategy without amendments.

Final Outcome: In the resolution on the funding strategy, the Governing Body:

- mandates the Secretariat to facilitate the provision of adequate resources by developed country parties for Treaty implementation in developing countries and countries with economies in transition;
- requests parties to take measures with the Governing Bodies of relevant international mechanisms, funds and bodies, to ensure due priority to the allocation of predictable and agreed resources for Treaty implementation;
- requests that the Global Crop Diversity Trust cooperate with the Governing Body;
- invites the Global Environment Facility, the World Bank and the regional development banks to support the conservation and sustainable use of agricultural biodiversity;
- invites parties, the private sector, including the food processing and other value-added industries, non-

governmental organizations and all other interested parties to make voluntary contributions; and

- decides to establish an *ad hoc* advisory committee of seven representatives of parties, to draft priorities and procedures for the allocation of funds under the direct control of the Governing Body.

The Funding Strategy annexed to the resolution states that potential sources for financial resources will include, *inter alia*:

- financial resources provided by developed country parties, which parties that are developing countries and countries with economies in transition avail themselves of;
- financial resources resulting from the sharing of monetary benefits arising from the commercialization of PGRFA;
- voluntary contributions from parties, the private sector, non-governmental organizations, and other sectors; and
- financial resources provided through the FAO regular programme.

Furthermore, the strategy stipulates that, *inter alia*:

- initial priorities will be the priority areas of the rolling Global Plan of Action;
- financial resources arising from benefit-sharing should be used to improve conservation and sustainable use of plant genetic resources;
- resources not under the direct control of the Governing Body may be allocated to Annex I crops as well as those not listed in Annex I, in particular underutilized crops;
- information on the mandates, policies, eligibility criteria and procedures of funding from international mechanisms, funds and bodies will be collected and maintained by the Secretariat and made available through the website of the Treaty; and
- cooperation between the Governing Body and the CGRFA should, “as appropriate, facilitate the implementation of supporting components of the Treaty, in particular the Global Plan of Action.”

APPOINTMENT OF THE SECRETARY: Arrangements for the appointment of the Secretary (IT/GB-1/06/11) were discussed in WG-II on Wednesday and Friday. The plenary adopted the relevant decisions on Friday evening.

When discussing the terms of reference, Europe argued that the Secretary’s independence may be compromised if he is required “to perform such other related duties that the FAO Director-General may assign,” instead proposing that the Secretary perform “*ad hoc* related duties that the Director-General may from time to time assign.” On the question of desirable qualities, GRULAC opined that the Secretary should have conservation experience.

On Friday in WG-II, Europe stressed the need to appoint a Secretary before the second session, and proposed text allowing, in exceptional circumstances, the Chair of the Governing Body to recommend a candidate to the FAO Director-General without the approval of the Governing Body. Madagascar and India expressed reservations, but agreed.

Final Outcome: In the session report, the Governing Body: approves the terms of reference for the Secretary contained in Appendix 1; agrees with the proposed procedures for the appointment of the Secretary contained in Appendix 2; and decides to establish a screening committee to review applications for the post. The Governing Body further mandates the screening committee to complete the procedures in time to recommend the candidate Secretary to the FAO Director-General so that the

appointment can be completed as early as possible before the second session of the Governing Body; and that exceptionally, on a specific mandate from the Governing Body, the Chair of the Governing Body shall propose the candidate to the FAO Director-General on the basis of the recommendation of the screening committee without the prior approval of the Governing Body.

TECHNICAL ADVISORY COMMITTEE: The possible establishment of a permanent technical advisory committee (IT/GB-1/06/8) was discussed in WG-II on Wednesday, Thursday and Friday, and the plenary adopted a decision on Friday to further consider the issue during the intersessional period. The Secretariat stressed the difference between the proposed permanent technical advisory committee and the agreed-upon advisory committee on the funding strategy. Europe, Australia and Canada opposed the establishment of a committee, raised the possibility of a future non-permanent committee, and called for deferring its consideration to the Governing Body’s second session. Africa, India, Malaysia, GRULAC, Egypt and Chad demanded the immediate establishment of a permanent committee, with Africa and India preferring an independent committee rather than one linked to the CGRFA. India, supported by GRULAC, proposed text on the establishment of a permanent advisory committee to review issues referred to it by the Governing Body and act as a think-tank on scientific and technical issues. Europe opposed, citing insurmountable budgetary constraints.

On Friday, in Working Group II, Indonesia offered compromise text on further considering the establishment of a committee between the first and second Governing Body’s sessions. India insisted that the technical advisory committee should be permanent. Europe, supported by Canada, proposed “the possible establishment of any technical subsidiary body.” After extensive negotiations, delegates agreed on text requesting the Secretariat to further consider the possible establishment of a technical advisory committee, and report back at the second session of the Governing Body.

Final Outcome: The Governing Body requests the Secretary to consider further the possible establishment of a technical advisory committee, including aspects relating to terms of reference, composition and funding needs, and report back to the second session of the Governing Body.

IMPLEMENTATION OF ARTICLE 6: Implementation of Article 6 (Sustainable use of PGRFA) (IT/GB-1/06/10) was discussed in WG-II on Thursday, and in plenary on Friday evening. The EU favored step-wise implementation, suggesting that the Secretariat assess the best way to proceed and present its findings to the Governing Body to decide on next steps.

Final Outcome: In the session report, the Governing Body decides: that the implementation of Article 6 should be a component of its programme of work and a standing item on its agenda; to engage in an in-depth consideration of PGRFA sustainable use following a staged approach to begin at its next session; and to request the Secretary to facilitate the participation of civil society organizations in the work of the Treaty, especially Article 6 implementation.

RELATIONSHIP WITH THE GLOBAL CROP DIVERSITY TRUST: The relationship between the Governing Body and the Global Crop Diversity Trust (IT/GB-1/06/14) was discussed in WG-II on Wednesday, and a decision by the

Governing Body was adopted in plenary on Friday. Discussion mainly focused on dispute settlement and procedures for appointing members to the Trust Executive Board.

On dispute settlement, the EU suggested referring disputes to an existing mechanism rather than creating a new one. In addition, GRULAC argued that in cases of failure to agree on arbitrators, the FAO Director-General should appoint arbitrators, while Europe and the CGIAR preferred the UN Secretary-General to do so. On Friday, in WG-II, the FAO Legal Council advised against referring disputes to the UN Secretary-General, and suggested that they be referred to the Secretary-General of the Permanent Court of Arbitration, which was agreed.

On the procedures for appointing members of the Trust Executive Board, the EU, Canada and Brazil called for regional balance, with India adding that “biodiversity-endowed” areas be adequately represented. Brazil called for consultations with governments in the appointment process, and Switzerland for an effective, transparent and participatory method for candidate selection.

Final Outcome: In the report, the Governing Body: expresses unanimous support for the Trust and notes that the Trust will operate under the overall policy guidance of the Treaty’s Governing Body; approves the text of the relationship agreement between the Governing Body and the Global Crop Diversity Trust; and agrees to procedures for the appointment of four members of the Trust’s Executive Board, detailed in the annex. The annex contains the relationship agreement, which: sets out the purpose of the agreement; specifies that the Governing Body provides overall policy guidance to the Trust on matters within the purview of the Treaty; clarifies that the Executive Board will have full executive independence in managing the operations and activities of the Trust; and details the method of dispute settlement.

ASSESSMENT OF PROGRESS IN PGRFA INCLUSION

IN THE MS: On Thursday, WG-II considered the assessment of progress in the inclusion of PGRFA held by natural and legal persons in the MS (IT/GB-1/06/12), with delegates deciding to postpone the first assessment of progress to the third meeting of the Governing Body, to allow for the MTA to become operational. The plenary adopted the decision on Friday.

Final Outcome: In the session report, the Governing Body decides to defer the assessment of progress in the inclusion of PGRFA held by natural and legal persons in the Multilateral System until the third session of the Governing Body.

AGREEMENTS WITH IARCS: Agreements with IARCs of the CGIAR and other relevant international institutions (IT/GB-1/06/9) were discussed and finalized in WG-II on Thursday, and adopted in plenary on Friday. A brief debate centered on IARCs’ access to resources and dispute settlement.

On access to resources, the EU and Canada, initially opposed by Brazil, supported encouraging ITPGR parties to give IARCs access to PGRFA not listed in Annex I, on mutually agreed terms. During the closing plenary, the agreement was adopted with minor amendments.

Final Outcome: In the session report, the Governing Body: approves the draft model agreement, attached in an appendix; requests the Secretary to continue consultations with other relevant international institutions and report regularly on

progress; and invites the FAO Director-General to sign the agreements with the IARCs and other relevant institutions on its behalf.

The appendix contains a model agreement between the IARCs and FAO, acting on behalf of the Governing Body. The agreement includes articles on, *inter alia*: the application and interpretation of the agreement; rights and obligations of the parties to the agreement; PGRFA received after the entry into force of the Treaty; consultations regarding implementation; duration of the agreement; and settlement of disputes.

PLENARY

2006-2007 BUDGET AND WORK PROGRAMME: The draft work programme and budget for the biennium 2006-2007 (IT/GB-1/06/13) was addressed in a budget committee that met from Tuesday through Thursday. During Thursday night’s plenary, Chair Mombiela introduced a draft resolution with three appendices containing the ITPGR core administrative budget, a Secretariat staffing table, and a programme of work for the biennium 2006-2007. Budget Committee Chair Christer Wretborn (Sweden) reported that the committee had agreed on a core administrative budget of US\$2,800,610, noting that FAO will contribute 40%. He further said that the budget is currently under-funded, expressed hope for country voluntary contributions, and urged the plenary to adopt the resolution. Austria, Finland, Ireland, Spain and Canada each pledged US\$5,000 for the first meeting of an advisory committee on the funding strategy.

On Friday, Budget Committee Chair Wretborn introduced a new core administrative budget of US\$2,854,988. Norway stressed that farmers’ rights are the cornerstone of the Treaty, and with support from India, Angola, Pakistan, Cuba and Yemen, suggested adding intersessional meetings on farmers’ rights to the programme of work, to prepare for consideration of this issue at the Governing Body’s second session. In response to inquiries, the Secretariat clarified that planned activities could not be carried out in the absence of voluntary contributions, and that the proposed budget cannot support participation of farmers’ organizations. Noting that civil society organizations are not adequately supported by international mechanisms, the South East Asian Regional Initiatives for Community Empowerment said farmers need to be “politically welcomed rather than financed.”

Final Outcome: In the resolution on the budget and programme of work for the biennium 2006-2007, the Governing Body, *inter alia*:

- adopts a core administrative budget for the biennium 2006-2007, contained in an appendix;
- expresses concern as to the adequacy of the amount provided for the Treaty in the FAO Regular Budget and invites the FAO Governing Bodies to fund a significantly higher proportion of the core administrative budget;
- urges all parties and states that are not ITPGR parties, as well as intergovernmental organizations and non-governmental organizations, to contribute to the budget and special funds of the Treaty;
- decides that the FAO contribution shall be used before any other source of income is used for funding the core administrative budget;

- decides that the work programme shall consist of meetings listed in an appendix, as well as meetings of the Governing Body, Bureau and the Secretary Selection Committee; and
- requests the Secretariat to convene meetings listed in an appendix, subject to the availability of adequate voluntary contributions to special funds referred to in the financial rules of the Treaty.

The adopted core administrative budget contained in an appendix to the resolution amounts to US\$2,854,988 of which US\$1,124,000 is funded by the FAO and the rest is outstanding balance yet to be funded.

SECOND SESSION OF THE GOVERNING BODY:

During Thursday's evening plenary, delegates agreed that the second session of the Governing Body will be held back-to-back with the next session of the CGRFA, in the first half of 2007 in Rome, Italy.

CLOSING PLENARY

On Friday, 16 June, the Working Groups met in the morning and afternoon to complete their work and adopt their reports. As the Friends of the Chair group worked on finalizing the standard MTA throughout the day and reached agreement in the late afternoon, the closing plenary did not convene until 9:47 pm. Rapporteur Tensure reported on the work and positive results of this session. The report was approved by the plenary without amendment. WG-I Chair Harvey reported on the successful conclusion of the deliberations of the Friends of the Chair group on the MTA. Delegates heard the report of the credentials committee (IT/GB-1/06/INF.18), with Eritrea questioning his country's inclusion among the non-fully accredited parties. The plenary then elected the bureau for the second session of the Governing Body. Godfrey Mwila (Zambia) was elected Chair. Other members of the bureau include: Sugiono Moeljopawiro (Indonesia), John Madden (Australia), Cambell Davidson (Canada), Modesto Fernandes (Cuba), Mohamed Khalifa (Egypt), and François Pythoud (Switzerland).

India read a statement on behalf of the Group of 77 and China, which highlighted the importance of both the funding strategy and the standard MTA for the full implementation of the ITPGR, and called for transparent, representative and multilateral implementation. He also stressed the need for financial resources. A civil society representative made a statement on behalf of the Berne Declaration, Community Biodiversity Development and Conservation Network, ETC Group, Global Forest Coalition, ITDG/Practical Action, SEARICE and SEEDS, calling for: representation of civil society organizations in contact groups; renewed commitments to fund the Global Plan of Action and to discuss the issue at the next session of the Governing Body; undertake studies and explore funding opportunities for *in situ* and *ex situ* conservation of PGRFA; and setting up transparent monitoring mechanisms in relation to compliance with the Treaty. Accepting a gift from the civil society representatives in recognition of his personal contribution to PGRFA, CGRFA Secretary Esquinas encouraged delegates to continue working towards the ideal of a world free from hunger for future generations. Chair Mombiela gavelled the session to a close at 2:14 am on Saturday, 17 June 2006.

A BRIEF ANALYSIS OF ITPGR GB-1

Having worked for years to create the ITPGR and ensure its rapid entry into force, delegates arrived in Madrid to breathe life into it. This required putting into place its core components – the standard Material Transfer Agreement, the funding strategy and a compliance mechanism – in addition to finalizing the Governing Body's rules of procedure and financial rules, which had not been resolved by the second session of the ITPGR Interim Committee.

Delegates soon realized that many items were closely interlinked (as in the case of the budget and the funding strategy, which depended on the adoption of the financial rules), thus resembling a Gordian knot that would be difficult, if not impossible, to untie. Understanding these linkages was not easy, and over the week, delegates spent considerable time explaining the complexities and their consequences to each other. Moreover, in several cases, delegates' negotiating strategies contributed to tightening the knot, by making their support for key decisions contingent on the adoption of others.

This brief analysis will recount delegates' attempts to untangle the agenda, and show how they successfully untied most of the knot of complex linkages among the MTA, the funding strategy and compliance.

ARRIVAL IN GORDIUM

At the beginning of the week, opinions varied about the chances of successfully adopting the standard MTA. Optimists counted on the collaborative spirit that had led to considerable progress during the intersessional meetings of the Standard MTA Contact Group, while pessimists expected that divergent interests and different approaches to benefit-sharing arrangements would stall the process.

Serving as a contract between providers and recipients of PGRFA, the standard MTA is the cornerstone of the ITPGR Multilateral System, laying out the conditions for access to genetic materials in the MS and specifying the modalities and levels of payment for benefit-sharing. Thus, the MTA is not only indispensable to operationalizing the Treaty, it also acts as one of the sources of funding for programmes and projects for the implementation of its objectives of conservation and sustainable use of PGRFA.

However, factoring in the time needed for product development, substantial benefit-sharing revenues can only be expected 7-15 years after the MTA enters into force. In light of future MTA payments, the EU prioritized the immediate adoption of the MTA, to speed up ITPGR implementation and get a step closer to its self-financing. GRULAC and other developing countries, however, conditioned their support for the MTA upon the approval of the funding strategy, to ensure sufficient funding during the interim period. This, among other factors, led to delays in negotiating the standard MTA, as delegates awaited progress on the funding strategy before making concessions on benefit-sharing provisions.

A TIGHT KNOT

Besides differing negotiating priorities between developed and developing regions, agreeing on the terms of the standard MTA proved difficult due to a number of its underlying complexities, often leading to different perceptions among regional groups as to what kind of benefit-sharing mechanism

within the MTA would constitute a practical and reasonable solution. This resulted in arduous deliberations and speculations repeatedly arose that some regions were trying to stall the process for political reasons. For example, GRULAC's insistence on language that clearly delimits the scope of the MTA was interpreted by some in this way. GRULAC delegates explained that their main concern was to ensure that the MTA applies only to genetic resources under the Treaty's Multilateral System in order to prevent possible repercussions on the negotiation of an international regime on access and benefit-sharing under the CBD.

However, seasoned ITPGR negotiators attributed the slow pace of negotiations to the sheer complexity of the issues and the lack of full understanding of the MTA, rather than divergences of interests or political strategy. Much about the MTA is unprecedented: it is a new form of contract that regulates transfers of genetic materials from a multilateral institution to private actors. There is yet little experience as to how the mechanism of the MTA will work in practice and how it will generate revenues through benefit-sharing. These uncertainties made it very difficult for countries to develop their positions and communicate their objectives. Despite efforts to provide opportunities for preparation and regional coordination before the meeting, delegates from several regions lamented that they did not have the capacity to analyze the implications of the proposals on the table and to identify common grounds for agreement, or in some cases, to align their positions within the regional groups. One delegate indeed commented that, at the end of the MTA negotiations, his voice was hoarse because of the time spent on explaining the possible consequences of different options.

Most prominent was the debate on how to define a "product" that is subject to benefit-sharing obligations and the corresponding level of payments. Confusion arose as to whether this also implies payments on PGRFA under development, leading to hard-fought negotiations on definitions and payment modalities. The Near East and Asia insisted on definitions that could imply payments on every transfer of genetic materials originating from the system, regardless of whether they are under development or commercialized products, such as seeds. Only by early Friday morning, when even the optimists had almost given up hope, did all groups agree that the additional revenue, which such an arrangement would yield, would likely be consumed by increased monitoring and transaction costs.

Following a series of late-night negotiating sessions, delegates managed during the final hours of the meeting to address the last hurdle: the determination of the levels of payment for benefit-sharing, which was resolved comparatively quickly, considering that the original "offers" and "demands" made by user and supplier countries were strikingly far apart.

An interesting feature of the newly adopted MTA is the possibility for the recipient to choose between two types of payment. The first, originally proposed by Europe, is based on a broad definition of products and requires benefit-sharing payments of 1.1% of sales of all PGRFA products that incorporate material from the Multilateral System and to which access is restricted by intellectual property rights, such as plant variety protection. Alternatively, recipients can opt for making payments on all commercial products of a certain Annex I crop, regardless of whether access to these is restricted and whether they incorporate material from the Multilateral System. Under

this option, recipients will enjoy a discounted payment rate of 0.5%, which seems more attractive to those recipients who will require large amounts of material from the system. The second option will likely generate revenues in the near future, since it will also apply to products that are already on the market, while the first option applies only to new products that will not be ready for commercialization for another 7-15 years.

While most delegates hailed the conclusion of the MTA as a great success, others noted that an immediate MTA is preferable to continuing the search for a "perfect deal," since the flaws of any MTA will only surface from experience in its implementation.

YET MORE ENTANGLES...

Financial matters formed another thread of the Gordian knot at the first session of the Governing Body. Early in the week, deliberations on financial rules and contributions to the Treaty's core budget mirrored that of other international processes, with developing countries, opposed by donor countries, insisting on the adoption of an indicative scale of voluntary contributions. Some emphasized that adopting such a scale would prevent ITPGR ratification by some economically strong non-parties, such as the US and Japan, while others pressured that a scale would have to be implemented "now or never," to ensure at least some long-term financial stability for the Treaty. Because of perceived limited contributions from the FAO regular budget and the lack of pledges from developed countries to the ITPGR budget, delegates decided to "shrink" it by roughly one-third below what had initially been proposed, in order to reduce the funding shortfall. To some, the limited financial commitments by donor countries can be explained by their desire to exercise stronger control on the use of their funding. This would also explain why they seemed more inclined to pledge donations to the Global Crop Diversity Trust – where they have greater influence on the Trust's Executive Board, rather than the Treaty's Trust Fund – for which the ITPGR Governing Body is responsible. Donors, however, explained their conduct as a way to obtain more funding from the FAO budget for the next biennium. Nonetheless, both sides agree that the current severe shortage of funds undermines effective implementation. Hopes are, therefore, high that the adoption of the funding strategy will improve this situation by attracting funds from the private sector and other stakeholders.

Other intertwined deliberations emerged at the last minute, just before the start of the closing plenary. Delegates managed to adopt a clean text both on the rules of procedure and on compliance, thanks to a compromise package in which Europe and Africa conceded to the consensus-based decision making sought by GRULAC, Asia and Southwest Pacific, and obtained the immediate establishment of a compliance committee operating with provisional compliance procedures and mechanisms, with procedures and mechanisms to be adopted by the second session of the Governing Body. As a result, the ITPGR Governing Body has, in contrast to the bodies of other international environmental agreements such as the CBD, a non-bracketed rule on decision making, which has the benefit of being unambiguous, but may lead to slower or less effective procedural decision making if compared with simple-majority

voting. The establishment of the compliance committee as an “empty shell” also stands as a signal of parties’ goodwill to make the ITPGR work as soon as possible.

WHY SLICE THE KNOT WHEN YOU CAN UNTIE IT?

When Alexander the Great sliced the Gordian knot, he found a solution that was not anticipated by the Phrygians, who had created such a challenge to find their future king. Delegates to the first session of the ITPGR Governing Body, in contrast, did not find an unexpected solution. Nevertheless, many were surprised by the last-minute breakthrough on the standard MTA and the progress made on the funding strategy, procedural rules and compliance. Instead of “cutting through the knot,” by deciding to refer some items to intersessional work or future Governing Body sessions, they successfully untangled most of the interlinked issues before them. And while they may not have always arrived at the perfect solution, this strategy proved to be wiser in the end in that it ensures the immediate operation of the ITPGR.

In the midst of this multifaceted progress, the meeting has also shown that one of the key remaining challenges is to raise the visibility and political profile of the Treaty, as well as the parties’ understanding of its technical and legal implications. Governments will need to promote the standard MTA as a key tool for benefit-sharing, and to persuade those private actors holding *ex-situ* collections of Annex I crops to join the Multilateral System, as well as build the capacity of all parties’ negotiators to fully understand the ground-breaking consequences of the MTA implementation. Having untangled the Gordian knot at this meeting, the Governing Body at its second session, in one year’s time, will face the task of weaving the loose ends back into the fabric of the Treaty.

UPCOMING MEETINGS

58TH EXECUTIVE COMMITTEE OF THE CODEX ALIMENTARIUS COMMISSION: The 58th session of the Executive Committee of the Codex Alimentarius will take place from 28 June to 1 July 2006, in Geneva, Switzerland. For further information, contact: K. Miyagishima, tel: +39-06-5705-1; fax: +39-06-5705-4593; e-mail: codex@fao.org; internet: http://www.codexalimentarius.net/web/index_en.jsp

29TH SESSION OF THE CODEX ALIMENTARIUS COMMISSION: The 29th Session of the Codex Alimentarius Commission will be held from 3-7 July 2006, in Geneva, Switzerland. For more information, contact K. Miyagishima, tel: +39-06-5705-1; fax: +39-06-5705-4593; e-mail: codex@fao.org; internet: http://www.codexalimentarius.net/web/index_en.jsp

16TH MEETING OF THE CITES PLANTS COMMITTEE: The 16th meeting of the CITES Plants Committee will take place on 3-8 July 2006, in Lima, Peru. For more information, contact: CITES Secretariat; tel: +41-22-917-8139; fax: +41-22-797-3417; e-mail: cites@unep.ch; internet: <http://www.cites.org/eng/news/meetings/PC16.shtml>

WORLD CONGRESS OF SOIL SCIENCE: The World Congress of Soil Science will be held on 9-15 July 2006, in Philadelphia, US. The theme is the “Frontiers of soil science: technology and the information age.” For more information, contact: Keith Schlesinger, Director of Meetings & Conventions; tel: +1-608-273-8080; fax: +1-608-273-2021; e-mail: kschlesinger@soils.org; internet: <http://iuss.colostate.edu/18wc/ss/>

EIGHTH ANNUAL BIOECON CONFERENCE: The eighth Annual BIOECON Conference will be held on 29-30 August 2006, in Cambridge, United Kingdom. The conference is on the economic analysis of ecology and biodiversity. This Conference is organized by the University of Cambridge and the International Food Policy Research Institute, in association with Diversitas and the UK Department for Environment, Food and Rural Affairs (DEFRA). For more information, contact: Andreas Kontoleon, University of Cambridge; tel: +44-1223-339773; fax: +44-1223-337130; e-mail: ak219@cam.ac.uk; internet: http://www.bioecon.ucl.ac.uk/04_8_ann-conf.html

54TH MEETING OF THE CITES STANDING COMMITTEE: The 54th meeting of the CITES Standing Committee is being held on 2-6 October 2006, in Geneva, Switzerland. For more information, contact: CITES Secretariat; tel: +41-22-917-8139; fax: +41-22-797-3417; e-mail: cites@unep.ch; internet: <http://www.cites.org/eng/news/calendar.shtml>

131ST FAO COUNCIL: The 131st session of the FAO Council will convene from 20-25 November 2006, 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; internet: http://www.fao.org/UNFAO/govbodies/Councilfinal_en.asp

14TH MEETING OF THE CONFERENCE OF THE PARTIES TO CITES: The 14th meeting of the Conference of the Parties to CITES will be held on 3-15 June 2007, in The Hague, the Netherlands. For more information, contact: CITES Secretariat; tel: +41-22-917-8139; fax: +41-22-797-3417; e-mail: cites@unep.ch; internet: <http://www.cites.org/eng/news/calendar.shtml>

SECOND SESSION OF THE ITPGR GOVERNING BODY: The second session of the Governing Body of the International Treaty on Plant Genetic Resources for Food and Agriculture will be held during the first half of 2007, back-to-back with the next session of the CGRFA, 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; internet: <http://www.fao.org/ag/cgrfa>

GLOSSARY

CGIAR	Consultative Group of International Agricultural Research
CGRFA	Commission on Genetic Resources for Food and Agriculture
IARCs	International Agricultural Research Centers
ITPGR	International Treaty on Plant Genetic Resources for Food and Agriculture
IU	International Understanding
MS	Multilateral System
MTA	Material Transfer Agreement
PGRFA	Plant genetic resources for food and agriculture

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RENEWABLES 2004 BULLETIN

A Daily Report from the International Conference for Renewable Energies

Published by the International Institute for Sustainable Development (IISD)

DAILY REPORTS AND WEB COVERAGE AT [HTTP://WWW.IISD.CA/SD/REN2004/](http://www.iisd.ca/sd/ren2004/)
VOLUME 95, No. 5, MONDAY, 7 JUNE 2004

SUMMARY REPORT OF THE INTERNATIONAL CONFERENCE FOR RENEWABLE ENERGIES - RENEWABLES 2004: 1-4 JUNE 2004

The International Conference for Renewable Energies (*renewables 2004*) took place from 1-4 June 2004, in Bonn, Germany. Approximately 3600 participants from 154 countries attended the Conference, including several Heads of State, 121 Ministers and representatives from governments, intergovernmental organizations (IGOs), non-governmental organizations (NGOs), the scientific community and the private sector.

The *renewables 2004* programme consisted of nine Plenary Sessions, including a Multi-Stakeholder Dialogue and a Ministerial Segment. The Multi-Stakeholder Dialogue addressed: the value of, and opportunities for, renewable energy - policy frameworks and regulatory certainty; and promoting renewable energy - finance and capacity for the future. Other Plenary Sessions addressed best-practice examples and success stories.

The Ministerial Segment included three Ministerial Roundtables that considered policies for renewable energy market development, financing options, and strengthening capacities, research and policy



Members of major groups and delegations in the main plenary room.

developing countries, and the mobilization of financial resources for new and renewable sources of energy. However, it was only following the 1992 UN Conference on Environment and Development (UNCED) that renewable energy issues began to feature more promi-

"IISD proved to be as professional as their reputation is. The group covered all events taking place at the conference venue itself as well as many side events which were located in the vicinity of the conference hall. IISD produced a well-designed bulletin including informative text and pictures of all important meetings, discussions and results of the main conference events. This bulletin was very useful for participants to follow events they could not attend or were also interested in. IISD also published plenty of information and photos on their web site. This service was a real added value to our own conference coverage. The services of IISD, being an independent organization, were especially appreciated by the conveners of the conference, ie the Federal Ministry for Economic Cooperation and Development and the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety"

Dr. Heinrich Schneider
Conference Secretariat
International Conference for
Renewable Energies, Bonn 2004

This product was developed in 2003 specifically for large conferences that include both substantive discussions and side events. Building on the success of the *Earth Negotiations Bulletin* and *ENB on the Side*, "Your Meeting" Bulletin was created as a conference daily report. IISD Reporting Services was hired to publish in this format at the World Forestry Congress, Renewables 2004 and the IUCN World Conservation Congress. "Your Meeting" Bulletin is a 4-6 page daily report and summary issue that includes coverage of policy discussions and/or negotiations, and extensive reporting from side events and special events during the conference.

For further information or to make arrangements for IISD Reporting Services to cover your meeting conference or workshop, contact the Managing Director:

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