

THIRD SESSION OF THE GOVERNING BODY OF THE INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE: 1-5 JUNE 2009

The third session of the Governing Body (GB 3) of the International Treaty on Plant Genetic Resources for Food and Agriculture (the Treaty or ITPGR) opens today and will continue until 5 June 2009 in Tunis, Tunisia. The meeting will address: procedures and operational mechanisms to promote compliance and address issues of non-compliance; implementation of the funding strategy; the business plan of the Governing Body; the relationship between the Governing Body and the Global Crop Diversity Trust; implementation of the Treaty's Multilateral System (MLS) of Access and Benefit-sharing (ABS); procedures for the Third Party Beneficiary; implementation of Article 6 (Sustainable Use of Plant Genetic Resources); implementation of Article 9 (Farmers' Rights); the relationship between the Governing Body and the FAO Commission on Genetic Resources for Food and Agriculture (CGRFA); and the work programme and budget for 2010/2011.

A BRIEF HISTORY OF THE ITPGR

Concluded in the framework of 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 contains sections on general provisions, farmers' rights, supporting components, and financial and institutional provisions. It establishes an MLS for facilitated access to a specified list of PGRFA including 35 crop genera and 29 forage species (Annex I), balanced by benefit-sharing in the areas of information exchange, technology transfer, capacity building and commercial development. The Treaty entered into force on 29 June 2004, and currently has 120 parties.

NEGOTIATION PROCESS: 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 CGRFA decided that the IU should be revised to be in harmony with the newly adopted CBD.

Negotiations spanned 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 consisted of 41 countries, chaired by Amb. Fernando Gerbasi (Venezuela), held six sessions to address contentious issues, including the list of crops to be included in the MLS, benefit-sharing, intellectual property rights (IPRs) to materials in the MLS, financial resources, genetic materials held by the International Agricultural Research Centers (IARCs) of the Consultative Group on International Agricultural Research (CGIAR) and definition of key terms. CGRFA's sixth extraordinary session (June-July 2001, Rome, Italy) 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 MLS, the new treaty's relationship with other international agreements, and the list of crops to be included in the MLS. 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 (October-November 2001, Rome, Italy) 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.

ITPGR INTERIM COMMITTEE: As part of the interim arrangements, CGRFA, acting as the ITPGR Interim Committee, 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 to material in the MLS, including terms for commercial benefit-sharing; and initiate cooperative arrangements with the CBD Conference of the Parties (COP).

The Interim Committee held two meetings (October 2002 and November 2004, Rome, Italy), where it adopted its rules of procedure and terms of reference for intersessional consideration of the rules of procedure and financial rules for the Governing Body, procedures for compliance and the terms of the standard MTA. An open-ended intersessional working group on the rules of procedure and financial rules of the Governing Body, the funding strategy and procedures for compliance (December

2005, Rome, Italy) revised these items and prepared a draft resolution on compliance, for consideration by the first meeting of the Governing Body. An expert group on the standard MTA (October 2004, Brussels, Belgium) considered options for the terms of the standard MTA and its draft structure, and recommended establishment of an intersessional contact group to draft its elements. This contact group held two meetings. At its first meeting (July 2005, Hammamet, Tunisia), it set out the basic structure of the standard MTA. A number of controversial 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. The second meeting (April 2006, Alnarp, Sweden) agreed on a draft standard MTA but left a number of issues unresolved, including: the Third Party Beneficiary's rights; 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 resolve pending issues prior to the first meeting of the Governing Body.

ITPGR GB 1: The first session of the ITPGR Governing Body (June 2006, Madrid, Spain) adopted a standard MTA and the funding strategy. The standard MTA includes provisions on a fixed percentage of 1.1% that a recipient shall pay when a product is commercialized but not available without restriction to others for further research and breeding; and 0.5% for the alternative payments scheme. The Governing Body further adopted: its rules of procedure, including decision making by consensus; financial rules with bracketed options on an indicative scale of voluntary contributions or voluntary contributions in general; a resolution establishing a compliance committee; the relationship agreement with the Global Crop Diversity Trust; a model agreement with the IARCs of the CGIAR and other international institutions; and the budget and work programme for 2006/07.

ITPGR GB 2: The second session of the ITPGR Governing Body (October-November 2007, Rome, Italy) addressed a series of items, including implementation of the funding strategy, the MTA for non-Annex I crops, cooperation with the CGRFA, and sustainable use of PGRFA. Following challenging budget negotiations, the meeting adopted the work programme and budget for 2008/09. It also adopted a resolution on farmers' rights, as well as a joint statement of intent for cooperation with the CGRFA.

INTERSESSIONAL HIGHLIGHTS

ADVISORY COMMITTEE ON THE FUNDING

STRATEGY: The Advisory Committee convened twice (16-17 October 2008, Rome, Italy and 12-13 March 2009, Geneva, Switzerland). The Committee drafted information and reporting requirements under the funding strategy and a strategic plan for the implementation of the strategy's benefit-sharing fund, as well as decision elements pertaining to the adoption of these draft texts, for consideration and adoption by GB 3.

35TH FAO CONFERENCE: The 35th FAO Conference (18-21 November 2008, Rome, Italy) decided that "the statutory bodies and conventions will be strengthened, enjoying more financial and administrative authority within the framework of FAO and a greater degree of self-funding by their Members."

THIRD PARTY BENEFICIARY COMMITTEE: The Committee held two meetings (24-25 November 2008 and 26-27 March 2009, Rome, Italy), where it drafted: procedures for the operation of the Third Party Beneficiary; operations of the Third Party Beneficiary; and an enabling resolution. The Committee also proposed amendments to the financial rules providing for the establishment of the Third Party Beneficiary operating reserve within the core administrative budget; recommended the establishment of operational guidelines for the amicable dispute settlement and mediation phases; and agreed on the information that the Third Party Beneficiary would require to carry out its roles and responsibilities.

SVALBARD GLOBAL SEED VAULT: The opening ceremony of the Svalbard Global Seed Vault was held on 26 February 2008. An international seminar on the occasion of its first anniversary was held on 26 February 2009 on "Frozen Seeds in a Frozen Mountain – feeding a warming world."

WIPO IGC: The 12th session of the Intergovernmental Committee on Traditional Knowledge, Genetic Resources and Folklore (IGC) of the World Intellectual Property Organization (WIPO) (25-29 February 2008, Geneva, Switzerland) reached a compromise agreement on steps for future work, which called for the Secretariat to prepare separate documents on international protection for traditional knowledge and for traditional cultural expressions/expressions of folklore, including a gap analysis, and to re-issue documents on genetic resources for "full in-depth discussion" at the 13th session. The IGC's 13th session (13-17 October 2008, Geneva, Switzerland), however, ended with no agreement, due to disagreement on two competing proposals on intersessional work. Substantive ITPGR-related issues included the development of a guide for contractual practices for ABS contracts, disclosure requirements for genetic resources in patent applications, the legal protection of traditional knowledge, and patent information systems as sources of information on new inventions utilizing genetic resources.

CBD ABS NEGOTIATIONS: The sixth meeting of the CBD Working Group on ABS (21-25 January 2008, Geneva, Switzerland) proceeded with the elaboration and negotiation of an international regime on ABS, under the co-chairmanship of Fernando Casas (Colombia) and Timothy Hodges (Canada). Discussions focused on the main components of the international regime, including fair and equitable sharing of benefits, access to genetic resources, compliance, traditional knowledge and genetic resources, and capacity building. The Working Group made considerable progress in producing a short and concise working document on the international regime, consisting of sections on the main components and lists of items "to be further elaborated with the aim of incorporating them in the international regime" in case there was agreement in principle, or "for further consideration," in case of disagreement or need for further clarification. CBD COP 9 (19-30 May 2008, Bonn, Germany) adopted a roadmap for continuing ABS negotiations, ensuring that three ABS Working Group and three expert group meetings will take place before the 2010 deadline for completion of negotiations.

The seventh meeting of the Working Group on ABS (2-8 April 2009, Paris, France) focused on operational text on the objective, scope, compliance, fair and equitable benefit-sharing, and access. The Working Group encountered several procedural obstacles, most of which related to the structure of the negotiating document agreed upon at ABS 6. Discussions on the ITPGR and application of its MLS were held with regard to potential exemptions from the scope of the regime.