



# The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



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## Item 6 of the Provisional Agenda

### INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

#### THIRD SESSION OF THE GOVERNING BODY

Tunis, Tunisia, 1 – 5 June 2009

#### REPORT OF THE SECRETARY<sup>1</sup>

Last month, UN Secretary General, Ban Ki Moon, and European Commission President, Emmanuel Barroso, both called for “a new multilateralism which is centred around the delivery of global public goods”, to address the interrelated crises of food, energy and climate. As the Secretary General put it at the Summit of the Americas:

*We need a new vision, a new paradigm, a new multilateralism. A multilateralism that is organized around delivering a set of global goods. A multilateralism that harnesses both power and principle. A multilateralism that recognizes the interconnected nature of global challenges.”*

Your Treaty, I believe, already exemplifies this new paradigm, and it is recognized as doing so even beyond the food and agriculture sector. Your Treaty was the first Treaty of the 21<sup>st</sup> century — and it remains at the cutting edge of such a new, results-driven and output-oriented multilateralism. Together we have made the Multilateral System of this Treaty into the first multilaterally managed global public good of the 21<sup>st</sup> century — a global gene pool of more than 1.1 million samples of plant genetic material, that you, the Contracting Parties, govern collectively and multilaterally. Through this gene pool you control – and are responsible for - the basis of more than 80% of the world's food from plants, and our most important tool for adapting to climate change in agriculture in years to come.

In the past 18 months, we have made this Multilateral System work. You will now address the other multilateral goods flowing from the Treaty, through multilateral benefit-sharing mechanisms that deliver concrete and sustained support to the conservation and improvement of food crops, particularly by those who maintain our agrobiodiversity. In summary, in just eighteen months, your Treaty has gone from a legal text to a practical reality for agriculture worldwide.

<sup>1</sup> This Report was delivered by Mr Shakeel Bhatti to the Governing Body in the form of a spoken presentation on 1 June 2009, in Tunis.

In this transition from theory to practice, the Treaty foresees new and specific monitoring and guidance functions for you, as the Governing Body. At your second session, you set me, as your Secretary, a number of very demanding tasks in managing this transition. My secretariat and I have worked day and night since then with utmost dedication and effort, and I am happy to report to you today that all the main elements of the mandate that you gave me have been achieved, even though some activities could not be completed, because of resource constraints that we were under. We have had to work creatively within these constraints and I had to take some hard decisions. But with commitment, effort and prudent resource management, the concrete outcomes of this biennium's work are before you in the technical working documents of this session, and the functioning systems that they describe. We have tried to make our documents as transparent, complete and accessible as possible. You have, I hope you will agree, a solid information base for you to take your decisions and guide this Treaty.

### **Achievements and results of the 2008-09 biennium**

I want first to sketch out for you the main results of an intense Work Programme, achieved despite significant under-funding of the Treaty at a much higher resource-to-results ratio than is usual.

#### ***The Multilateral System***

As you decided at your First Session, my first focus has been “to make the Multilateral System functional.” During the last biennium, I have put special effort into getting the various elements of the Multilateral System up and running. We have tried to give you, in the documents before you, as complete a picture as possible of the current state of play. Looking at it globally, I am convinced that all the necessary elements are functional, or require merely your final decisions.

You adopted the Standard Material Transfer Agreement at your first meeting: it is working, and working well, but two things need to be addressed. A number of legal, technical and administrative uncertainties need attention, which will mean working closely with Providers and Recipients of genetic material worldwide, and this will be one of my priorities in the next biennium. Developing countries, in particular, will require assistance in factoring the Standard Material Transfer Agreement into their administrative practice.

In our documents, I have drawn attention to the importance of having a clear and accurate picture what is actually available “in” the Multilateral System. This requires a number of things: first, that countries—particularly developing countries—take the legal and administrative steps to identify their materials that, in accordance with the Treaty, are part of the Multilateral System; and that these be adequately documented, so that they can be used by plant breeders, farmers, researchers and others. Several Contracting Parties have already specifically informed me of the materials which are included in their countries. I would like to thank Brazil, Germany, Namibia, Netherlands, Switzerland, all the Nordic Countries, through their common genebank, and Zambia, as well as the first private sector bodies who have included material, namely PRO-MAIS<sup>2</sup> and AFSA,<sup>3</sup> both in association with the French National Institute of Agricultural Research.<sup>4</sup> I am delighted to say that, through ever more efficient coordination and integration of existing information systems on agricultural plant genetic resources, the necessary documentation tools are being developed, in a wide partnership that we have been able to establish with the CGIAR Centres, the Global Crop Development Trust, and national and regional genebanks.

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<sup>2</sup> L'Association pour l'Étude et l'Amélioration du Maïs.

<sup>3</sup> L'Association Française des Semences de cereals à paille et autres Autogames.

<sup>4</sup> INRA.

As Contracting Parties, through the regionally representative *Ad Hoc* Committee on the Third Party Beneficiary, which you set up at your last Session, you have prepared and brought for decision to this Session a very coherent draft set of procedures for the Third Party Beneficiary, including recommendations for possible measures to contain costs; information to be made available by users, and a reporting schedule; as well as for the establishment of a roster of experts.

However, if my review of the status of the Multilateral System tells us anything, it is that the Multilateral System and the implementation of the Standard Material Transfer Agreement are not self-executing: we must engage with the System, we must manage the System and we must provide minimum support to users, to overcome initial uncertainties and hesitations.

Contracting Parties and users of the System have put many complex questions to me, and we need to be able to respond, if the Treaty and its systems are to be credible. Some non-technical examples include:

- The farmer who needs to be assured that the seeds which his community has developed over generations will benefit humanity, and that he will, in his turn, have access to the seeds he needs in his farming system;
- The genebank manager who needs to be convinced that his collections will also benefit from facilitated exchange.
- The user who wants to ship seeds next week, but whose Legal Office is telling him it needs first to understand the meaning of a particular clause in the Standard Material Transfer Agreement;
- The researcher who worries about the intellectual property rights over his research results;
- The breeding company, perfectly willing to share benefits in accordance with the Treaty, but wanting legal certainty that it will not be accused of biopiracy.

The Multilateral System is for all of them, and must interact transparently and honestly with all stakeholders. You as the Governing Body have the global, multilateral responsibility for governing this crucial genepool, and, as the Secretariat must translate your guidance into day-to-day management of the Treaty's systems and interaction with stakeholder communities, we urgently need your decisions and guidance on this.

My review has also put clearly before you what I believe are the priorities for the moment: to resolve the uncertainties that are preventing some Providers, including some Contracting Parties, from effectively incorporating their materials in the Multilateral System; and to document and make visible the materials that are in the Multilateral System, which is the *sine qua non* for addressing the challenges the world currently faces: climate change, population growth, and persistent poverty.

### ***The Funding Strategy***

A second pillar of the Treaty is the Funding Strategy. In the Ministerial Declaration which you adopted at your First Session and again, more recently, at your Second Session, you reaffirmed that that the successful mobilization of adequate financial resources is essential to the implementation of the Treaty, and that the Funding Strategy is an essential element in this regard. You have adopted most of the necessary procedures, and established an *Ad Hoc* Advisory Committee to complete this work, and to develop a strategic plan for the implementation of the Funding Strategy, in particular appropriate mechanisms for its operationalization, and a fundraising strategy for the funds under the control of the Governing Body.

There have been two quantum leaps which the Treaty has achieved under the Funding Strategy since your last session. First, in accordance with the mandate you gave it, to approve “small-scale projects [...] under exceptional circumstances”, your Bureau was able to open the first Call for Proposals under the Benefit-sharing Fund, and I am profoundly grateful to Norway, Italy, Spain and Switzerland for their generous contributions to the Benefit-sharing Fund, which made this possible. I wish to congratulate the Bureau, which has, just yesterday, in a marathon session, approved the first eleven benefit-sharing projects in the history of plant genetic resources. By successfully completing this first test-run of benefit-sharing under the Treaty, it has proved that international benefit-sharing within a binding legal architecture can work on a multilateral basis. These grants amount to a total cost of more than half a million US\$. The ratio of needs expressed in the Call for Proposals in relation to funded projects may be low, but these first projects prove that the System can work - and that it is working. Through your Treaty, international benefit-sharing is now working in practice, on the ground, for those who conserved the plant genetic diversity that feeds us all, such as, concretely, through these newly funded projects:

- the Andean farming community that needs to conserve *in situ* the crop, namely potato, that its center of origin has given to the world;
- the African genetic resource center that is struggling to adapt its national crops to climate change and ensure food security;
- the Asian NGO that is developing locally adapted cultivars for small scale enterprises to ensure local livelihoods; and
- the Near Eastern genebank that is conserving on farm and *in vitro* its rich local citrus varieties.

The second advancement offers a concrete and practical perspective on how to address the needs that were expressed by very many agricultural stakeholders worldwide within a few weeks of the Call for Proposals: the *Ad Hoc* Advisory Committee that you nominated has submitted for your consideration, as you requested at your last session, a Strategic Plan for the Benefit-sharing Fund of the Funding Strategy. In preparing this plan, they benefited from the possibility that you gave them of drawing on the expertise of one of the best international fund-raising firms advising international institutions, and they based this Strategic Plan on models that have been successfully used by other funds, treaties or conventions. The *Ad Hoc* Advisory Committee also prepared the last and final Annex of the Funding Strategy, on transparent and precise Monitoring and Reporting, for your approval. These advances have brought the entire Funding Strategy to a stage where it can now, I believe, begin to fulfil its potential to provide tangible support for the three priorities which you have set at your last Session, namely on-farm conservation, sustainable use of plant genetic resources and information exchange, and, as the Treaty says in Article 18.5, [I quote], “Priority being given to farmers in developing countries who conserve and sustainably use plant genetic resources”. Thus, the Treaty can complete the virtuous cycle of facilitating exchange and practically supporting the conservation and sustainable use of agricultural plant genetic resource, particularly by and for those who have developed and conserved them over the ages.

### ***Capacity-building***

At your Second Session, you decided to create a “Capacity Building Coordinating Mechanism” to support the national implementation of the Treaty, and called for voluntary contributions for this purpose. I am very pleased to say that we were able to put the mechanism in place as of May 2008. You also stressed the importance of collaboration between FAO, Bioversity International and the Treaty Secretariat, and with new bridges and a new partnership that we were able to create, we now have a Joint Implementation Programme with a budget of over US\$ 1 million, through the generosity and commitment of Sweden and Spain. We now have

a capacity to respond to countries that are seeking assistance in developing the policies, legislation, and institutional and administrative practices necessary to implement the Treaty. I am most grateful to Sweden and Spain for their sustained and substantial commitment to the Treaty.

### ***Developing the Secretariat***

As Susan Rice has recently said, “the global challenges we face demand global institutions that work” - and, I would add, that work efficiently. Efficiency and dynamic alignment of financial and human resources to the goals you have set have been my guidelines in establishing your Secretariat. I have an excellent interdisciplinary staff team, although they are over-extended, in the light of the enormous workload that they have shouldered. They believe in this Treaty, and have worked hours much longer than the norm. They have delivered results of very high quality under very high pressure. I would ask you to join me in recognizing this, and thanking them.

I envisage the Secretariat as a lean, nimble and dynamic institution which, under your guidance, executes the management of a global public good transparently and multilaterally as foreseen by the Treaty. Multilateralism also means that the Secretariat should never attempt to substitute itself for stakeholders in the conservation and sustainable use of plant genetic resource. This would be a most wasteful and ineffective way of working. Instead, I have tried to create outcome-oriented partnerships, and have provided platforms for cooperation, so that the whole can be larger than any one input. The Treaty makes such a strategy explicit, for example, in Article 17, where the Global Information System will be built “based on existing information systems”. This has been my goal and my experience in this biennium has been that establishing and nurturing such partnerships involves a substantial ongoing investment of time and labour by the Secretariat, but this is a *sine qua non* of making the Treaty work.

I intend to continue with a transparent, good governance and Contracting Party-driven approach to establishing the Treaty’s operational, management and budget systems, and in this I seek your continued support, guidance and participation, so that the Treaty becomes a model of a forward-looking and dynamic management for the 21<sup>st</sup> century, a small, flexible and new institution shining out of the grey of old and inefficient practices.

Besides my staff, there are many people I want to thank for their support during an intense two years: first, you, Mr. Chairman for the balanced and sensitive way in which you have guided us based on your experience of having participated in the Treaty process and negotiations for many years; the Bureau as a whole, which has been a constant source of support and wise advice; the Director General and all my colleagues at FAO, especially Mr Modibo Traore, Assistant Director General for Agriculture, and Mr Shivaji Pandey, Director of the Plant Protection and Production Division, who have always made a special effort to support the Treaty and its Secretariat, even during a time of radical transformation of FAO itself; as well as my colleagues at the Commission on Genetic Resources and my predecessors in this work, Jose Esquinas Alcázar and Clive Stannard, for the inspiration and support that they have always given me.

### ***Financial matters***

You will, I hope, allow me to be frank about the very real financial problems which the Treaty has experienced. I have given you an un-whitewashed and very realistic account of these in our report on the implementation of the 2008/09 Work Programme and Budget. You would, I am sure, not want anything less from a Secretary who has the long-term health of your Treaty at heart. The unpredictability of both the level and the timing of voluntary contributions by Contracting Parties, combined with the lack of a Working Capital Reserve, created very real difficulties. I had to take some very hard decisions. Posts were left unfilled, and a number of important activities had to be cancelled, including planned training for National Focal Points, and capacity-building for developing countries. A large fraction of those that remained could only be realised because Italy generously allowed us the temporary use of funds it had contributed for

other purposes to the Special Funds. If we have been able to advance the Treaty's operational systems right across the board to the favourable position they are now in, this is due to only two things: the understanding and continuing support of Italy, and the absolute dedication of my small staff. As a result of this situation, until now the Treaty has been running on the midnight oil of the Secretariat staff. Unfortunately, it is my duty to tell you, Mr Chairman, that this cannot continue. It is not sustainable.

I have laboured to give you transparent, realistic and accountable, state of the art budgeting and reporting. Like everyone, I am very aware of the current world financial crisis, and have worked to give you a responsible budget that is an absolute minimum level, if the Treaty is not to stand still, or even go backwards at this crucial juncture. Once more, I must be frank and crystal clear with you: the Treaty is not yet stable - financially or operationally. Despite intense work, its systems are still not fully operational, mature and recognized. The coming biennium will be critical in stabilizing the Treaty, its core operations and its political credibility.

### **The Treaty in a changing world**

I would like to end on a personal note. When you first appointed me and I arrived in Rome in 2007, I found no Secretariat, no staff, no pre-existing infrastructure, no operational Treaty systems and no administrative procedures for the Secretariat: in other words, there was no tangible existence of the Treaty in the form of its global operational systems or a dedicated Secretariat. What I did find was a mountain of work for the start-up of the Treaty systems, and the simultaneous task of convening the Second Session of the Governing Body. For two years, I have had to work around the clock to make your Treaty work, and to carry out the tasks that you have set me do in your last Session.

As we started to put in place the Secretariat and the Treaty's operational structures, I began to see more clearly the tasks before us. I benefited greatly from close interaction with your excellent Bureau, and with many Contracting Parties and from constant help of my colleagues at FAO. After one operational biennium, and half-way through my term of contract, I do feel that, though the Treaty is still fragile and its parts are at different stages of development, I can see the parts coming together. I hope that you will allow me, in closing, to share some of my reflections on the opportunities and challenges before the Treaty at this stage.

First, since we had to build the Treaty's administrative and financial procedures from the ground up, we were able to draw on evolving best practices, at the international level and in Rome. As the Bureau of the Governing Body has put it, the Treaty maintains its own distinctive governance and management structures, responsive to you as the Contracting Parties. I hope you will agree that the Treaty, as a unique institution, is accountable, transparent, dynamic, well governed, and value for money. Beyond the progress in one particular part or area of the Treaty or another, I feel that if there is anything through which I can make my own limited contribution to helping the Treaty for the future, it is by giving it such a governance and management structure from the very beginning. I hope that this would instill confidence in those Contracting Parties who may have had negative experiences in the past in the food and agriculture sector, and that it would allow them to distinguish the Treaty in this way from those negative experiences. I have done everything I can to make this the case.

Second, the Treaty itself is becoming a model, in other international processes. Other United Nations bodies, such as the World Health Organization in its process on virus-sharing and benefit-sharing; the Convention on Biological Diversity in the elaboration of its international regime on access and benefit-sharing; and the UN Convention on Law of the Sea, in regard to the genetic resources of the deep sea-bed; are all looking at the Treaty as their reference in crafting customized multilateral systems. We must continue in the vanguard of public international law, implementing the law into practical operational systems for the global genepool and for supporting conservation and sustainable use through the Funding Strategy.

Third, the Treaty is all about building bridges, connecting people, about pooling, collaborative, cooperative and common action. The Treaty is about the global community working together for food security, adaptation to climate change, and the sound management of agro-biodiversity, always keeping in focus on the needs of farming communities and the poor and hungry.

Fourth, one of the strengths of the Treaty is that it has a very specific subject matter, and practical objectives. It is fine-tuned to suit the needs of our community, the agricultural and plant genetic resources sector, building on thirty years of discussions, but the solutions it embodies are increasingly relevant to many policy communities because they address the broadest global policy challenges we face today, including in the environment, trade and development sectors.

Finally, the Treaty offers you—Governments and Ministries of Agriculture—a unique opportunity –to put agriculture back on the international policy map, to regain policy initiative for our sector, at a time when food security, particularly in the face of climate change, is one of the world’s hottest topics. Agriculture, as I am sure you, the representative of Ministries of Agriculture can attest, has for too many years been increasingly marginal in the larger debates. The world food crisis is turning this around, and a successful Treaty, going from strength to strength, will strengthen your hands and give you access to resources, in your own administrations, and on the international stage. Do not lose sight of this common opportunity for us as a sector, as you discuss your differences this week.

For this reason, the Treaty community needs to keep in mind the bigger policy picture. The Treaty is more relevant than ever in the broader policy context: it is at the crossroads where many policy-making processes converge: conservation and sustainable use of biodiversity; recognition of traditional knowledge; commerce and trade; sustainable economic growth and development; innovation policy and intellectual property; adaptation to climate change; food security policy, and above all the moral imperative to feed a still growing and often unacceptably poor world population.

This week, the stakes are high for the Treaty, for you as Contracting Parties. At this critical crossroads, the future of this instrument lies in your hands. You here have the ability to put the Treaty on a long-term trajectory, as a functioning, operational, consensual global system. I hope that the groundwork we have tried to do for you will assist you in this task, and wish you much wisdom in your work this week.

Shakeel Bhatti,

Secretaryt of the Governing Body