



The International Treaty

ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE



Item 3 of the Draft Provisional Agenda

INTERNATIONAL TREATY ON PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE

FIRST MEETING OF THE *AD HOC* WORKING GROUP ON PROCEDURES AND OPERATIONAL MECHANISMS TO PROMOTE COMPLIANCE AND ADDRESS ISSUES OF NON-COMPLIANCE

Rome, Italy, 2-3 February 2010

DRAFT PROCEDURES AND OPERATIONAL MECHANISMS TO PROMOTE COMPLIANCE AND ADDRESS ISSUES OF NON-COMPLIANCE

I. INTRODUCTION

1. At its Third Session, the Governing Body recalled its Resolution 3/2006 of the First Session and Resolution 1/2007 of the Second Session, and by Resolution 2/2009;
 1. *Decide[d]* to establish and convene, subject to the availability for that purpose of funds from the Special Fund for Agreed Purposes, an *ad hoc* working group which shall negotiate and finalise the procedures and operational mechanisms to promote compliance and address issues of non-compliance, on the basis of the text contained in the *Annex* to this Resolution, with a view to their approval at the Fourth Session of the Governing Body;
 2. *Decided[d]* that the Co-Chairs of the Contact Group on Procedures and Operational Mechanisms to Promote Compliance and Address Issues of Non-compliance, convened at the Third Session of the Governing Body, shall serve as Co-Chairs of the *ad hoc* working group;
 3. *Decide[d]* that the *ad hoc* working group shall be comprised of up to two representatives designated by each Region of the FAO in addition to the Co-Chairs;
 4. *Decide[d]* that the *ad hoc* working group shall hold two meetings each of two days in Rome, preferably immediately before meetings of the Bureau; [and]
 5. *Invite[d]* Contracting Parties and observers to make, through the Secretary, submissions on the text contained in the Annex to this Resolution before 1 October 2009 for consideration by the *ad hoc* working group, and *requests* the Secretary to compile any such submissions.

II. DOCUMENTATION

2. The text of the draft Procedures and Operational Mechanisms to Promote Compliance and Address Issues of Non-compliance, considered by the Third Session of the Governing Body for negotiation, is contained in the *Annex I* to this document.
3. A possible draft Resolution, by which the Governing Body could adopt the Procedures and Operational Mechanisms to Promote Compliance and Address Issues of Non-compliance, is contained in *Annex II*.
4. Submissions made by Contracting Parties, following the invitation of the Governing Body, are contained in the document, *Compilation of submissions made by Contracting Parties and observers on procedures and mechanisms to promote compliance and address issues of non-compliance*.¹
5. The Ad Hoc Working Group is invited to negotiate and finalise the draft procedures and operational mechanisms to promote compliance and address issues of non-compliance with the draft resolution, taking into account, as appropriate, the document referred to in paragraph 4 above.

¹ IT/AHWG-C 1/10/3.

ANNEX I

**DRAFT PROCEDURES AND OPERATIONAL MECHANISMS TO
PROMOTE COMPLIANCE AND ADDRESS ISSUES OF NON-COMPLIANCE**

The following procedures and mechanisms are developed in accordance with Article 21 of the International Treaty on Plant Genetic Resources and are separate from, and without prejudice to, the dispute settlement procedures and mechanisms established by Article 22 of the International Treaty on Plant Genetic Resources.

I. OBJECTIVES

1. The objective of the compliance procedures and mechanisms shall be to promote compliance with all the provisions of this Treaty and to address issues of non-compliance. These procedures and mechanisms include monitoring, offering advice or assistance, including legal advice or legal assistance, when needed and requested, in particular to developing countries and countries with economies in transition.

II. PRINCIPLES

1. The compliance procedures and mechanisms shall be simple, cost-effective, facilitative, non-adversarial, non-judicial, legally non-binding and cooperative in nature.
2. The operation of the compliance procedures and mechanisms shall be guided by the principles of transparency, accountability, fairness, expeditiousness, predictability, good faith, and reasonableness [and shall take into account capacities of Contracting Parties].

III. INSTITUTIONAL MECHANISMS

1. The Compliance Committee established by the Governing Body on 16 June 2006 by Resolution 3/2006, hereinafter referred to as “the Committee”, shall carry out the functions specified herein.
2. The Committee shall consist of [14] members nominated by Contracting Parties and elected by the Governing Body on the basis of two from each of the seven regional groups of the FAO.

[3. Members of the Committee shall have recognized competence in the field of genetic resources or other fields relevant for the International Treaty, including legal or technical expertise[, and they shall serve in their individual capacity]/[and they shall [serve]/[act] objectively and in the best interests of the Treaty].]
4. Members shall be elected by the Governing Body for a period of four years, this being a full term. At its [...] session, the Governing Body shall elect [seven] members, one from each region, for half a term, and [seven] members for a full term. Each time thereafter, the Governing Body shall elect for a full term, new members to replace those whose term has expired. Members shall not serve for more than two consecutive terms.

5. The Committee shall hold meetings as necessary, preferably in Rome, and, wherever possible, in conjunction with meetings of the Governing Body or other International Treaty bodies, subject to the availability of financial resources. The Secretariat shall service the meetings of the Committee.

6. The Committee shall submit its reports including recommendations with regard to the discharge of its functions to the next regular session of the Governing Body for consideration and appropriate action in accordance with the International Treaty.

7. Bearing in mind Rule I of the Rules of Procedure of the Governing Body, the Committee shall develop and submit any further rules of procedure[, as appropriate,] [, including rules on confidentiality, conflict of interest and electronic decision-making,] to the Governing Body for its consideration and approval.

8. The Committee shall elect its Chair and a Vice-Chair, who will rotate among the FAO regions.

Option 1:²

IV. FUNCTIONS OF THE COMMITTEE

The Committee shall, with a view to promoting compliance and addressing issues of non-compliance, and under the overall guidance of the Governing Body, have the following functions:

- a) */Consider information submitted to it regarding matters relating to compliance and issues of non-compliance;*
- b) Address issues of non-compliance and identify the specific circumstances of the issue referred to it, in accordance with Sections [V to VII] below;
- c) Offer advice and/or facilitate assistance, as appropriate, to the concerned Contracting Party, on matters relating to compliance with a view to assisting it to comply with its obligations under the International Treaty;
- d) [Review general [issues]/ [cases] of compliance by Contracting Parties with their obligations under the International Treaty, taking into account the information submitted [by the Contracting Parties][to it] and following the guidance of the [Committee][Governing Body] [, in accordance with Section VI below];]
- e) Take [measures][actions], as defined [in Section VII] below[, [or make recommendations,] as appropriate, to the Governing Body];
- f) [Monitor the activities of the International Treaty supported by the Secretariat and information supplied by the Contracting Parties;][Monitor the implementation of the Treaty by Contracting Parties on the basis of reports in accordance with Section IX below;]

² There is an agreement to work on the basis of option 1, and to keep option 2 as a point of reference.

- [f *bis*) Make recommendations to the Governing Body on the interpretation of the Standard Material Transfer Agreement, in accordance with Sections V to VII below;]
- g) Carry out any other functions as may be assigned to it by the Governing Body pursuant to Article 21;
- h) [[Report to the Governing Body]/[Provide confidential reports to the Bureau] on its activities [, including a summary of each closed issue of non-compliance,]]/[To present a bi-annual report to the Governing Body].
- [i) Set up a network between Contracting Parties with the objective of exchanging information and experiences which they will use to resolve problems of non-compliance;]

Option 2:

IV. REPORTS TO THE GOVERNING BODY

The Committee shall submit a report to each regular session of the Governing Body reflecting:

- (a) the work that the Committee has undertaken;
- (b) the conclusions and recommendations of the Committee; and
- (c) the future programme of work of the Committee.

V. PROCEDURES

1. The Committee shall receive, through the Secretariat, any submissions relating to compliance from [the following entities]:

- a) Any Contracting Party with respect to itself;
- b) [Any Contracting Party with respect to another Contracting Party; or
- c) The Governing Body.]

[The Contracting Party in respect of which the concern is raised is hereinafter referred to as “the Contracting Party concerned”.]

[1*bis*. The Committee shall receive, through the Secretariat, any communication concerning questions of interpretation of the Standard Material Transfer Agreement from:

- (a) the Governing Body;
- (b) a Contracting Party;
- (c) an International Agricultural Research Centre or the Consultative Group of the International Agricultural Research Centres,
- (d) a Party to a Standard Material Transfer Agreement; or
- (e) any natural or legal person that can demonstrate an interest in concluding a Standard Material Transfer Agreement.]

Option 1³

[2. Upon reception of submissions on possible non-compliance, the Secretariat will initiate a process of dialogue with the Contracting Party or Contracting Parties involved in order to [overcome]/[address] the situation.]

[3. In the event that such dialogue process will not reach its aim within thirty days, the Secretariat shall, within fifteen days of receipt of submissions make the submissions available to the Contracting Party concerned, and will publish it, encouraging the submission of any information from other sources, about it. The Contracting Party concerned and any other source interested will have sixty days to submit responses and related information to the secretariat. The Secretariat, within fifteen days of receipt of these responses and related information, shall transmit the submission, the response and information to the Committee. The Committee will have ninety days to analyse and produce the recommendation or to adopt any measure, as proceeds, to ensure compliance in order to address the issue.]

[4. A Contracting Party that has received a submission regarding its compliance with the provision(s) of the International Treaty should respond and, with recourse to the Committee for assistance if required, provide the necessary information, preferably within three months and in any event not later than six months. This period of time shall commence on the date of the receipt of the submission as certified by the Secretariat. In the case where the Secretariat has not received any response or information from the concerned Party within the six months as referred to above, it shall transmit the submission to the Committee.]

5. A Contracting Party, in respect of which a submission is made or which makes a submission, is entitled to attend the deliberations of the Committee. However, this Contracting Party shall not participate in the elaboration and adoption of a recommendation of the Committee.]

Option 2

[2. Any submission shall be addressed in writing to the Secretariat and shall set out:

- a) The matter of concern;
- b) The relevant provisions of the International Treaty; and
- c) Information substantiating the matter of concern.

[3. The Secretariat shall, within [15]/[30] days of receipt of submissions under paragraph 1b above, make the submissions available to the Contracting Party concerned, and once it has received a response and information from the Contracting Party concerned, it shall transmit the submission, the response and information to the Committee. In the case that a Contracting Party submits documentation with regard to itself the Secretariat shall, within [15]/ [30] days, forward that submission to the Committee.]

4. When the Contracting Party concerned has received a submission it should respond and, with recourse to the Committee for assistance if required, provide the necessary information preferably within three months and in any event not later than six months. This period of time shall commence on the date of the receipt of the submission as certified by the Secretariat. In the case where the Secretariat has not received any response or information from the Contracting Party concerned within the six months as referred to above, it shall transmit the submission to the Committee.

³ There is agreement to work on the basis of option 2, and to keep option 1 as a point of reference.

5. The Committee may reject to consider any submission made pursuant to paragraph 1b of this section that is *de minimis* or ill-founded, bearing in mind the objectives of the International Treaty.

5 bis. The Contracting Party concerned [may present responses or comments at every step of the proceedings]/[is entitled to participate in the deliberations of the Committee]. This Contracting Party shall not participate in the elaboration and adoption of a recommendation of the Committee.]

[6. Confidentiality will be an essential requirement of the process.]

[7. Any communication shall be addressed in writing to the Secretariat and shall set out:

- (a) the question of interpretation;
- (b) the relevant provision of the Standard Material Transfer Agreement; and
- (c) any relevant supporting information clarifying the question of interpretation.]

VI. INFORMATION

1. The Committee shall consider relevant information from:

- a) The Contracting Party concerned;
- b) [The Contracting Party that has made a submission with respect to another Contracting Party.]

2. The Committee may seek or receive and consider relevant information, including from:

- a) [Non-governmental organizations, the private sector and other civil society organizations and relevant inter-governmental organizations, [including the International Agricultural Research Centres] [, as directed by the Governing Body and with the consent of the Contracting Party concerned]];
- b) The Secretariat.

[3. The Committee may seek expert advice.]

[4. The Committee, in undertaking all of its functions and activities, shall maintain the confidentiality of any information that is [provided to the Committee].]

VII. [MEASURES]/[MECHANISMS]/[ACTIONS] TO PROMOTE COMPLIANCE AND ADDRESS CASES OF NON-COMPLIANCE

1. [[The Committee may take one or more of the following measures] with a view to promoting compliance and addressing [cases][a case] of non-compliance [which is raised in accordance with Section V.1 above and taking into account such factors as the cause, type, degree, and frequency of non-compliance, the Committee may [only]]] / [The Committee, after consultations with the Contracting Party concerned and taking into account such factors as the

cause, type, degree and frequency of non-compliance, may]:

- a) [Provide]/[Offer] advice or [and or facilitate] assistance [,including legal advice or legal assistance] [or non-binding recommendations] to the Party concerned, as appropriate;
- b) [Make recommendations to the Governing Body regarding the provision of financial and technical assistance, technology transfer, training and other capacity-building measures];
- c) Request or assist, as appropriate, the Contracting Party concerned to develop a compliance action plan regarding the achievement of compliance with the International Treaty within a timeframe to be agreed upon between the Committee and the Party concerned, [taking into account its existing capacity to comply]; and
- d) Invite the Contracting Party concerned to submit progress reports to the Committee on the efforts it is making to comply with its provisions under the International Treaty.

2. [With a view to promoting compliance and addressing an issue of non-compliance raised in accordance with Section V.1 the][The] Governing Body may, upon the recommendations of the Committee, and taking into account such factors as the cause, type, degree and frequency of non-compliance, [and the capacity of the Contracting Party concerned, in particular of developing country Contracting Parties in complying with the International Treaty,] also decide [to] [upon one or more of the following measures]:

- a) Provide [financial and technical] assistance[, including legal assistance to the Contracting Party concerned,][technology transfer, training and other capacity-building measures][subject to budgetary considerations];
- b) [Issue a [caution]/[notification] to the concerned Contracting Party; or]
- c) [Publish cases of non-compliance.]/[Request the Secretariat to place on the website [closed issues]/[findings] of non-compliance.]
- [d) Take any other actions it deems appropriate [for capacity-building] in accordance with the International and for the fulfillment of the Treaty's objectives.]

[3. With a view to promoting consistent interpretation of the Standard Material Transfer Agreement, the Governing Body may upon the recommendation of the Committee and, as appropriate:

- (a) provide an interpretation of the Standard Material Transfer Agreement, or
- (b) amend the Standard Material Transfer Agreement.]

VIII. REVIEW OF THE PROCEDURES AND MECHANISMS

[The Governing Body shall, in line with Article 21, review the effectiveness within X years of adoption of the procedures and mechanisms and/or periodically of these procedures and mechanisms and take appropriate action.]

[IX] [IV *ter*]. REPORTING

The Governing Body may, from time to time, seek reports from the Contracting Parties regarding compliance with the International Treaty.

[[IX] [IV *ter*]. MONITORING

1. Each Contracting Party shall submit to the Committee, through the Secretariat, a report on the measures it has taken to implement the International Treaty in one of the six languages of the United Nations [five years after the entry into force of the International Treaty, and every 5 years thereafter, in accordance with any further decisions of the Governing Body on the submission of such reports] [periodically in conformity with decisions taken by the Governing Body].
2. The Committee shall consider the reports that it has received up to twelve months before the next session of the Governing Body taking into account any guidance of the Governing Body.
3. The Committee shall submit a synthesis report on the basis of the reports that it has considered to each session of the Governing Body, which may include recommendations to the Governing Body on possible decisions to solve identified problems, including on the invitation to Contracting Parties to make a submission in accordance with Section V.1a.
4. The Committee may develop and submit any further rules on monitoring and reporting, including a reporting format, to the Governing Body for its consideration and approval, taking into account the need to avoid duplication and to enhance synergies.]]

ANNEX II

DRAFT RESOLUTION FOR THE CONSIDERATION OF THE GOVERNING BODY**[RESOLUTION */2010 OF THE GOVERNING BODY
COMPLIANCE****The Governing Body,**

[1. *Hereby decides* to adopt the procedures and operational mechanisms included in the *Annex* hereto;]