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Plant Treaty Governing Body Identifies Need to Enhance Multilateral System of Access and Benefit-sharing

Posted on [February 19, 2014](#) by [Elisa Morgera](#)

by Elsa Tsioumani



January 2014: Recognizing that the benefit-sharing component of the Multilateral System of access and benefit-sharing, established under the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGR or Treaty) is far from perfect, the Treaty's Governing Body has recently decided to launch a process aiming at enhancing its functioning. This post will present briefly the ITPGR, a treaty which establishes a global system for access to plant genetic materials necessary for agricultural development and thus food security, as well as for sharing the benefits arising from their use, and explain why recent developments have the potential to radically redesign this system – one which remains a rare example of multilateral benefit-sharing globally.

The International Treaty on Plant Genetic Resources for Food and Agriculture

The ITPGR, a legally binding instrument, was concluded under the auspices of the UN Food and Agriculture Organization (FAO). The ITPGR targets the conservation and sustainable use of plant genetic resources for food and agriculture, as well as the fair and equitable sharing of benefits arising from their use, in harmony with the 1992 Convention on Biological Diversity, for sustainable agriculture and food security. The Treaty negotiations were based on the revision of the non-binding International Undertaking on plant genetic resources for food and agriculture, which relied on the principle that these should be preserved and freely available for use as part of the common heritage of mankind. Following a paradigm shift in

international law that was largely due to the asymmetries created by a regime of free access to plant genetic resources combined with the enclosures of the intellectual property system protecting modern agricultural varieties, genetic resources were considered to be a “common concern of all countries” and were subject to State sovereignty. This was reflected in FAO Resolution 3/91 and, in the main, the Convention on Biological Diversity. The principle of national sovereignty over natural and genetic resources thus led to the introduction in international environmental law of the concept of the fair and equitable sharing of benefits arising from their use. In 1993 it was decided that the International Undertaking should be revised in line with the CBD: this led to the negotiation of the Treaty, which entered into force on 29 June 2004, and currently has 131 Parties.

The exchange of plant genetic resources is indispensable for the continuation of agricultural research and food security, as well as for the adaptation of key crops to the new conditions brought about by climate change, floods, droughts and plant pests and diseases. The Treaty’s Multilateral System of access and benefit-sharing (ABS) is aimed at facilitating access to, and exchange of, [a specified list of crops](#) considered vital for food security, and at institutionalizing the sharing of the benefits arising from the utilization of these resources. The scope of benefits includes the non-monetary, such as the exchange of information, access to and transfer of technology, capacity building and facilitated access to crops – the latter is recognized as a benefit in itself. The sharing of benefits arising from commercialization is done through standard payments by the users of material accessed from the Multilateral System, according to the provisions of the [standard Material Transfer Agreement](#) (SMTA) adopted by the Treaty’s Governing Body. Such payments, together with voluntary donations, are directed to the Treaty’s benefit-sharing fund, which allocates funds under the direction of the Governing Body to particular activities designed to support farmers in developing countries to conserve crop diversity and assist farmers and breeders globally to adapt crops to changing needs and demands. The 19 [projects](#) sponsored by the second round of the benefit-sharing fund, for instance, are currently in underway in 31 countries across Asia, Africa, the Near East, and Central and South America. The projects aim at placing particular emphasis on farmers’ traditional knowledge, their socio-cultural systems and institutions, and the role of local communities in securing access to agricultural biodiversity. Farmers are involved in the collection, characterization, evaluation and development of new varieties in crops like rice, maize, potato, wheat and barley, as well as in the compilation of information on existing crop diversity. This project-based approach has been complemented by a number of government and stakeholder initiatives aiming at facilitating implementation of the non-monetary benefit-sharing mechanisms under the Treaty, including in particular the [platform for the co-development and transfer of technologies](#).

The Need for Enhancement

Given the lengthy time-periods required for research, development and commercialization to take place, commercial benefits arising from the use of genetic resources in the Multilateral System are still to materialize and eventually be shared. The Treaty’s benefit-sharing fund has thus mainly relied on government donations. Some innovative ideas have also seen the light of day, including Norway’s tax on seed sales, which funds its contribution to the benefit-sharing fund. In general however, the flow of income to the benefit-sharing fund is far from

regular or predictable, while, as highlighted by the Treaty Secretariat, no benefit-sharing payments resulting from the use of the SMTA, either mandatory or voluntary, were received in the last biennium.

The need for a better understanding of when payments resulting from the use of the current SMTA may be expected, as well as the need for a regular and predictable flow of resources to the benefit-sharing fund was recognized well before the latest fifth session of the ITPGR Governing Body, held from 24-28 September 2013, in Muscat, Oman. At its fourth session, for instance, the Governing Body had highlighted the need to identify regular and predictable sources of funding for the benefit-sharing fund, and had emphasized the need to further explore innovative approaches in engaging voluntary donors, such as the seed and food processing industries ([resolution 3/2011](#)). In the intersessional period, the *Ad Hoc* Advisory Committee on the Funding Strategy worked on identifying possible innovative approaches with the aim of putting use-based income into the benefit-sharing fund, including upfront payments on access, revising the provisions of the SMTA which address levels and modalities of payment, and expanding the coverage of the Multilateral System. The Committee recommended that the further development of innovative approaches should be addressed systematically by a new intersessional Working Group, established by the Governing Body. At the same time, a [series of studies](#) launched during the meeting attempted a projection of benefit flows over time, and concluded that flows will be moderate at best, and will take even longer than expected, even under the most favourable conditions: participation of more countries in the Treaty, including those with major genebank collections, fully effective participation by Contracting Parties, i.e. making all their plant genetic resources available immediately, full compliance with voluntary payment stipulations, and no deliberate avoidance of use of material from the Multilateral System in institutional breeding programmes, all of which are factors which influence benefit flows considerably.

Outlook

Following these developments, the Governing Body, at its fifth session, acknowledged that much more needs to be done for the Treaty to start realizing its objective of fair and equitable benefit-sharing, and adopted a [resolution](#) to launch an intersessional process to enhance the functioning of the Multilateral System. A Working Group has been mandated to develop measures to increase user-based payments and contributions to the Treaty's benefit-sharing fund, as a priority, as well as "additional measures" to enhance the functioning of the Multilateral System. The significance of this development lies first in the particular focus on the benefit-sharing mechanism and the opportunity to address it systematically. Second, through the consideration of "additional measures", the process may result in an expanded [list of crops](#) within the Treaty's Multilateral System. In other words, the search for enhanced benefit-sharing may lead to a fundamental modification of the Treaty itself – unthinkable until a few years ago since this list of crops was at the heart of the Treaty negotiations and the consensus reached. The Working Group will hold at least two meetings in the next biennium, and it remains to be seen whether this intergovernmental process will come up with a series of imaginative proposals to address this series of technically complex matters. Considered as a unique opportunity in the history of the Treaty, it is expected to determine whether the Treaty will reach its full potential in terms of multilateral benefit-sharing and contributions to non-economic benefits such as food security and adaptation to

climate change.

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