The Asian Regional Group

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Introducing the Asian Region

FAO’s Asian sub-region comprises 25 members out of which 9 are not party to the Treaty (including China, Japan, Kazakhstan, Mongolia, Sri Lanka, Timor-Leste, Uzbekistan and Vietnam; Thailand having signed but not ratified the Treaty (see Annex 2 of this book for the table of ratifications per region).

Food and poverty in Asia

Despite rapid economic progress and poverty reduction, Asia and the Pacific accounts for 63 per cent of the world’s undernourished (FAO, 2009a); according to the United Nations Food and Agriculture Organization:

*In South Asia, the incidence of child malnutrition is higher than in any other region. Only a few countries are on track to meet the World Food Summit target of halving the number of undernourished by 2015. Furthermore, future progress is uncertain, especially in the wake of recent substantial gains in cereal prices that make it more difficult for the rural landless and the urban poor to afford adequate nutrition. Interest in bio-fuels as a means to achieve energy security may lead to further increases in commodity prices that will help some farmers but will have negative impacts on food security for many households.* (FAO, 2009b)

The Asian region has reported that both China and India are well on track to achieving the Millennium Development Goal of halving the prevalence of poverty and hunger, as are 17 other countries. In general terms, accelerating growth in India has put South Asia on track to meet the goal, while East Asia has experienced
a sustained period of economic growth, led by China. However, a few countries in the region are continuing to face difficulties in reducing hunger sufficiently to meet the MDG and World Food Summit targets (FAO, 2009c). South Asia has the highest level of underweight prevalence in the world, with almost half (46 per cent) of all children under five being underweight. Three countries in this region drive these high levels – India, Bangladesh and Pakistan – which alone account for half the world’s total underweight children. Large disparities exist for underweight prevalence among urban and rural children. On average, underweight prevalence among children in rural areas is almost double that of children in urban areas in the developing world. Malaysia has the fastest rate of improvement (FAO, 2008).

**Asian countries’ interdependence on plant genetic resources for food and agriculture**

Next to these striking data, it is important to stress that already in the 1920s, the Russian geneticist Vavilov had identified Asia as one of the regions in the world with the highest genetic variability of cultivated food crops, through the determination of several important centres of origin including Central Asia, China, India and Indo-Malaysia. According to a background study paper of the FAO Commission on Plant Genetic Resources from 1997, Asia is indeed the primary centre of origin of many important crops such as rice, wheat, sugar, soybean, banana and plantain, grapefruit, rye, pea and onion (FAO, 1997). This study also confirms a finding from Kloppenburg and Kleinman (1987) in that the Asian and Pacific regions are the least dependent upon crop species originating in other regions of diversity for their food production (Table 4.1).

Asia is therefore a primary provider of genetic diversity to the rest of the world. This status certainly contributed to the importance given by the Asian regional group to the negotiation and implementation of the Treaty.

**Table 4.1 Percentages of regional food production dependent upon crop species originating in other regions of diversity**

<table>
<thead>
<tr>
<th>Regions</th>
<th>Percentage of dependence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chino-Japanese</td>
<td>62</td>
</tr>
<tr>
<td>Australian</td>
<td>100</td>
</tr>
<tr>
<td>Indochinese</td>
<td>34</td>
</tr>
<tr>
<td>Hindustanean</td>
<td>49</td>
</tr>
<tr>
<td>West Central Asiatic</td>
<td>31</td>
</tr>
<tr>
<td>Mediterranean</td>
<td>99</td>
</tr>
<tr>
<td>African</td>
<td>88</td>
</tr>
<tr>
<td>Euro-Siberian</td>
<td>91</td>
</tr>
<tr>
<td>Latin-American</td>
<td>56</td>
</tr>
<tr>
<td>North American</td>
<td>100</td>
</tr>
</tbody>
</table>

*Source: Kloppenburg and Kleinman (1987)*
The Treaty: A crucial instrument to negotiate and implement for Asia

Asia has for a long time been conscious that conserving and using plant genetic resources in a sustainable way is vital for our future. Participating in and implementing the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) is also one of the means to reach the first Millennium Development Goal (MDG). The importance given to the Treaty by Asian countries can be easily demonstrated. First, India is one of the principal Asian countries to have put the conservation biodiversity and of Farmers’ Rights high on its political agenda. Already in 1981, H. E. Shrimati Indira Ghandi, Prime Minister of India, gave a Frank MacDougall Memorial Lecture on the topic, at the 21st FAO Conference. Mr. Monkombu Sambasivan Swaminathan, known as the father of the green revolution in India, has also given an invaluable contribution to the promotion of the field throughout his career, first in establishing the Commission on Plant Genetic Resources as an independent chairman, FAO Council, Rome, in 1981–85. Then, he developed the concept of Farmers’ Rights and the text of the International Undertaking on Plant Genetic Resources (IUPGR). He also chaired the International Congress of Genetics (1983), and between 1988 and 1991 sat as a chairman of the International Steering Committee of the Keystone International Dialogue on Plant Genetic Resources, regarding the availability, use, exchange and protection of plant germplasm. Finally, India was the first country in the world to adopt and implement legislation on Farmers’ Rights, thereby recognizing the primary importance of this question.

Second, Asian countries have been very active during the negotiations of several treaties relating to genetic resources, in particular, within the Like Minded group. Asian countries have also often hosted meetings related to the conservation of biological diversity, whether specific for food and agriculture or under the scope of the Convention on Biological Diversity (CBD). In 1995 notably, Indonesia hosted the 2nd ordinary meeting of the Conference of the Parties at the Convention on Biological Diversity (COP 2), where the special nature of agricultural biodiversity, its distinctive features and problems needing distinctive solutions, were expressly recognized (CBD, 1995).

Finally, Asian non-governmental organizations (NGOs) have always been very active in the field of plant genetic resources. One of these important institutions is SEARICE, which has strongly promoted and protected farmers’ communities’ rights in Asia and throughout the world (for more details, see Chapter 13). The officer of SEARICE who represented the Philippines, played an important role in the negotiation on Farmers’ Rights in the ITPGRFA (see Annex 3 of this book for details on the main provisions of the Treaty). Other Asian stakeholders, such as breeders and gene bank curators, have also dynamically participated in international networks such as the ones supported by the former International Board for Plant Genetic Resources (IBPGR), which later became the International Plant Genetics Research Institute (IPGRI, now Bioversity International). This significantly contributed to spread the essential need to conserve, sustainably use and share agricultural biodiversity.
Besides, I myself had the honour to chair or vice-chair several important meetings during the negotiation of the Treaty (see Annex 1 of this volume for the list of all Commission and Treaty meetings). I was therefore able to witness sensitive discussions, which I have tried honestly to articulate in the personal views expressed in this contribution. Other delegates from Asia were privileged to chair several meetings, contact groups, unofficial meetings and working groups during the negotiations of the Treaty, hereby providing and securing an Asian input in the negotiations of the Treaty. Active participation from delegates of India, the Philippines and Malaysia in the negotiations influenced the final conclusion of the provisions of the Treaty, in particular, the articles on the multilateral system (MLS) and Farmers’ Rights. The positioning of the Asian region during the progress of the negotiation, reflected its social economic environment.

Today, it is recognized by most stakeholders worldwide, that agriculture and the rural economy play a crucial role in securing sustainable gains in the fight against hunger and poverty, and ‘there is much greater appreciation now for the fact that agriculture has strong links with other sectors’ (FAO, 2009c). Indeed, many external factors impact on the way Asia manages its plant genetic resources for food and agriculture: the tremendous growth of Asia’s population and economy, the rapidly changing climate, a globalizing trade pressure, an increased recognition and implementation of democratic schemes and human rights, in particular, through the growing role played by NGOs and civil societies (see Chapter 10). These factors are taken into account at the national and regional levels, when the Asian group meets to discuss PGRFA issues. In order to facilitate the collaboration between Asian countries and allow them to take decisions on and implement the Treaty, Asian regional meetings are organized prior to each international meeting related to plant genetic resources.

This chapter will highlight some of the main issues for which the Asian region has played a role during the negotiation of the Treaty. This contribution will also spot the challenges that the region is facing in the implementation of the Treaty at the national level, as well as more global issues to be specified and agreed upon at the international level to facilitate and increase the efficient participation to the Treaty.

The principle of common but differentiated responsibilities: A key to Asia’s views on the Treaty

The foundation of Asia’s position during the negotiation of the Treaty was based on the Common but Differentiated Responsibilities as accepted in Agenda 21. Asia recognized that countries have common responsibilities in the conservation and sustainable use of PGRFA for food security, quality of life and environment well-being. The operational common interests to achieve the objectives of conservation and sustainable use of PGRFA for food security cover the strategic need to have access to genetic resources for research and development, technologies and information. The differentiated responsibilities lie in the strategic need of
countries to provide for access to genetic resources, technology, information and financial resources in accordance with their capabilities and capacities.

The principle of common but differentiated responsibilities was pushed as the initial positioning of Asian countries. It provided the strong foundation to articulate the pillar of access to genetic resources, technology, information and financial resources. It also supported the pillar of benefit-sharing arising from the use of genetic resources. The initial positioning was necessary to support the determination of the concept of food security as a global public good. However the long and time-consuming negotiation on Farmers’ Rights and intellectual property rights (IPRs) soon triggered the change towards the safeguarding of national laws in terms of access to genetic resources and IPRs.

The 5th session of the Commission on Genetic Resources for Food and Agriculture (CGRFA) discussed the timetable for the revision of the International Undertaking (IU) (see Annex 1 of this volume for the list of all Commission and Treaty meetings). The session agreed that the revision should carefully be conducted, as a gradual pragmatic and step-by-step process, building on the consensus already achieved through the Commission’s previous discussions, as embodied in the IU and its annexes. Conference Resolution 7/93 requested that the revision of the IU be negotiated (see Chapter 10 for full detail of the IU revision).

A working paper on the issues for consideration in Stage II entitled ‘Access to genetic resources and Farmers’ Rights’, was presented to the 9th session of the working group (11–14 May 1994) and to the 1st extraordinary session of the CGRFA (7–11 November 1994). The formal negotiations of the Treaty started with the 1st extraordinary session of the Commission, in November 1994. During this session the Commission only focused on the discussion of Stage I entitled ‘Integration of the annexes and harmonization with the Convention on Biological Diversity’.

**The shift from the principle of common but differentiated responsibilities to prevailing national interests**

The provisions in national laws on access to genetic resources and IPRs have influenced the negotiating position of Asia, which is to have easy access to genetic resources and to safeguard the provisions of IPRs in their national laws. The negotiation on differentiated responsibilities became more difficult as developed Asian countries needed to protect IPRs on technologies. Developed Asian countries also have national interests to protect information, in particular, technological information that gives rise to commercial/competitive advantage. Developing countries, with large rural populations engaged in small-scale agriculture, were interested in safeguarding the informal breeding and seed systems which provide the main source of rural food security and livelihoods. Some of these countries which are country of origin also have the national interest to obtain direct benefits, in particular, commercial benefits.

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At this stage, the terms of ‘free access’, ‘availability of PGRFA’ and ‘conditions of access’, were discussed within the framework of harmonization with the CBD. Asia pushed for the use of the term ‘conditions of access’. In the end, a compromise was established with the use of the term ‘facilitated access to PGRFA’.

**The Annex I List negotiation: An important feature in Asia’s position on the Treaty**

The finalization of Article 9, Part IV on the MLS, and Article 18 also influenced the concluding negotiation of the Annex I list of crops in the MLS. Asia did not play a major role in the early phase of negotiation of the list. However, Asia had an important role in the final stage of the list negotiations, when national interests of countries of origin prevailed in excluding their genetic resources from the list. This is particularly true for major agriculture exporting countries. Their national interests were the need to safeguard/protect their competitive advantage in the export markets and to use their genetic resources for bilateral exchanges.

It was during the 6th session of the CGRFA that the proposals were submitted on a list of genera in Annex I of the proposed article on the scope of the IU, which provided an example of a list containing 231 genus and the scenario to establish a multilateral system or undertaking for those harvested species most used for food and agriculture.

Ideas to establish bilateral and/or multilateral agreements in relation to access to PGRFA, were discussed during the 10th session of the working group (3–5 May 1995), where the option for a list of crops was also proposed. This implied adding a list of mutually agreed species to which specific provisions of the undertaking would apply, particularly in relation to access to and the distribution of benefits. This option received fairly good acceptance. The idea of species or gene pool of major relevance to food security and those for which there was strong interdependency between countries was discussed.

At the 6th session of the CGRFA, 19–30 June 1995, there were proposals on the Scope of the IU and the list of 231 genera was submitted as an example under Scope. There were also proposed wordings on the Availability of PGR (access). Within the proposals on Availability, there were wordings on benefit sharing. The option submitted by EU listed 231 genus consisting of: major grain crops-grasses (12); minor grain crops (6); major grain legumes (9); minor grain legumes (12); cereals from other families (5); major starch crops (7); minor starch crops (3); oil crops (5); fruits (3); shrub fruits (6); tree fruits (30); vegetable crops (38); nuts (7); species (7); herbs (20); beverages (6); fibre (6); sugar crops (2); industrial crops (6); forage-grasses (22) and forage legumes (19). The list was incorporated into the Third Negotiating Draft.

At the 3rd extraordinary session of the CGRFA, 9–13 December 1996, the USA submitted a list of crops (genus) essential to global food security (25 crops plus forages); Brazil submitted a list of crops/genera of basic importance for human world food consumption (25 crops); Africa stated that access to and inclusion of
crop species in the system could be willingly decided by members of a multilateral system; France stated that within each species, there will be different classes of genetic material: (a) First Class: designated material with unrestricted access through an international network of collections; (b) Second Class: non-designated material with negotiated access. Brazil wanted to start the multilateral system with a small window, likewise with the USA; the EU preferred it with a large window.

At the 7th regular session of the CGRFA, 15–23 May 1997, three options were provided for further negotiation:

- Option A: Designated material in the international network or PGRFA (genus) designated by national governments.
- Option B: Designated material or PGRFA (genus) listed in the Annex or Material not included.
- Option C: PGRFA (genus) listed in the Annex or Material not included.

At this stage of the negotiation, there were many possible scenarios. There were options within options and countries/regions had positions regarding access, benefit sharing and list of crops. The Fourth Negotiating Draft had 58 pages.

At the 4th extraordinary session of the CGRFA (1–5 December 1997), a major breakthrough, in terms of a proposal for a multilateral system to facilitate access to PGRFA through a list of major crops, began to take shape. From all the proposals on the list of crops, the Commission agreed to have one Tentative List of Crops for further negotiation. This list contained 37 crops (41 genus), grasses (28 genus) and legumes (33 genus).

The informal meeting of experts on PGRFA, in Montreux, Switzerland (19–22 January 1999) (see Chapter 2 for a detailed analysis of this meeting), proposed a multilateral system, including conditions for facilitated access and benefit-sharing to be applied to a specific list of crops. The Montreux meeting thus set a broad framework of agreed principles for further negotiation. The criteria used to establish the Tentative List of Crops, were (i) their importance for food security at local or global levels, and (ii) countries’ interdependence with respect to PGR. The 8th session of the CGRFA (19–23 April 1999) agreed that the multilateral system shall cover PGRFA listed in Annex I to the future Treaty and established the criteria of food security and interdependence.

At the 2nd inter-sessional meeting of the contact group, 3–7 April 2000, statements were made on whether the window (list of crops) of the multilateral system, should be small or as wide as possible. Brazil wanted it small and the EU wanted it big. The USA has stated its position. Africa has stated its position. Other countries/regions remained silent. It was only at the 3rd inter-sessional meeting of the contact group (26–31 August 2000) that regions submitted a concrete list of crops. The information paper prepared by the Secretariat illustrated what the following regions proposed: Africa – 9 crops; Asia – 22 crops (24 genus); Europe – 273 crops including fruits, vegetables, nuts, herbs, species, forages, beverages and so on; Latin America and the Caribbean – 29 crops; and North America – as in the tentative list in Annex I – crops – 37 (41 genus), grasses – 28 genus, legumes – 33
At the 6th inter-sessional meeting of the contact group, Spoleto (22–28 April 2001), members of the working group on the list (Canada and Iran as co-chairs; Angola, Burkina Faso, Zimbabwe for the Africa region; China, Japan, the Philippines for Asia; France, Poland, Sweden for the European region; Argentina, Brazil, Colombia for Latin America and the Caribbean region; USA for North America; and Australia, Samoa for the Southwest Pacific) invited experts from IPGRI and the Secretariat of the CGRFA (FAO) to begin serious negotiation on the list. The working group used the criteria of food security and interdependence to select the crops. The lists submitted by the regions (FAO, 2000) were used as source material and compiled in one working document, comparing commonality of crops among regions. The working group worked on the crops most commonly suggested by the regions. The working group agreed that the working basis should be crops, with genera as indicative of crops, and species designation in cases where required. The working group achieved consensus on 30 food crops (Table I in the working group document). A further group of widely consumed food crops (Table II), where there is considerable support from a number of regions, remains under discussion. In addition, there were crops important to one or more regions that had not been discussed yet. Forage crops were highly important to all seven regions. However, requirements were diverse and highly complex. Discussions on forage crops had just begun and needed considerable further discussion, including advice from forage experts. The working group recommended that:

1. A panel of experts be asked to examine the genera in Tables I and II and make technical recommendations (including scientific sources) for further consideration and final confirmation, at the species level when required by the regions, the working group and the contact group. This study would identify and suggest the relevant genetic resources of the crop, including related genera and species that are important for breeding activities and the root stock of the crop, if relevant.
2. An opportunity be provided for discussion of the crops from the lists submitted by the regions, that have not yet been considered.
3. The working group continues to develop, with the assistance of forage experts from the regions, the list of forage crops for the next meeting of the contact group.
4. The working group finishes its work on the list of food crops before the next meeting of the contact group.

At the 6th extraordinary session of the CRGFA (25–30 June 2001), the final negotiation on the list took place, mainly among developing countries on the exclusion of such crops as soya bean, tropical forages, oil palm, sugar cane and groundnut/peanut from the list of crops. The active participation of the Asian region was focused on excluding soya bean, oil palm and sugar cane from the list in order to protect national interests in these crops. The final list consisted of 35 crops (36 genus), 15 genera of legume forages, 12 genera of grass forages and two
genera of other forages. Most countries in Asia were contented with this final list. However, a few countries were not fully satisfied because rice was included in the Annex.

**What are the challenges ahead for Asia?**

The Treaty tried to accommodate most of the contracting parties’ common interests in its MLS. However, the need for parties to safeguard their national interests will make it difficult for countries to follow a common framework of implementation at the national level. Some of the provisions in the MLS and the standard material transfer agreement (SMTA) are still very general and can be interpreted differently to suit national interests. Such provisions would require further elaboration by the Governing Body which has to agree on a common framework for implementation at the national level. Such provisions include:

**Article 12.3 (e) PGRFA under development**

Questions have arisen regarding what materials can be classified as PGRFA under development. The Treaty does not define PGRFA under development. However, the SMTA has a definition on PGRFA under development are defined under Article 2 of the SMTA,

> PGRFA under development means material derived from the [original material accessed from the Multilateral System] and hence distinct from it, that is not yet ready for commercialization and which the developer intends to further develop or to transfer to another person for further development. The period of development shall be deemed to have ceased when those resources are commercialized as a Product.

The rationale to have this definition for PGRFA under development in the SMTA is built on the idea of an unbroken chain of contractual obligations passed on from recipient to recipient until a commercial cultivar is released. It allows identification of how and when the development chain starts and how and when it ends.

Other questions that need be to resolved are:

- Article 12.3 (d) IPRs and other rights
- Article 11.2 Management and control of the Contracting Parties and in the public domain
- Article 12.3 (a) and SMTA Uses of PGRFA other than those uses provided for in the MLS
- Article 13.2 a), b) and c) Mechanism for the sharing of non-monetary benefits
- Creating legal space in national legislation on access and benefit sharing (ABS) including Article 11.3 and practical and legal implication of natural and legal persons putting material into the MLS as well as Article 12.3 (h).
The Governing Body of the Treaty has established the Ad Hoc Advisory Technical Committee on the SMTA and the MLS to consider the above issues and other issues raised by the contracting parties and other users of the SMTA and the MLS. Hopefully, the views and opinions of the committee will be useful to guide the operational efficiency and transparency as well as the legal certainty in the implementation of the SMTA and the MLS.

**Conclusion**

Negotiating the Treaty has been a very demanding and creative effort between all stakeholders involved in plant genetic resources and between all member countries. However, the positive outcome of the revision of the IU through the signing of the Treaty and the conception of its innovative multilateral system should not lead to a situation where states rely on what has been done, thus slowing the process down. On the contrary, more efforts should be placed in a common implementation framework to help countries efficiently apply the Treaty obligations at the national level. Particularly in Asia, integrated policy and planning, between line ministries and the private sector, and within and beyond national jurisdictions, first require that the agricultural sector becomes aware of its own environmental externalities, as well as of the impact of environmental change on its economic and societal performance. This will allow the definition of appropriate policy objectives within the agricultural sector, based on negotiated strategic actions and respecting national interests, including legal structures and resource allocation (FAO, 2009c). This will also allow for an effective application of the Treaty and will contribute to enhance and expand the recent positive outcomes of the Treaty in our region and all around the world.

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