Chapter 6

The Latin American and Caribbean Regional Group

A Long and Successful Process for the Protection, Conservation and Enhancing of PGRFA

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A necessary introduction

The process leading to the adoption of an International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA) has been developed in other chapters of this book. This allows starting from the perspective of the Latin American and Caribbean region (LAC), instead of repeating in detail what the scenario was during the last part of the second half of the 20th century, and the complex and at the same time interesting process leading to the adoption of the first environmental multilateral agreement of the 21st century.

A key characteristic of plant genetic resources for food and agriculture (PGRFA) is based on what breeders – formal ones in research centres or enterprises as well as farmers and local and indigenous communities – in all countries need: that is, to get access to genes in the form of PGRFA to keep their breeding programmes running, or to maintain and enhance local or traditional varieties for sustaining local communities and cultures. The problem is that all countries are dependant on genes coming from the entire world, as nowadays, there is no single country known to be self-sufficient on PGRFA (Crucible Group, 1994; FAO, 1997; Correa, 2000; Gerbasi 2004; Moore and Tymowski, 2005). Countries, institutions, researchers, farmers and people in general, need this flow of genetic resources to support their breeding programmes and to ensure food security.
As a reminder, the most important issue was that PGRFA were considered until the 1980s as a common heritage of mankind. In a way, this concept did not recognize the enormous contributions of people for centuries: mostly farmers and local and indigenous communities who conserved and enhanced the wealth that crop plants can represent to current generations for food, feeding, fibres, housing and so many other uses that man needs for everyday life.

In this interesting and unique process, mostly after the 1980s and, of course, after the decisive adoption of the Convention on Biological Diversity (CBD) in Rio de Janeiro, 1992, the international community developed the ITPGRFA on the basis of ensuring the conservation, the sustainable use and the sharing of benefits derived from the use of PGRFA. It is something interesting that the Treaty was able to achieve primarily for PGRFA, what the CBD is still negotiating without a concrete outcome yet, for access and benefit sharing for biodiversity in general.

A good support for the efforts developed by FAO, its country members and farmers’ communities in the entire world, was the decision adopted during the 2nd meeting of the Conference of the Parties to the CBD in Jakarta, Indonesia, in November 1995. This decision on ‘The Global System for the Conservation and Utilization of PGRFA’ recognized ‘the special nature of agricultural biodiversity, its distinctive features and problems needing distinctive solutions’, and at the same time, recalled Resolution 3 of the Nairobi Final Act of the Conference for the Adoption of the Agreed Text of the CBD, which recognized ‘the need to seek solutions to outstanding matters concerning plant genetic resources within the Global System for the Conservation and Use of Plant Genetic Resources for Food and Sustainable Agriculture, in particular (a) access to ex-situ collections not acquired in accordance with this Convention; and (b) the question of farmers’ rights’ (CBD, 1995). This decision gave an inestimable impulse to the process.

In the statement delivered during the First Session of the Governing Body of the Treaty in Madrid (ITPGRFA, 2006), it was recalled that the 6th meeting of the Conference of the Parties to the CBD in 2002 ‘recognized that the International Treaty on Plant Genetic Resources for Food and Agriculture will have an important role for the conservation and sustainable utilization of agricultural biological diversity, for facilitating access to plant genetic resources for food and agriculture, and for the fair and equitable sharing of the benefits arising out of their utilization’ (CBD, 2002). It thus recognized that the Treaty will make a significant contribution to the achievement of the three objectives of the Convention in the strategic area of agricultural biodiversity. For this reason, the Conference of the Parties (COP), at the same meeting, stressed the need for the expeditious entry into force of the Treaty and called on the 188 parties to the CBD and other governments to give priority consideration to its signature and ratification. The CBD Secretariat in its message recalled also that the 7th meeting of the COP of the CBD, held in Kuala Lumpur in 2004, again urged parties of the CBD and other governments to ratify the Treaty as an important instrument for the conservation and sustainable use of genetic resources, leading to hunger reduction and poverty alleviation.
Complexity of negotiations

The complexity of negotiations regarding PGRFA can be explained quickly recalling the close link of agriculture with the fundamental issue of food security, with trade – including the role of the World Trade Organization (WTO) and Trade-related Aspects of Intellectual Property Rights (TRIPS) agreements – without forgetting that plants are also a major source of pharmaceutical products and products for industrial use (several of them with a very high value) that surpass the value of those plants as food or any other common use. Tobin (1997) made an analysis on this issue and mentioned data from the Rural Advancement Foundation International (RAFI) that estimated losses of Southern nations from forgone royalties for the use of genetic material for the pharmaceutical industry around US$5079 million, and compared the use of genetic resources for agriculture with losses of US$302 million, highlighting that the use of genetic resources for agricultural purposes obviously offers less potential benefits than its use for pharmaceuticals.

The fact that the scope of the Treaty includes all ‘plant genetic resources for food and agriculture’ makes it a very important instrument for the LAC region, which recognized from the very beginning of the process the relevance of having a unique instrument for dealing with the diversity and the uniqueness of PGRFA.

The characteristics of the Latin American and the Caribbean region

LAC is a wide region comprising the southern part of North America (Mexico), whole Central America, the Caribbean and South America, which show different ecosystems, climates, cultures and people. Although mostly tropical climates predominate, also sub-tropical and even temperate climates are present. At the same time, vegetation in LAC goes from sea-level territories to very high mountains, reaching for some of them more than 6000m in height, as the examples of Peru (Nevado Huascaran, 6768m in the Andes) and Bolivia (Nevado Illimani, 6462m, also in the Andean region) considered being some of the highest mountains in the world.

All those different conditions contribute to facilitate the existence of a large diversity of genetic resources, which constitute a real wealth for humankind. It is common to have a very wide range of crops, forms and varieties, many of which are still not found, described nor used by people other than some indigenous or local communities that know and use those plants, as they are living in the wilds in close contact with nature.

Different cultures living in LAC were developed, in a great extent, having plants and crops closely linked to people. This fact made it easier for those indigenous and local communities to learn the characteristics, properties and usefulness of different plants and allowed them not only to conserve, but also to improve, in a very primary way, those plants leading to improved varieties and crops, that at the same time became closely linked to those cultures. This is a clear example of traditional knowledge incorporated and interlinked with PGRFA.
Together with that, LAC is the centre of origin of some of the most valuable food crops for humankind, like potatoes, maize and some very valuable tubers and roots, making an even heavier responsibility for the region, as unique genes have to be preserved to ensure the existence of the necessary and valuable variability on those PGRFA for the future.

From a total amount of 126 countries that are parties to the Treaty as of September 2010, 16 of them are countries from LAC (see Annex 3 of the book for the tables of participation to the Treaty by regional groups), and there are still five countries more that signed the Treaty and are in the process of becoming parties in the future.

The role of LAC in the process previous to, during the adoption of, and after the adoption of the Treaty

The active role of LAC represented in international negotiations by GRULAC\(^1\) can be pointed out by the fact that Mexico, as part of GRULAC and supported by the G-77, started a decisive debate during the 21st Conference of FAO in 1981. This debate led, two years later, to the adoption of important steps for the international process on PGRFA.

As Esquinas-Alcázar and Hilmi (2008) rightly pointed out in an article on the negotiations of the ITPGRFA, at the end of the 1970s and the beginning of the 1980s, the problem of PGRFA shifted clearly from a scientific problem to a political problem. The sensitiveness of developing countries raised valid questions as difficult to answer as the following:

- If PGRFA are distributed through the whole world, but the majority of biodiversity is present in tropical and subtropical countries where we find most of developing countries, then, when seeds are collected and placed in gene banks, frequently belonging to developed countries, to whom do the seed samples stored there belong?
- If the new varieties obtained are the result of applying the technology to the raw material or genetic resources, then why are the rights of donors of technology recognized in the form of breeder’s rights, patents, and so on, whereas the rights of donors of germplasm are not?

These questions were key for starting a negotiation process. The fact that LAC is a region with a very rich biodiversity, that the region contributed for decades to the collection of gene banks of several international institutions and developed countries, and that some of the mega-diverse countries of the world belong to our region, conditioned an active role of almost all of our countries in the pre-negotiation and negotiation process of the Treaty, leading to its adoption in 2001. The active role of LAC countries, as members of FAO, contributed to set up the scenario for the consecutive steps that allowed: first, to decide during the
22nd Conference of FAO in 1983 to establish a Commission on Plant Genetic Resources, and second, to adopt an International Undertaking (IU) on PGRFA that, although not legally binding, became the first example of the desire of LAC, as part of the international community, to address the loss of plant biodiversity in the world.

At that point, nobody could challenge the idea that the process of establishing an international regime for PGRFA was clearly a political issue, requiring negotiations and the establishment of national, regional and international policies to allow all countries to be able to use those fundamental resources to ensure food security for all.

The adoption of the CBD in 1992 marked a shift in the process of an international regime for PGRFA. The 1st extraordinary meeting of the Commission on Plant Genetic Resources in 1994 initiated the harmonization of the IU with the CBD; this could be considered a milestone for the process. Participation of GRULAC countries was fundamental in clearly highlighting issues that must guide the negotiations, according to the needs and requirements of developing countries.

A significant fact was the decision of the members of the Commission on Genetic Resources to elect Venezuelan Ambassador Fernando Gerbasi as its Chair in 1997. I consider it obligatory, to recognize the role played by Mr Gerbasi from this moment onwards guiding the Commission to succeed in the adoption of the Treaty four years later, making an extremely wise use of his diplomatic skills and unbelievable conciliatory power (see Chapter 2 of this book). This was a clear example of the capacity and commitment of GRULAC with the process on PGRFA. It is an interesting exercise to consult the book of Ambassador Gerbasi (Gerbasi, 2004) that summarizes very well some of the important moments of the whole process of negotiations of the Treaty.

We have to mention that, together with the whole community of Latin America and the Caribbean Countries, Cuba, as a member of the Commission on Genetic Resources, played a relevant role, not only presenting the national positions for the negotiations, but also representing GRULAC and the G-77, when this last group of developing countries placed the responsibility on Cuba to be the Chair of the G-77 in Rome during the last part of the negotiating process and the adoption of the Treaty in 2001. This was a responsibility and an honour, that the Permanent Representative of Cuba to FAO in Rome, Ambassador Juan Nuiry, performed with skillfulness and an inimitable ability to bring everybody together, and to allow having a balanced outcome of those difficult and complex negotiations.

Developing countries, including GRULAC members, gave the G-77 the responsibility of negotiating on their behalf, with all the power given by the membership of more than 120 countries at that time. We should remember that some of the very skilful negotiators based in the United Nations headquarters in New York were sent to FAO by their respective countries to reinforce the negotiations at the final stage of adoption of the Treaty. Some of the very important and well informed negotiators belonging to the LAC countries that participated in this group.
After the adoption of the Treaty, GRULAC continued placing great importance on implementing the instrument that had been adopted. The active role played by GRULAC during the meetings of the Commission acting as the Interim Committee of the Treaty, was fundamental to prepare the arena for the first meeting of the Treaty, once it entered into force in 2004. The financial rules for the Treaty, the rules of procedure, the draft budget for the Treaty, the financial strategy, as well as the first steps for designing a standard material transfer agreement (SMTA) for the multilateral system (MLS), and the draft procedures to promote compliance were the most important negotiations after the adoption of the Treaty. Without those proposals, prepared for the consideration of the Governing Body, the operation of the Treaty would not have been possible (Earth Negotiation Bulletin, 2002).

After that, different groups were created under the Commission acting as the Interim Committee for addressing different relevant issues. One of the groups focused on developing the SMTA for the MLS. The countries of the LAC region contributed to a great extent to the design of this valuable instrument.

Another group was the ‘Open-ended Working Group on the Rules of Procedure and the Financial Rules of the Governing Body, Compliance, and the Funding Strategy’, which convened at the FAO headquarters in December 2005 (CGRFA, 2005). This working group prepared draft resolutions for the consideration of the Governing Body at its first meeting. The G-77 proposed the nomination of Cuba as the Chair of the meeting, which was elected and acted as such during the meeting. This again was an expression of the recognition of the active role performed by Cuba and GRULAC.

Without being exhaustive, and recognizing the key role played by all LAC countries, I want to mention the active role of some countries during the whole process of the Treaty: Brazil, with substantive contributions in a wide list of issues, placing its well known negotiation capacities and expertise for the benefit of GRULAC; Argentina with a relevant role in the negotiations for the adoption of the Treaty and in the Commission acting as the Interim Committee for the Treaty, mainly through the important contribution of their legal experts, when developing important proposals for the draft SMTA, the rules of procedure, the third party beneficiary mechanism of the MLS, and others; Colombia with the relevant technical expertise on PGRFA and the very important considerations on biodiversity, as a well known mega-diverse country; Ecuador, with the technical expertise as well as diplomatic and negotiating skills of their experts that contributed notably to sustain GRULAC positions; and Uruguay, with substantive technical contributions that allowed progress with a solid text on several occasions, as with the very important contribution for the development and refinement of the financial strategy. Those are only examples, and I want to emphasize my personal recognition to all countries in the region for the wonderful work developed.

The need to harmonize existing legislations at national level within countries is a prerequisite for allowing the LAC countries that are still not parties to the Treaty, to complete the process for becoming a party. It is perhaps the case of some very important and active LAC countries in the FAO Commission on
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Genetic Resources. Ruiz (2008) made a good analysis of the implications of some regional decisions and national legislation that consider the issue of access and benefit sharing, like the Decision 391 of the former Andean Pact. As Ruiz rightly commented in his article, some very restrictive steps adopted by some countries are now very difficult to implement in a practical way. An exercise for the harmonization of those national and regional legislation with the Treaty could perhaps allow implementing the latter at national levels without any confrontation with national legislation or with sovereign decisions made by each country.

The position of the LAC region regarding PGRFA and an international regime for them

Negotiations for the ITPGRFA were, as in any intergovernmental multilateral agreement, made among government delegations, with civil society representatives included in the delegations.

A common theme for almost all LAC delegations was the consideration that the region contributed for centuries to PGRFA and it was not adequately compensated for making this wealth available to countries of all regions of the world. At the same time, during the last decades, some PGRFA from the LAC region were collected by research institutes, international organizations and different groups of collectors, and used in different countries for developing pharmaceutical or industrial products that represented several times the value known for those plants, without sharing a fair part of this value with the LAC countries. LAC countries, like stewards for those materials, had preserved the valuable materials that contained active substances or compounds that were used for saving lives or making human life more comfortable. Correa (1998) mentions concrete examples of a legal dispute, where the The Andean Court of Justice had to rule against the intentions of the pharmaceutical industry to obtain protection on pharmaceutical products already patented, that were produced from plants prospected in LAC.

For success in the negotiations towards the adoption of the Treaty, a more political approach was necessary when considering PGRFA and this vision was part of the position of the LAC region for the negotiations. A clear view on what was missing was fundamental for LAC at that time. As a result, LAC contributed in a substantial way to it, with concrete proposals, firm positions, while at the same time showing flexibility and understanding towards the needs and positions of other countries and regions.

This situation of inequity marked the negotiations of the Treaty for our region and explains why it was so difficult to reach a final consensus for the agreement in 2001, why there was such a strong position of almost all our countries, regarding the role of indigenous and local communities in the conservation of our resources for centuries, and why in the end we only had a small list of crops in Annex I of the Treaty, constituting the core of the MLS.

At the same time, LAC realized that access to PGRFA was also necessary for developing new and important plant forms and varieties, and recognized that all
our countries are in need of PGRFA for ensuring food security. Mainly research institutions and gene banks in LAC wanted to have access to the necessary genes for their plant breeding programmes, and negotiators managed the situation in a very smart way, contributing a lot of ideas and proposals that allowed negotiations, although slowly and step by step, to go forward until succeeding.

Although the MLS of the Treaty is limited in its scope because of the still limited number of crops included in Annex I, it constitutes an innovative mechanism serving as a model, facilitating the access to genetic resources, and at the same time ensuring that any benefits derived from their use are shared in a fair way with the people that maintained and enhanced those PGRFA for centuries. This is the most novel characteristic of the Treaty, which allowed progress in this very sensitive issue thanks to its objectivity and fairness. To allow the sharing of benefits derived from the use of PGRFA, although in a collective way, as it is designed for being distributed through the benefit-sharing fund to all developing countries, constitutes the first and still unique approach to this aspiration of humankind.

The special challenge imposed by climate change

At a time when climate change is a real concern for all humankind, the LAC region should focus on putting in place concrete measures, strategies and programmes to address the challenges that climate change will impose on our countries in the future. Highly dependant on agriculture, some recent examples of natural disasters are a call of alert that our agricultural systems must be improved for the imperative of subsistence. Indeed, flooding due to continuous and heavy rains in Central America, heavy storms and severe hydro-meteorological events in the Caribbean, and extreme temperatures and displacement in time of the occurrence of the seasons during the year have affected the planting and harvesting of food crops in all LAC.

To cope with climate change adaptation challenges, it is absolutely necessary to have PGRFA available to researchers, farmers and all people involved in plant breeding and in food security issues. Genes that would allow plants to adapt to those changing climate patterns should remain available. Because of the different climates and conditions prevailing in LAC, we will need genes adapted to raising or lowering temperatures; to resist droughts or heavy rains; to be able to grow in altitudes different varieties for crops like potatoes, in places as high as the mountains in the Andean region; or even to adapt crops to migrate to lower or higher latitudes.

Because the adaptation of plants to changing climate conditions is not a process that could be achieved in a short time, we give the Treaty a relevant role to guide this process in a way that food security could be achieved in the medium term, in spite of challenges imposed by climate change. Adaptation of agriculture to climate change challenges will require the availability of adequate PGRFA, with enough time to allow its incorporation to new improved and adapted varieties, and a good quantity of work by farmers and researchers.
Walking towards the future

To ensure having an operational Treaty will require sufficient available funding for its implementation as a whole, including the implementation of all and every article of the Treaty, as well as a working funding strategy and an enhanced MLS for access and benefit-sharing, and to ensure that the Governing Body remains sovereign and able to implement the Treaty in the way it decides, without any constraints or limitations. This is crucial if we want to continue supporting developing countries to conserve and use, in a sustainable way, all PGRFA to achieve food security for all their inhabitants and to widely develop further, the innovative concept of Farmers’ Rights.

Regarding the issue of widening the scope of Annex I of the Treaty, my opinion is that it remains a very sensitive one. As Annex I is part of the letter of the Treaty, its modification would imply opening the letter of the Treaty, and I think that there are some risks that might not be faced, even today. It is true that all countries, developed and developing, are in need of the whole rainbow of plant species and varieties for research and breeding. For example, Brazil has been asking to include crops like garlic and onion, peanuts, tomato, soybeans and sugar-cane in the Annex I list, but perhaps at this time we should find some alternative ways to overcome this difficulty. I am sure that the continuous implementation of the Treaty, in the successful way it is occurring, will allow, after a number of years, to reconsider the list of crops included in Annex I. Construction of trust and a successful implementation and operationalization of the MLS, the effective control of the SMTA, the growing and ensured sharing of benefits derived from the use of PGRFA from the MLS with an effective functioning of the third party beneficiary mechanism, will all constitute the basis for this important and necessary step.

I see in the future all countries of the LAC region becoming parties to the ITPGRFA. The strength of a whole region, negotiating and constructing an operative and strong Treaty, will be the best contribution we could make to the international efforts to allow all people to have access to food. I am sure that some remaining issues, mainly legal issues on national legislations, could be overcome and the whole LAC region will work together for this aim.

The enormous challenge of having an international instrument for PGRFA was faced and overcome by the international community. This is something that seemed impossible 15 years ago. The quick rise in the number of parties to the Treaty, in a very short time for an international multilateral agreement, is a clear response from countries that the Treaty is well designed and responds to the expectations of them all. It is a good reason and a good incentive to continue working very hard to ensure our contribution to eliminating hunger from all parts of the world, and ensuring food security for all.
A final note

A book addressing the process of the Treaty cannot forget to pay tribute to a very special person, who played a key role from FAO and the Commission on Genetic Resources for Food and Agriculture: Don José Esquinas-Alcázar. A convinced herald for the need to conserve, protect, enhance and use in a sustainable way all PGRFA, our good friend ‘Pepe Esquinas’ dedicated part of his life to the development of the Treaty. I am sure that Latin America and the Caribbean region will join me in this well-deserved homage in recognition of the work Mr Esquinas-Alcázar and his continuous support to the LAC region for so many years.

Notes

1 GRULAC is the Latin American and Caribbean group. It comprises the following countries: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay and Venezuela.

2 The G-77 now comprises 131 countries from all over the world.

3 Only 9 years after its adoption and 6 years after its entry into force, the Treaty reached 127 contracting parties.

References


CBD (2002) Sixth ordinary meeting of the Conference of the Parties at the Convention on Biological Diversity (UNEP/CBD.COP/6/20), Decision VI/6, available at www.cbd.int/decisions/cop/?m=cop-06


