The Rationale for the International Treaty on Plant Genetic Resources for Food and Agriculture

(Presentation 1)

Background

The International Treaty on Plant Genetic Resources for Food and Agriculture (hereinafter ‘the Treaty’) was adopted on 3 November 2001 by the Thirty-first Session of the Conference of the Food and Agriculture Organization of the United Nations (FAO). The Treaty was approved under Article XIV of the FAO Constitution by a vote of 116 Members in favour, with two abstentions. The Treaty entered into force on 29 June 2004, 90 days after the deposit of the fortieth instrument of ratification, acceptance, approval or accession, and now has 125 Contracting Parties. The adoption of the Treaty brought to an end more than seven years of difficult negotiations initiated by Resolution 7/93 of the Twenty-seventh Session of the FAO Conference in 1993. This Resolution called for negotiations, through the FAO Commission on Genetic Resources for Food and Agriculture, to revise the International Undertaking on Plant Genetic Resources, in harmony with the Convention on Biological Diversity (CBD).

In harmony with the CBD, the Treaty provides for the special needs of plant genetic resources for food and agriculture (PGRFA). In particular, it allows for the conservation and continued flow across national boundaries of the plant genetic resources most important to sustaining food security and on which all countries are interdependent.

For generations, farmers have drawn on thousands and thousands of different plant genetic resources in order to breed the major crops that today feed the world. The further development of agriculture, and the world’s food security, will depend on farmers and breeders continuing to have access to the plant genetic resources necessary to face new environmental and agricultural challenges in a way that minimizes transaction costs while still ensuring the fair and equitable sharing of benefits arising from their utilization. The Treaty ensures this continued flow by setting up a multilateral system of facilitated access and benefit sharing for those plant genetic resources that are most important for food security and on which countries are most interdependent (listed in Annex I to the Treaty). For these resources, the Contracting Parties to the Treaty have, in the exercise of their sovereign rights

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1 The text of the International Treaty on Plant Genetic Resources for Food and Agriculture can be found in the reference section of this module.
2 This introduction is taken from G. Moore and W. Tymoski. 2005. Explanatory guide to the International Treaty on Plant Genetic Resources for Food and Agriculture. IUCN, Gland, Switzerland and Cambridge, UK. (Published with the support of IPGRI. Available in English and French, and to be published in Spanish.)
4 Under the terms of Article XIV, the Conference is required to proceed to a vote on the adoption of conventions. The outcome of the vote on the Treaty is equivalent to an adoption by consensus, in that no Member voted against the adoption of the Treaty.
5 Article 28 of the Treaty.
over their genetic resources, agreed to facilitate access on a multilateral basis. For these resources, the Contracting Parties have also agreed on the standard terms and conditions that will determine access and benefit sharing, thereby avoiding the need to resort to bilateral negotiations over each accession. This standardized system of access and benefit sharing is called the *multilateral system*. While the multilateral system covers only certain listed plant genetic resources, the Treaty sets a framework for the conservation and sustainable use of all PGRFA and establishes the institutional machinery to oversee the implementation of its provisions.

Before dealing in more detail with the rationale for the Treaty, it might be appropriate to clarify the concept of PGRFA. In essence, PGRFA are the genetic resources or materials containing functional units of heredity of actual or potential value for food and agriculture that are contained in plants. As such, they are to be differentiated from the crops themselves as commodities, i.e., as biological resources. PGRFA are important as tools or ‘building blocks’ for breeders in improving crops and introducing new traits, such as drought or pest resistance, into those crops.

**Rationale for the Treaty**

The origins of the Treaty date back to the International Undertaking on Plant Genetic Resources (hereinafter ‘the Undertaking’), which was adopted by the FAO Conference in November 1983 under Resolution 8/83. It was the first international instrument dealing with the conservation and sustainable use of PGRFA. The Undertaking was a voluntary (not legally binding) agreement that sought ‘to ensure that plant genetic resources of economic and/or social interest, particularly for agriculture, will be explored, preserved, evaluated and made available for plant breeding and scientific purposes’. In line with that principle, adhering governments and institutions having plant genetic resources under their control were to subscribe to the policy of allowing access to samples of such resources and were to permit their export where the resources had been requested for the purposes of scientific research, plant breeding or genetic resource conservation.

The Undertaking also provided for the adoption and maintenance of appropriate legislative and other measures to protect and preserve plant genetic resources in areas of their natural habitat in the major centres of genetic diversity, as well as the maintenance of *ex situ* collections. It also provided for international cooperation to support these efforts and the development of an internationally coordinated network of national, regional and international centres. This would include an international network of base collections in genebanks, under the auspices or the jurisdiction of FAO, that would assume the responsibility to hold base or active collections of plant genetic resources of particular species for the benefit of the international community and on the basis of unrestricted availability.

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7 International Undertaking, Article 1.
8 International Undertaking, Article 1.
9 International Undertaking, Article 5.
While the Undertaking attracted wide support,10 a number of countries either indicated that they could not support it11 or adhered to it only subject to reservations,12 in part concerning the concept of free availability and its compatibility with plant breeders’ rights. At the same time, there was a growing feeling among a number of countries about the inequality of a system that rewarded the contributions of some innovators to the development of plant genetic resources (through plant variety protection and patents) but failed to recognize the important contribution over time of farmers’ innovations in selecting and breeding, as well as conserving, plant genetic resources. There was also growing concern that any system of PGRFA must reflect more fully the sovereign rights that countries have, and always have had, over those resources. To meet these growing concerns, the FAO Conference in 1989 adopted a series of Agreed Interpretations of the International Undertaking,13 which recognized that plant breeders’ rights, as provided for by the International Union for the Protection of New Varieties of Plants (UPOV), were not incompatible with the Undertaking. At the same time, they recognized farmers’ rights arising from the past, present and future contributions of farmers in conserving, improving and making available plant genetic resources, particularly those in the centres of origin/diversity.14 A further conference resolution in 1991 reiterated the sovereign rights of States over their plant genetic resources, clarified that breeders’ lines and farmers’ breeding materials should only be available at the discretion of their developers during the period of their development, and that farmers’ rights should be implemented through an international fund on plant genetic resources.15

Meanwhile, negotiations on access to genetic resources, and the fair and equitable sharing of benefits arising from their use, continued in the context of the UN Conference on Environment and Development (the Earth Summit) of 1992. The outcome of those negotiations was reflected in the CBD, the text of which was adopted in 1992 at a Conference16 convened by UNEP in Nairobi (the Nairobi Conference). The CBD was opened for signature at the Earth Summit and entered into force in December 1993. It provided a comprehensive framework for the conservation and sustainable use of genetic resources, with emphasis on decision making at the national level. It recognized the sovereignty of States over their natural resources and laid down the principle that the authority to determine access to genetic resources rests with the national government concerned and is subject to its national legislation. However, each Contracting Party is to endeavour to create conditions to facilitate access to genetic resources for environmentally sound uses and agrees not to impose restrictions that run counter to the objectives of the Convention. Access, where granted, is to be on mutually agreed terms and is subject to the prior informed consent of the Contracting Party providing such resources unless otherwise determined by that Party.17 Measures taken with the aim of sharing benefits, including sharing benefits arising from the commercial and

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10 One hundred thirteen countries adhered to the International Undertaking.
11 E.g., Australia, Canada, Switzerland and the United States of America.
12 E.g., Argentina, Belgium, Bulgaria, Colombia, Cuba, Denmark, Egypt, France, Germany, Hungary, Iceland, Ireland, Israel, Jamaica, Mexico, the Netherlands, New Zealand, Oman, Switzerland, the United Kingdom and Zimbabwe.
13 FAO Resolutions 4/89 and 5/89.
14 The Resolution provides that these rights are vested in the international community, as trustee for present and future generations of farmers, for the purpose of ensuring full benefits to farmers and supporting the continuation of their contributions, as well as the attainment of the overall purposes of the International Undertaking.
15 Conference Resolution 3/91.
16 Conference for the Adoption of the Agreed Text of the Convention on Biological Diversity.
17 The Convention does not prescribe how that determination should be made by individual Contracting Parties. In the absence of any such prescription, it could include both determinations at the national level and determinations within the context of a multilateral arrangement.
other utilization of genetic resources, are similarly to be on terms mutually agreed upon with the Contracting Party providing the resources.

For the purpose of access and benefit sharing, the CBD covered only genetic resources provided by Contracting Parties that are countries of origin of such resources or by Parties that acquired the genetic resources in accordance with the Convention. It thus specifically did not cover access to ex situ material collected before the entry into force of the Convention, including the genebank collections of the international agriculture research centres (IARCs) of the Consultative Group on International Agricultural Research (CGIAR) as well as many national collections. The Nairobi Conference recognized the need to seek solutions to these and other outstanding matters concerning plant genetic resources within the Global System for the Conservation and Sustainable Use of Plant Genetic Resources for Food and Agriculture (hereinafter ‘the FAO Global System’) established by FAO. It called, in particular, for solutions to be found to the question of access to ex situ collections not acquired in accordance with the Convention and to the question of farmers’ rights. This call was reinforced in Agenda 21, adopted by the Earth Summit of 1992, which called for the strengthening of the FAO Global System and its adjustment in line with the outcome of the negotiations on the CBD, as well as for the recognition of farmers’ rights.

The invitation extended by the Nairobi and Rio Conferences was taken up in November 1993 by the FAO Conference, which adopted Resolution 7/93 requesting the Director General of FAO to provide a forum for negotiations among governments for adapting the International Undertaking, in harmony with the CBD, considering the issue of access to plant genetic resources on mutually agreed terms (including ex situ collections not addressed by the Convention) and addressing the issue of the realization of farmers’ rights.

As mentioned above, the negotiations, which culminated in the adoption of the Treaty, were long and difficult. They took place within the framework of the FAO Commission on Genetic Resources for Food and Agriculture, initially in the Commission itself and later in a Contact Group of some 40 delegations established by the Commission. At one stage, the chairperson convened an informal meeting of experts in Montreux, Switzerland, to help give direction to the negotiations. The elements derived from that meeting were indeed instrumental in that respect. The main difficulties arose out of the need to balance access with real benefit sharing, the need to take into account intellectual property issues, and the inherent complexity of the subject matter.

**Rationale for special treatment of PGRFA**

The special nature of PGRFA and the need to seek special solutions has been recognized by the Nairobi Conference in its Resolution 3, by the Conference of Parties to the CBD itself and in the Preamble to the Treaty. What, then, is the special nature of PGRFA that differentiates them from other genetic resources and calls for special solutions? The answer to this question lies partly in the nature of PGRFA and the plant breeding process (with its reliance on ongoing human management), partly in the interdependence of countries on access

18 See the final Act of the Conference for the Adoption of the Agreed Text of the Convention on Biological Diversity, 22 May 1992.
19 Resolution 3 of the Nairobi Conference, operative paragraph 4.
20 The FAO Global System included the International Undertaking on Plant Genetic Resources.
21 Decision II/15 of the second Meeting of the Conference of Parties starts with the words ‘Recognizing the special nature of agricultural biodiversity, its distinctive features and problems needing distinctive solutions’.
22 The first paragraph of the Preamble to the Treaty provides that the Contracting Parties are ‘convinced of the special nature of PGRFA, their distinctive features and problems needing distinctive solutions’.
to plant genetic resources from other countries and partly in the importance of plant genetic resources for food security.\(^{23}\)

**The nature of PGRFA and the plant breeding process**

Unlike other genetic resources, PGRFA, or at least those of cultivated crops, are essentially a synthetic form of biodiversity. Cultivated crops, on which people depend for their food and survival, have been created by humans and, for the most part, cannot exist without continued human intervention. Over the millennia, farmers have domesticated wild plants and, through a process of selection and breeding, made them suitable for modern agriculture. This they have done by breeding out the natural traits, such as shattering of seed-heads prior to maturity or seed dormancy, that allow those plants to survive in the wild. They have also bred in new traits, such as higher yields and drought or disease resistance. Any individual landrace is thus the product of the breeding work of thousands of farmers over many generations. PGRFA also depend on continued and active human management. Without human care and selection, PGRFA will revert to the wild and may be of little further value to food and agriculture. Maintaining intra-specific genetic diversity, i.e., genetic diversity within individual species, is essential for maintaining yield stability and the ability of crops to adapt to new diseases and other environmental challenges.

The nature of the plant breeding process calls for a broad range of plant genetic resources as inputs into any single successful product. Indeed, a new plant variety can often be the product of generations of breeding by farmers and breeders, which may stretch across many countries. Even at the stage of developing a single new commercial variety, scientists might have to screen literally thousands of samples in search of a particular agronomic characteristic. Depending on the crop, breeders commonly work with up to 60 or so different landraces originating from 20 to 30 different countries. This wealth of parentage, particularly when seen in the context of the selection and breeding work of generations of farmers, means that it is difficult to track the original parentage of the products of plant breeding or of their several distinctive properties, not to mention calculating the extent to which any particular genetic input has been instrumental in producing the special characteristics of a new commercial variety.\(^{24}\)

In both these senses, PGRFA are unlike other forms of biodiversity, such as pharmaceutical products, which may often be derived from a single natural source, with human input limited to the knowledge of the properties of the natural sources.

**The interdependence of countries on access to plant genetic resources**

PGRFA have, for centuries, been freely and widely exchanged across the world’s continents and regions. Potatoes originated in the Andes Mountains of Latin America and are now staple crops in Europe and elsewhere in the world; barley and wheat were first domesticated in the

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\(^{24}\) In this sense, the distinctive nature of PGRFA raises questions as to the extent to which the definition of country of origin established in the CBD can be easily applied to agricultural crops, which are noted for their intra-species diversity. The definition seems to have been more appropriate for the regulation of access to medicinal species found in rain forests. See C. Fowler. 2003. Implementing access and benefit-sharing procedures under the Convention on Biological Diversity: The dilemma of crop genetic resources and their origins. In *Strengthening partnerships in agricultural research for development in the context of globalization*, Proceedings of the GFAR-2000 Conference, 21–23 May 2000, Dresden, Germany. GFAR/IPGRI. P. 110. Available on-line (accessed June 2010): www.fao.org/docs/eims/upload/205459/GFAR-IPGRI_Publication.PDF.
Near East; rice originated in Southeast Asia. Very often crops fared better in their new environments than in the original centres of origin, given that the new environments were often free from the natural diseases and pests prevalent in those centres of origin. But once such diseases and pests find their way into those new environments, breeders and farmers may have to go back to the centres of origin and biodiversity of crops in order to find natural resistance. The Irish potato famine of the 1840s is one example, where, in order to save Europe’s potato harvests, natural resistance to the *Phytophthera infestans* potato blight had to be sought in the centres of origin of the potato in South America. A more recent example has been the taro leaf blight which threatened to wipe out the taro crop of at least one South Pacific country, a crop that was essential to its food security. The country had to look to other countries, both within the Pacific Region and outside, in order to find new taro stock that was resistant to the disease. Other countries in the region will be forced to broaden the genetic base of their taro crops if they are to avoid similar crises. Broadening the genetic base of staple crops was specifically recognized by the ministers of agriculture in the Pacific Region as being crucial to the region’s food security.\(^{25}\)

The exchange of PGRFA has continued over the ages, and almost all countries in the world are now heavily interdependent on PGRFA from other parts of the world for their agricultural development. The world’s media have tended to focus on the one-way movement of genetic resources for pharmaceutical research from genetically rich countries in the South to industrialized countries in the North. For PGRFA, on the other hand, the flow is two-way. Indeed, no country or region of the world is entirely self-sufficient in terms of the plant genetic resources needed to sustain and improve its major crops.\(^{26}\) Without access to genetic diversity from sources outside the country or region, crop improvement in those countries or regions cannot be properly undertaken.

**The importance of plant genetic resources**

*The importance of plant genetic resources for food security*

As noted above, continued access to PGRFA is essential to preserve the world’s food security.\(^{27}\) The world is continually faced with the need to increase crop productivity and to develop new varieties that are better adapted to face environmental and biological challenges or to meet the needs of local communities. To meet these needs and challenges, farmers and

\(^{25}\) In Point 17 of their Communiqué adopted in September 2004, the Ministers of Agriculture of the Pacific Region ‘[a]cknowledged that access to genetic resources (crop, tree and animal) is necessary to ensure food security in the long-term. Broadening the genetic base of crops, trees and livestock, genetic improvement and diversification are crucial in coping with rapid change. Regional initiatives such as NARI's PARCIP should be supported. Access to and utilization of genetic resources will be enhanced through active participation in PGR networks, both at the regional level (PAPGREN) and at the international level (COGENT and BAPNET). To ensure continued access to genetic resources the countries of the region should consider endorsing the RGC MTA, ratifying the International Treaty, signing the Establishment Agreement for the Global Crop Diversity Trust.’


\(^{27}\) The term ‘food security’ has been defined in the World Food Summit Plan of Action in 1996. The introduction to the Plan of Action states that food security must be considered ‘at the individual, household, national, regional and global levels. Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life’. More specifically, Objective 2.3 states that food supplies should be ‘safe, . . . appropriate and adequate to meet the energy and nutrient needs of the population’.
plant breeders must have access to a wide range of PGRFA and to the essential information about those PGRFA that will allow good use to be made of them. Conserving PGRFA is not just a question of preserving a diversity of consumer choice for tomatoes or potatoes; it is a matter of ensuring that tomatoes and potatoes, and any other crops for that matter, can continue to be available to feed the world!

The importance of plant genetic resources in an age of climate change

PGRFA are particularly important in the era of climate change. Recent studies have indicated that the impact of climate change on agriculture will vary from region to region.28 Europe and North America are likely to see an increase in land area suitable for cultivation, while sub-Saharan Africa and the Caribbean are likely to see a reduction overall.29 But whatever the overall impact, one thing is clear: climate change will profoundly change the present conditions of agriculture in almost all countries. One study indicated that in all the developing countries reviewed, the mean temperatures recorded during the growing season over the last century would not overlap with those projected over the last 30 years of this century.30 In other words, the coolest summers in the future are likely to be hotter than the warmest summers in the past.

In such conditions, everyone agrees on the urgent need for agriculture to adapt to future growing conditions, including the need to adapt to new pests and diseases brought on by the changes in climate. Adapting means ‘breeding varieties that have greater tolerance to local abiotic stresses such as drought, flooding and extreme temperatures, as well as continuing to breed for resistance to pests and diseases’.31 Breeding such adapted varieties will require access to appropriate genetic resources, including those of the wild relatives of agricultural crops32 both inside a country and, increasingly, from outside.

PGRFA are important for two main reasons

First, they are important as an immediate resource responding to current needs, i.e., for the particular characteristics they may provide in the breeding of new varieties, in terms of productivity, pest resistance, drought tolerance, plant architecture, taste or colour.33 Much of the increase in food production over the last half century can be attributed to innovations achieved through plant breeding, drawing on existing genetic resources. However, the large increases in yield that have been achieved in areas of high agricultural potential have not been replicated in more marginal areas. In addition, there is a problem of genetic erosion caused by the replacement of diverse genetic material by modern varieties. Further large increases in food production will be required to feed the dramatically expanding population of the world and to adapt agricultural production to climate change. New breeding strategies will have to aim at improving economic and environmental sustainability by developing cultivars that produce

29 Ibid.
32 Wild relatives of crops, i.e., plants found in the wild from which modern crops were developed, or which are otherwise related to them, are often important sources of traits such as resistance to drought or disease.
ever-higher yields with less use of expensive and potentially harmful chemical inputs. The new varieties will also need to be better adapted to the needs of local farmers in more marginal areas or economies, and to incorporate increased genetic diversity. All of this will place greater demands on the availability of a wide range of PGRFA. While many countries may have large genebanks relating to their major crops, there will always be a need for access to a wider range of diversity from the centres of origin of the crop species, to find resistance to new diseases, for example.

Second, PGRFA are important as insurance against unknown future needs. Modern varieties that tend to be more uniform are replacing a large number of traditional, genetically more heterogeneous, varieties, thus increasing crop vulnerability. Disasters such as the Irish potato famine mentioned above and the destruction of the Sri Lankan coffee industry by rust are in themselves evidence of the need for increased genetic diversity in crops. Meeting such new and unexpected challenges will require continuing and increased exchanges of PGRFA.

**Special needs for access to plant genetic resources for food and agriculture**

Significant steps were taken in the CBD to address the protection of the world’s genetic resources and biodiversity, and to ensure equitable regimes of access and benefit sharing. But it was not able, on its own, to respond fully to the special needs and characteristics of PGRFA. In particular, the increasing tendency towards negotiating access to genetic resources on a case-by-case bilateral basis, with the consequent high transaction costs involved, has threatened to stifle the continued exchange of PGRFA on which modern agriculture depends.\(^ {34} \) Accessing PGRFA on a bilateral basis is problematic for farmers and breeders in all countries. It is, in fact, particularly difficult for those developing countries that are both economically poor and relatively poor in genetic resources. They have fewer prospects for accessing genetic resources through bilateral exchanges, given that they do not have the funds, technologies or sources of original genetic diversity to negotiate such exchanges.\(^ {35} \)

This specific problem has been resolved in the Treaty. Under the Treaty, countries have decided, in the exercise of their sovereign rights over their genetic resources and in harmony with the CBD, to establish a multilateral system for access and benefit sharing for a negotiated list of important crops. These crops were selected on the basis of their importance to food security and the extent of countries’ interdependence on access to those resources. For these genetic resources, the Contracting Parties to the Treaty have agreed to forego their individual rights to negotiate separate access and benefit-sharing terms and to give their prior informed consent on a bilateral basis: for these resources, they have agreed to apply terms that have been mutually agreed upon by all parties on a multilateral basis in order to ensure the continued flow of those plant genetic resources and to lower the transaction costs involved.

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\(^ {34} \) While the CBD called on Contracting Parties to endeavour to create conditions to facilitate access to genetic resources, it requires access to be subject to prior informed consent and on mutually agreed-upon terms. In the absence of any multilateral agreement, these requirements have necessarily been implemented on a bilateral basis, thus drastically slowing the exchange of PGRFA to such an extent as to endanger plant breeding activities, particularly in the developing world and small-scale enterprises.

PGRFA interdependence and food security

PGRFA differ from other genetic resources in at least three ways:

- The PGRFA of crops are essentially human-made or, rather, developed by humans.
- No region or country is self-sufficient: all regions and countries are dependent, to a greater or lesser degree, on PGRFA from other regions or countries, i.e., countries are interdependent insofar as PGRFA are concerned.
- Plant genetic resources are the foundation for modern agriculture and are thus essential for food security. The list of crops that are included in the multilateral system of access and benefit-sharing has been established in accordance with the criteria of food security and interdependence.

A study* presented to the FAO Commission on Genetic Resources for Food and Agriculture concluded that for the major food crops, all regions were dependent on PGRFA from other regions to a high degree: the degree of dependence for most regions being over 50%. Thus interdependence in Central Africa ranges from 67% to 94%. Interdependence in the Indian Ocean countries ranges from 85% to 100%. No country in the study was ranked as completely self-sufficient. Even countries such as Ethiopia were listed as being 28% to 56% interdependent. The figures for Bangladesh range from 14% minimum to 21% maximum. In view of this high degree of interdependence, continued access by countries to a wide range of plant genetic resources in other regions is essential for crop improvement and thus critical to modern agriculture.

World food security depends to a large extent on the continued improvement of plant crops. A study§ undertaken by FAO and submitted to the FAO Commission on Plant Genetic Resources for Food and Agriculture during the course of the negotiations for the revision of the International Undertaking concluded that plant products contribute the vast proportion of the world's supply of food energy, particularly for developing countries in Africa, Asia and the Pacific. Thus, in Africa, plants provide 93% of food energy; in Asia and the Pacific the figure is 87%; in the Near East, 88%; in Europe, 72.5%; in Latin America and the Caribbean, 81% and in North America, 73%. Sixty-five percent or more of the total supply of food energy is provided by four crops and their derivatives: rice, wheat, sugar (sugar cane and sugar beet) and maize. The crops listed in Annex I to the International Treaty together contribute some 80% of the world’s total supply of food energy.


‡ For each nutrient, a nutrition conversion factor (NCF) specific to each FAO commodity was selected in the study and used to calculate the energy or nutrient availability from that commodity.

One of the main objectives of the negotiations, and thus another important achievement of the Treaty, was the clarification of the status of ex situ collections, such as those held by the CGIAR Centres, acquired prior to the entry into force of the CBD. The CBD had left this issue unresolved and had called on the FAO to work on it.

Both FAO and the Conference of Parties to the CBD have welcomed the Treaty as providing a special solution for PGRFA that is responsive to the needs of farmers, breeders and sustainable agriculture in general.
Relationship of the Treaty with the Convention on Biological Diversity

The original mandate given by the FAO Conference in 1993 for the negotiation of the Treaty was to revise the International Undertaking with the aim of bringing it into harmony with the CBD and to deal with the issues of access to PGRFA on mutually agreed terms, including the *ex situ* collections not addressed by the CBD, and the realization of farmers’ rights.

This indeed sums up the essence of the relationship between the Treaty and the CBD:

- The CBD deals with biological diversity as a whole and sets the framework for the conservation and sustainable use of genetic resources, including access and benefit sharing. Its objectives are basically related to the environment.

- The Treaty, on the other hand, deals in more detail with the specific issues raised by the conservation and sustainable use of PGRFA. Its objectives are more related to food and agriculture. For the PGRFA that have been deemed especially important for food security, and which are listed in Annex I to the Treaty, the Contracting Parties to the Treaty have agreed on a special multilateral system of access and benefit-sharing. This is in no way inconsistent with the CBD; the Contracting Parties to the International Treaty have merely agreed that, for this particular sector and among themselves, the terms under which genetic resources are accessed should be mutually agreed on a multilateral rather than on a bilateral basis, and these terms should be set out in the Treaty itself in order to facilitate the exchange of PGRFA and to reduce the transaction costs of exchanges.

During the final stages of the Treaty negotiations, the question of the Treaty’s legal status and its connection with the CBD arose. At one stage, it was suggested that the Treaty might become a Protocol to the CBD. In the end, this approach was rejected and the Treaty was adopted as a free-standing independent international agreement under Article XIV of the FAO Constitution. Perhaps one of the main reasons for this approach was the idea that the Treaty was essentially an agricultural rather than an environmental agreement and, as such, should be responsive to the needs of the agricultural sector: the agricultural flavour of the Treaty (and the necessary technical support) would best be maintained by locating its governing body and secretariat within the FAO. The Treaty, however, expressly recognizes the importance of maintaining close links between the Treaty and both the FAO and the CBD.  

36 Article 1.2 states that the Treaty’s objectives ‘will be attained by closely linking this Treaty to the Food and Agriculture Organization of the United Nations and to the Convention on Biological Diversity’. At its third session in 2009, the governing body of the Treaty welcomed the ongoing fruitful cooperation between the Treaty and the CBD. A memorandum of understanding between the two secretariats is now under consideration to formalize and further strengthen that cooperation.