WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge

A Milestone for Respecting Genetic Heritage and Associated Traditional Knowledge

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The recent agreement within the World Intellectual Property Organization (WIPO) framework ignites a flame of hope about the international community's ability and goodwill to find consensus on global problems. Though crises are not rare in international relations, the devastating shared experience of the COVID-19 pandemic was expected to intensify the cooperation efforts. However, the reality reveals growing tensions marked by military wars and deadlocks in climate and trade negotiations.

According to Keohane (2006), multilateralism can be defined as the institutionalised collective action undertaken by a set of independent states and established in an inclusive manner.[1] Established in 1967, WIPO aims to cooperate globally in promoting intellectual property protection. As defined by the convention that created WIPO in 1967, these IP rights include "literary, artistic, and scientific works", "inventions in all fields of human endeavour", and "scientific discoveries", among others.

Over the past 20 years, there has been an exponential increase in research and innovation based on genetic resources and associated traditional knowledge, with a tripling in the number of patents granted globally related to biotechnology.[2] Nevertheless, this rapid evolution has not been accompanied by adequate national legislative and administrative structures, especially in developing countries, to ensure the balanced protection of these resources and knowledge, prevent their misappropriation and promote the fair and equitable sharing of the benefits arising from their utilisation.

In this context, the 26th WIPO General Assembly in 2000 approved the creation of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC). Despite efforts to facilitate understanding among members, the IGC could not reconcile the interests of providers and users of these resources and knowledge holders. At the 18th Session of the Committee, held in 2011, the documents relating to genetic resources and traditional knowledge totalled almost 300 pages.[3]

In 2022, the former IGC Chair introduced a draft international legal instrument[4] to advance the negotiations being conducted by the Committee without prejudice to any Member States' positions. When the 55th WIPO General Assembly decided to convene a Diplomatic Conference (DipCon) to conclude the negotiations, this preliminary version was adopted as the basic proposal to be discussed by the countries. In addition, to pave the road to the conference, the General Assembly agreed on a Special Session of the IGC to further close existing gaps and set up a Preparatory Committee to provide for the required administrative procedures.

The DipCon was held in May 2024 at WIPO's Headquarters in Geneva, Switzerland. Approximately 1,200



delegates and observers worldwide, including representatives of Indigenous Peoples and Local Communities, attended this historic event.

Led by Brazil's Ambassador Guilherme Patriota, the DipCon navigated deep divides between the demander developing countries and the so-called Group B, composed of developed nations. The work was divided between Main Committee I, coordinated by the representative of Australia and in charge of the Preamble and Articles 1 to 10, and Main Committee II, led by the representative of Namibia and responsible for the remaining Articles 11 to 23.

Ultimately, the conference achieved a substantive agreement emphasising transparency. The key point of the new Treaty is undoubtedly the obligation to disclose the origin of genetic resources and associated traditional knowledge that often serves as a basis for innovation and technological development focused on their potential economic value. It also allows for imposing sanctions for non-compliance with the disclosure requirement in the event of fraudulent conduct or intent.

The incorporation of this transparency requisite into the intellectual property system at the time of the patent application will favour the claim of benefit-sharing by countries of origin of the genetic heritage and holders of traditional knowledge, providing incentives for the maintenance and strengthening of a way of life that generates environmental services on a global scale. It will also enable timely opposition in case of misappropriation, protecting these resources and knowledge and preventing the granting of unfair patents.

It is essential to highlight that country of origin means only where resources are found in "*in situ*" conditions, within their ecosystems and natural habitats, or where domesticated or cultivated species have developed their distinctive properties. The notion of source, on the other hand, includes research centres, gene banks, other *ex situ* collections or repositories, as well as Indigenous Peoples and Local Communities.

However, the absence of an explicit reference to digital sequence information (DSI) is a matter of concern. It is a crucial issue due to the rapid biotechnological development, which makes direct access to the biological component of interest for obtaining the associated genetic information increasingly dispensable. As gene banks worldwide have already seized (often improperly) and sequenced a large part of the resources, synthetic biology research and commercial applications derived from this information are expanding without the need to obtain regular access respecting the dictates of the national legislation of the country of origin.

The topic has achieved significant prominence in different international forums (CBD, FAO, WHO, WTO, etc.), mainly due to the divergence in the sharing of benefits arising from DSI. Even for this reason, it may be more appropriate to leave its discussion for the future, along with derivatives and new and emerging technologies,

in the context of the review already provided by the Treaty after four years of its entry into force. In addition, the instrument establishes that it shall be implemented harmoniously and in a mutually supportive manner with other relevant multilateral agreements.

The document also expresses the need for the inclusion and participation of Indigenous Peoples and local communities in discussions on its implementation. It is done without presenting a definition for these human collectivities or their traditional knowledge, recognising their right to self-determination based on their habits and traditions. In this regard, it offers an apparatus for the respect and appreciation of ancestral legacies, as well as for the generation of employment and income for those who live in the forest and act as drivers for biodiversity conservation and sustainable use.

Notably, some countries have been making significant internal progress in monitoring access to genetic heritage and the consequent process of technological development. The Brazilian system is among the most advanced and mature ones, and it is based on open dialogue between industry, researchers and the Ministry of Environment and Climate Change, which is responsible for regulating the issue.

The legislation enacted in 2015[5] includes the expression "information of genetic origin" in the concept of genetic heritage and requires the indication of the origin of traditional knowledge to safeguard the rights of Indigenous Peoples and local communities. This Brazilian law has brought greater efficiency by reducing bureaucratic access requirements, thereby stimulating research and innovation based on the sustainable use of biodiversity while still prioritising its conservation. Clearer criteria for sharing benefits arising from the economic exploitation of products and materials derived from genetic resources and associated traditional knowledge have also enhanced legal certainty for companies' investment and facilitated inspection procedures. Since its implementation, more than 76,000 regular accesses have been registered and more than 17,000 products have been notified.[6]

At the Conference's closing ceremony, 30 countries* signed the Treaty, and the Gambia also did it the following week, so the instrument has 31 signatories[7] to date. However, it will only come into force after depositing the 15th instrument of ratification or accession with the WIPO Director General as depositary of the Treaty.

In conclusion, it is undeniable that the new Treaty enriches the intellectual property system by incorporating the environmental, social and human rights dimensions. Its multiple approaches can contribute not only to the sustainable development and economic stability agendas but also to the revitalisation of multilateralism and the strengthened recognition of its role as a means of mediating conflicts and facilitating consensual global solutions.

References

1. Keohane RO (2006) The contingent legitimacy of multilateralism. In: Newman E, Thakur R, Thirman J (Eds.) Multilateralism Under Challenge? Power, International Order, and Structural Change (pp. 56-76). United Nations University Press.
2. Moser C, Villa AM (2020) AI in Biotech Patents: The Tip of the Iceberg. Swiss Biotech, 21 April 2020. https://www.swissbiotech.org/listing/ai-in-biotech-patents-the-tip-of-the-iceberg/
3. WIPO (2011) Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore: Eighteenth Session (IGC-18). World Intellectual Property Organization (WIPO): Geneva, May 2011. https://www.wipo.int/meetings/en/details.jsp?meeting_id=22171

* Algeria, Bosnia and Herzegovina, Brazil, Burkina Faso, Central African Republic, Chile, Colombia, Congo, Côte d'Ivoire, Democratic People's Republic of Korea, Eswatini, Ghana, Lesotho, Madagascar, Malawi, Marshall Islands, Morocco, Namibia, Nicaragua, Niger, Nigeria, Niue, Paraguay, Saint Vincent and the Grenadines, Sao Tome and Principe, Senegal, South Africa, United Republic of Tanzania, Uruguay, and Vanuatu.

4. WIPO (2022) Chair's Text of a Draft International Legal Instrument relating to Intellectual Property, Genetic Resources and Traditional Knowledge Associated with Genetic Resources. World Intellectual Property Organization (WIPO): 3 May 2022. https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=572391
5. Brazil (2015) Federal Law No. 13.123. May 20, 2015. https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13123.htm
6. SisGen. National Genetic Heritage and Associated Traditional Knowledge Management System. https://sisgen.gov.br/paginas/publicidade.aspx
7. WIPO (2024) Signatures of the WIPO Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge. World Intellectual Property Organization (WIPO): 30 May 2024. https://www.wipo.int/meetings/en/doc_details.jsp?doc_id=631638