# A Draft Note for the International Conference on TRIPS CBD Linkage: Issues and Way Forward[1]

## A POSSIBLE PLURILATERAL FRAMEWORK TO ADDRESS THE MISAPPROPRIATION OF GENETIC RESOURCES AND TRADITIONAL KNOWLEDGE

## INTRODUCTION

A significant number of developing countries and some developed countries have introduced in their patent laws (or in other legislation), under different modalities, requirements relating to the disclosure of the source/origin of genetic/biological resources and the associated traditional knowledge (TK) claimed in patent applications. The incorporation of such requirements into national laws has addressed some of the concerns of developing countries regarding the misappropriation of these resources and knowledge. However, their effectiveness is likely to be limited in the absence of an *international* rule that sets out the terms of the obligation and the consequences of non-compliance. This limitation is particularly problematic if the obligation is not recognized and enforced in the markets where the commercialization of the protected inventions may be most profitable.

In view of the limitations that the provision of a disclosure obligation at the national level may have, developing countries have actively pursued in various multilateral fora, the recognition of an obligation to disclose the origin of genetic/biological resources and the associated TK. Although the proposals and debates in such fora have probably

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helped to disseminate the concept and influenced the adoption of national provisions on the matter, as examined below, they have failed so far to materialize in the desired adoption of international rules.

International organizations such as WIPO and WTO provide a possible forum for the negotiation of multilateral rules on issues relating to the misappropriation of genetic resources TK and TCEs. Meetings can be convened and supported by the respective secretariats, technical advice may be provided and, most importantly, the outcomes of a negotiation may have a multilateral reach. The recent negotiating record of those organizations show, however, that it is difficult to reach consensus on new international rules that address the concerns and interests of developing countries. Since the adoption of the agreement that established the WTO in 1994, only one new multilateral treaty (primarily proposed by developed countries) has been agreed upon[2] while the TRIPS Agreement was amended in response to the obstacles faced by least developed countries and developing countries without manufacturing capacity in pharmaceuticals. [3] WIPO had a better record as it adopted in the same period three treaties relating to substantive norms in the area of copyright, two on procedural aspects relating to the registration of trademarks and one on procedural aspects regarding applications for patent protection; a convention on geographical indications was also revised. [4] However, only one of these instruments responded to concerns voiced by developing countries. Other initiatives by governments or civil society to develop new instruments under the auspices of WIPO such as on broadcasting, copyright exceptions for libraries, industrial designs and, notably, genetic resources, TK and Traditional Cultural Expressions (TCEs), have failed so far.

The Doha Ministerial Conference of WTO adopted in 2001 a specific mandate to work on the relationship between the TRIPS Agreement and the Convention on Biological Diversity. A key issue in respect of that relationship in the view of developing countries, is how to address the possible misappropriation of genetic resources and TK under patent laws. The first proposals on the subject were made in the context of the

[2] The Trade Facilitation Agreement was adopted in 2013 and entered into force in February 2017.
[3] Incorporation of article 31bis into the TRIPS Agreement. While the amendmemt was adopted by the WTO Conference in 2005, it was only approved by two thirds of WTO members in January 2017.
[4] See wipo.int.

review of article 27.3(b). However, the proposals shifted later to the consideration of a possible amendment or an addition to article 29 of the TRIPS Agreement, which deals with the general disclosure obligation imposed on patent applicants. Several submissions outlined the purposes and possible scope of a disclosure obligation relating to patent claims on genetic/biological resources and associated TK[5]. In particular, a group of developing countries, supported by the African, Caribbean and Pacific Group of States (ACP Group) and the Least developed Countries (LDC) Group, made a proposal for a new article 29*bis*.[6] After the adoption of the Nagoya Protocol to the Convention on Biological Diversity on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits arising from their utilization (hereinafter 'the Nagoya Protocol'), a new submission was made[7] that reflected some of the elements of this Protocol, such as the concept of an 'Internationally Recognized Certificate'. Although in 2008 a large number of countries (including the European Communities and Switzerland) reached a common position regarding a possible amendment to the TRIPS Agreement to incorporate a disclosure obligation, no consensus was reached.

A similar proposal regarding a disclosure obligation was submitted by a number of developing countries to the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) which is undertaking text-based negotiations with the objective of reaching agreement on one or more international legal instruments that should ensure the effective protection of TK, TCEs and genetic resources.[8] Discussions at the IGC have been conducted for near 18 years, without any concrete outcome in sight.

Available information on the negotiations regarding the disclosure obligation in WTO and WIPO suggests that a large majority of countries do support a disclosure obligation, although there are differences regarding its scope and, notably, the consequences of

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[5] See, e.g., "Elements of the obligation to disclose the source and country of origin of biological resources and/or traditional knowledge used in an invention", submission from Brazil, India, Pakistan, Peru, Thailand, and Venezuela, IP/C/W/429 of September 21, 2004.
[6] Communication from Brazil, China, Colombia, Cuba, India, Pakistan, Peru, Thailand and Tanzania, Brazil, India and others — The Outstanding Implementation Issue on the Relationship between the TRIPS Agreement and the Convention on Biological Diversity — IP/C/W/474, Add.1, Add.2, Add.3, Add.4, Add.5, Add.6, Add.7, Add.8 and Add.9 Revision (Also circulated as WT/GC/W/564/Rev.2 and TN/C/W/41/Rev.2) 5 July 2006.
[7] TN/C/W/59, April 2011. Brazil, China, Colombia, Ecuador, India, Indonesia, African Group, ACP Group, Peru, and Thailand.
[8] See <http://www.wipo.int/tk/en/igc/>.

non-compliance. While such differences might be overcome through *bona fide* negotiations, progress is impeded by the firm opposition of the USA and other developed countries. Thus, in the long and unproductive negotiations held in the context of the IGC the United States, along with Canada, Japan and the Republic of Korea, have conformed a bloc that opposes any mandatory disclosure requirement. [9] The United States, for instance, questions the feasibility of 'a disclosure mandate providing transparency' and has argued that it may be 'burdensome' as a 'result of the enormous information potentially required'.[10]

It is also worth noting that developing countries attempted to introduce a mandatory disclosure requirement during the negotiation of the Nagoya Protocol. They aimed, in particular, at ensuring that patent offices become a mandatory 'checkpoint' in order to ensure compliance with the benefit sharing obligations under the CBD and the Protocol. As noted by a commentator,

> Developing countries consistently argued throughout the negotiations that user countries must establish effective monitoring, tracking and reporting requirements to support compliance. Without these, compliance would be rendered ineffectual and illusory. Monitoring requires the designation of checkpoints where the user must disclose pertinent information. This information would include: the country of origin of the resource or the associated TK, the prior informed consent of that country had been obtained, that MAT [mutually agreed terms] had been established and its essential terms adhered to, such as, whether the user had the right to the particular resource and whether a particular use was permitted by the grant of the access.[11]

The proposals by developing countries in the negotiations of the Nagoya Protocol were ultimately watered down. The Protocol, as adopted, only included a general obligation to set up 'one or more' checkpoints, without any specific reference to a disclosure obligation or the intervention of patent offices as 'checkpoints'.

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[9] See KEI, US proposal to seek a "better understanding" of Switzerland's implementation of the Nagoya Protocol receives chilly reception, June 6, 2016, available at https://www.keionline.org/23113.

[10] See WIPO/GRTKF/IC/30/9.

[11] Gurdial Singh Nijar, The Nagoya Protocol on Access and Benefit Sharing of Genetic Resources: An Analysis, CEBLAW, Kuala Lumpur, 2011, p. 19

The impasse in establishing a disclosure obligation at the international level is unlikely to be overcome in the near future. It is illustrative of the obstacles that developing countries face to develop international rules against misappropriation of genetic resources and TK. Although working within multilateral fora, such as UNEP, WTO and WIPO, remains the primary option, the absence of concrete outcomes may encourage developing countries to consider other alternatives, such as the negotiation of a binding plurilateral instrument outside such fora.

## THE INTERNATIONAL FRAMEWORK: CBD, NAGOYA, ITPGRFA AND SDGS

The CBD introduced for the first time in an international binding agreement, provisions on access to genetic resources and the sharing of benefits derived from their exploitation. One basic objective of the Convention is "the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources" (article 1). The CBD reaffirmed the sovereign rights of States to exploit their genetic resources "pursuant to their own environmental policies" (article 3). Access to genetic resources, where granted, shall be "subject to the prior informed consent of the Contracting Party providing such resources" and on mutually agreed terms" (article 15). In addition, each contracting party shall take legislative, administrative or policy measures with the aim of sharing in a fair and equitable way the results of research and development and the benefits arising from the commercial and other utilization of genetic resources with the supplying contracting party.

The implementation of the CBD showed that attaining a fair sharing of benefits resulting from the use of genetic resources and associated traditional knowledge was an elusive objective. The benefits actually obtained were limited or did not materialize at all. One of the reasons for this limited impact was identified and addressed in the negotiation of the Nagoya Protocol that came into effect in 2014. The Protocol introduced three important elements that may contribute to improve the fulfillment of the fair and equitable benefit sharing objectives of the CBD. First, it clarified that the benefit sharing obligations apply to the exploitation of 'derivatives' (as defined in the Protocol) and not only to the genetic resources as such. Second, it introduced specific

rules to ensure compliance by user countries including, as mentioned, the identification or establishment of at least one 'checkpoint' to that effect. Third, it introduced the concept of an internationally recognized certificates of compliance.[12]

The efforts by developing countries to obtain the international recognition of an obligation to disclose the origin of genetic/biological resources and associated TK has focused on patent law, i.e. on the information contained in patent claims. However, such an obligation may be relevant in other legal contexts as well, such as plant varieties and industrial designs. Commercial plant varieties are often derived from varieties developed and conserved by farmers or farmer communities, but their contribution generally has no recognition or compensation. Industrial design law may also allow for the misappropriation of traditional designs.[13] Initiatives to incorporate that obligation in relation to plant varieties and, more recently, industrial designs has faced the same kind of opposition noted in relation to patent law, despite that the impact of a disclosure obligation may significantly vary under those different types of intellectual property law.

In the case of plant varieties, he UPOV Council issued an opinion interpreting the UPOV Convention as preventing contracting parties from establishing a disclosure obligation as a condition for registration of a plant variety. It considered that in accordance with the UPOV Convention, the grant of the breeder's right shall not be subject to conditions other than compliance with the novelty, distinctness, stability and uniformity requirements provided, that the variety is designated by a denomination and that the required fees have been paid (Article 5). Further, the Council noted that plant variety protection (PVP) cannot be annulled or cancelled for reasons other than those indicated in Articles 21 and 22 of the Convention (UPOV 1991).

[12] It is also worth noting that with regard to access and benefit-sharing of plant genetic resources for food and agriculture (PGRFA), a special framework has been developed under the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA). According to this Treaty, the benefits deriving from the use of PGRFA are to be shared *multilaterally* in the case of the food crops and forage genera important for food security which are in the Multilateral System established by the Treaty (as listed in Annex 1).

[13] In many countries, industrial designs may be registered without prior examination or are protected without registration. In some countries they are protectable under copyright.

In November 2014 the African Group proposed to incorporate a specific provision on disclosure of origin in the draft treaty on formalities for the registration of such designs negotiated under the auspices of WIPO. That provision would introduce an additional item into the list of requirements spelled out in draft article 3 which would allow contracting parties to require the disclosure of the origin of traditional cultural expressions, traditional knowledge, or biological or genetic resources used in creating a design. As proposed, this would not be a *mandatory* requirement for contracting parties, but one they might legitimately introduce as part of the procedures to register an industrial design.

Finding a solution to the gap created by the lack of an internationally recognized disclosure obligation and, more generally, of an international regime against misappropriation, is not only relevant in the context of WIPO's and WTO's discussions. The UN Sustainable Development Goal (SDG) 2.5 of he 2030 Agenda for Sustainable Development also sets out the objective to maintain genetic diversity and promote access to and fair and equitable sharing of benefits arising from the utilization of genetic resources and associated traditional knowledge. In addition, SDG 15.6 seeks to protect, restore and promote sustainable use of ecosystems and mandates the global community to promote fair and equitable sharing of benefits arising from the utilization of genetic resources and appropriate access to such resources.

## TOWARDS A NEW BINDING INSTRUMENT?

An alternative to the current frustrating scenario regarding the development of an international regime that addresses misappropriation, would be to look for normative solutions outside the multilateral fora. Neither WTO nor WIPO have an exclusive competence to work in relation to that issue nor, more generally, in the area of intellectual property.

International conventions may result from the initiative of a group of countries to negotiate outside an international forum. Thus, despite the existence of the Paris Union established by the Paris Convention for the Protection of Industrial Property, and the fact that article 1 of the Convention specifically refers to industrial property applied in agriculture, the adoption of the UPOV Convention in 1961 resulted from the action of a

few European countries, notably France which convened the first diplomatic conference on the protection of plant varieties. More recently, the developed countries attempted to generate new international disciplines on the enforcement of intellectual property rights outside WIPO and WTO, through the Anti-counterfeiting Trade Agreement (ACTA) negotiated as a stand-alone plurilateral agreement (which finally never entered into force).

The negotiation of an international instrument in the context of multilateral fora has clear advantages, including the possibility of a potential membership broader than that attainable if negotiated outside them. In addition, the support of a secretariat capable of mobilizing technical and financial resources (for instance, to facilitate the participation of least developed countries) may be important for the success of an initiative. But these advantages are neutralized when, as it is currently the case with the disclosure obligation, one or a few countries block any possible progress on the matter.

Nothing would prevent a group of like-minded countries to convene preparatory meetings to discuss and agree on a new instrument that addresses the issue of misappropriation, nor to eventually convene a diplomatic conference for its adoption.

There are different options for a new binding instrument against misappropriation, including a disclosure obligation. Thus, a new instrument may attempt to develop substantive standards, including the determination of what constitutes misappropriation, and the measures to deal with it. This would require agreement on some minimum standards, thereby leading to some degree of harmonization. Given the differences in legal systems and approaches, even among developing countries, this option may require considerable time and efforts.

Another option would be to agree on the extraterritorial application of foreign access and benefit sharing laws by local courts. Accepting jurisdiction on a complaint based on acts that do not conform to the national law of a foreign country may be based on the agreed exclusion [14] in the jurisdictions of the contracting parties of the principle known

[14] For instance, the European Union's regulation on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters determines the jurisdiction of the

as '*forum non conveniens'*, that is, the discretionary power given to a court to decline jurisdiction to hear a case if it finds that it is an inappropriate forum or that another forum would be more appropriate.

This approach might provide one of the most comprehensive and efficacious ways of dealing with the misappropriation of genetic resources and TK. The courts of a user country may in such a situation order, for instance, a party that accessed genetic resources or TK to stop their utilization or to share the benefits arising from their commercial utilization. However, the application of a foreign law may be problematic given the need to interpret and apply legislation adopted in the context of different legal systems.

A further, less intrusive, alternative would be to seek the recognition of foreign final judgments regarding a)the validity or enforceability of patents or other intellectual property rights acquired without disclosing the origin of the claimed genetic resources or TK, and/or b)the effective compliance with access and benefit sharing regulations, namely the recognition of monetary and non-monetary benefits.

The validity or enforceabiity of a patent covering genetic resources or TK might not be challenged solely on the argument that a foreign law on access and benefit legislation was bypassed or violated. Only the non-fulfillment of one or more of the patentability requirements may provide sufficient legal ground for that purpose. Patents and other intellectual property rights are subject to the principle of territoriality, according to which the validity and enforceability of such rights can only be judged under the laws and by the courts of the country where the rights were granted or recognized. [15] Although patent laws often provide for the possibility of challenging the ownership of a

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courts of the Member State where the defendant is domiciled, thereby excluding the applicability of the *forum non conveniens* principle in the situations covered under the regulation

[15] The territoriality principle was confirmed in relation to patent rights in the context of the TRIPS Agreement through the adoption, in 2003, of a waiver regarding paragraphs f) and h) of article 31 (later incorporated as article 31bis). There are some exceptions to the principle of territoriality, such as article 6 *quinquies* (A)(1) and article 6*bi*s (1)of the Paris Convention. However, the countries where the protection is sought retain the right to apply exceptions (such as Article 6*quinquies*(1)(B) with regard to the recognition of trademarks "*telle quelle*"). Other examples of derogations to the territoriality principle are found in agreements that recognize foreign geographical indications, as established in some bilateral and multilateral conventions like the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958). See Carlos Correa, 'Elements of an International Regime for the Recognition of National Regulations on Access to Genetic Resources', Geneva, 2008.

patent when misappropriation of an invention may be demonstrated, this should also be done under the law of the country of grant. Hence, the recognition and enforcement of foreign judgments may not offer a feasible option if its purpose is to address issues of validity or exercise of granted patents. It may, however, be a viable alternative if it is focused on the effects of non-compliance with the access requirements and benefit sharing obligations as determined by the law of a foreign country.

This option would rely on the internationally recognized principle of comity. There are differences between common law and continental law in the way that principle is applied. Under common law, the decision whether to recognize or not a foreign judgment depends on an analysis of factors such as procedural fairness, impartial justice between aliens and citizens, and absence of fraud. Under continental law, in addition to due process and public order considerations, a reciprocal treatment between the foreign country and the country where the judgment originates is generally required. However, such differences may be reconciled through appropriate treaty provisions.[16]

Important efforts have been made to develop international frameworks for the recognition/enforcement of foreign judgments. [17] A first category of international instruments includes multilateral agreements that generally apply to judgments of civil or commercial nature. For example, the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (concluded 1st February 1971 and entered into force on 20 August 1979) applies to decisions rendered in civil or commercial matters by the courts of contracting States, provided that they are no longer subject to ordinary forms of review in the State of origin. The recognition is not subject to review of the merits of the decision rendered by the court of origin (article 8), and the authority addressed shall be bound by the findings of fact on which that court based its jurisdiction, unless the decision was rendered by default (article 9). However, the jurisdiction of the court of the State of origin need not be recognized by the authority addressed, *inter alia*, if the law of the State addressed confers upon its courts exclusive jurisdiction, either by reason of the subject matter of the action or by

[16] Ibid.
[17] See Ralf Michaels, 'Recognition and Enforcement of Foreign Judgments', Max Planck Institute for Comparative Public Law and International Law, Heidelberg and Oxford University Press, 2009.

virtue of an agreement between the parties as to the determination of the claim which gave rise to the foreign decision (article 12(1)). The 1971 Hague Convention only attracted a small number of members. The narrower 2005 Hague Choice of Court Convention was relatively more successful (signed by Mexico, the United States, the European Community, Singapore, Ukraine and, more recently, China) but it applies to jurisdiction in civil and commercial matters based on the exclusive choice of parties.

A second category of instruments includes bilateral and regional agreements for the recognition of foreign judgments, such as the Montevideo treaties of 1889 and 1940 which attribute judgments from one State the same force in other countries as they have domestically (provided they fulfill certain requirements), the 'Bustamante Code of 1928, the 1979 Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards and the 1984 Inter-American Convention on Jurisdiction in the International Sphere for the Extraterritorial Validity of Foreign Judgments. In the European Union, judgments in civil and commercial matters are enforced under the so-called Brussels I Regulation of 2000 and other regulations. Other precedents may be found in the Arab League 1952 Agreement as to the Execution of Judgments, the 1983 Arab Convention on Judicial Co-operation ('Riyadh Convention'), and the1995 Protocol on the Enforcement of Judgments Letters Rogatory, and Judicial Notices issued by the Courts of the Member States of the Arab Gulf Co-operation Council.

There are also a number of international agreements that apply to judgments in some particular areas only, such as transportation treaties (e.g. the Convention concerning International Carriage by Rail ('COTIF'), treaties dealing with nuclear accidents (eg., Convention on Third Party Liability in the Field of Nuclear Energy, Brussels Convention on Liability of Operators of Nuclear Ships) and oil pollution (e.g. Convention on Civil Liability for Oil Pollution Damage, Civil Liability for Bunker Oil Pollution Damage, Convention on Civil Liability for Damage Cause during Carriage of Dangerous Goods by Road, Rail and Inland Navigation). The instrument discussed here would fall within this category.

**Some possible aspects of a new instrument**

***Objectives***

The main objective of a new plurilateral instrument may be to provide remedy in cases where access and benefit sharing legislation has been bypassed or violated, such as when access took place without prior informed consent and mutually agreed terms, as prescribed by the applicable national law. [18] It would, hence, address one of the significant gaps in the implementation of those treaties regarding the misappropriation of genetic resources, their derivatives, and/or TK

***Scope***

A new international instrument on misappropriation of genetic resources and TK might be applicable to any situation of misappropriation, as defined or characterized under the national law of the country where the resources or knowledge have been obtained, including non-compliance with a disclosure obligation in relation to patents or other intellectual property rights. It would belong to the third category of agreements discussed above. Its narrow scope would avoid the difficulties inherent in developing a regime generally applicable to foreign judgments, and may facilitate national decision-making to adhere to it.

***Covered foreign judgments***

The core of a new instrument would be the recognition and enforcement of foreign final judgments relating to non-compliance of access and benefit obligations. A 'judgment' may be understood, as any final judgment on the merits rendered by a court or tribunal of a contracting party, irrespective of the designation given to the proceedings or the judgment itself (such as decree, order, decision, sentence, or writ of execution),

[18] Where a party who legally obtained access pursuant to the applicable national access and benefit sharing legislation utilizes the genetic resources, derivatives or TK in ways not consistent with a contract entered into with the providing country (for instance, if there is no or insufficient sharing of benefits resulting from the commercial exploitation of the accessed materials or knowledge), remedies may be sought under contractual law in the forum agreed upon.

including court approved settlements, and the determination of costs or expenses. A final judgment may be defined as a judgment which is not subject to further appeal.[19]

***Effects of the recognition***

An international instrument for the recognition of foreign judgments made in relation to access and benefit sharing legislation would incorporate extraterritorial considerations that may be limited to the effects of non-compliance of that legislation. The effect of a foreign judgment in the State of recognition and enforcement should be, to the extent possible, the same and, under no circumstances greater, than the effect enjoyed by the foreign judgment in the foreign State.

***Procedural v. substantive rules***

Importantly, a new international instrument to address the misappropriation of genetic resources and TK, as proposed above, would not require the prior substantive harmonization of national laws of the contracting parties, nor an international agreement on substantive rights recognized to States or other stakeholders, such as indigenous communities or the holders of biological resources. That instrument would only facilitate the recognition of judgments made in accordance with a national law that has been bypassed or violated in a foreign country. The legislation in the country where a judgment is recognized/enforced may differ from that applicable in the country where the initial judgment took place. Parties to such an agreement may even have no specific provisions on the matter; but they would still be obliged to give effect to foreign judgments enforcing access and benefit sharing legislation.

***Legal standing***

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**19** However, if a judgment is still subject to appeal, or if the period for an ordinary review has not expired, the recognizing/enforcing court may stay the recognition and/or enforcement until the appeal is decided or the period expires. A non-final judgment may be recognized/enforced, at the discretion of the court, subject to the provision of a security by the plaintiff. See International Law Association, Draft Guidelines on the Recognition and/or Enforcement of Foreign Judgments, June 6, 2015.

Another important aspect relates to legal standing. Access and benefit sharing legislations are generally grounded on the concept that genetic resources are subject to the sovereign rights of the country where such resources reside (as recognized in article 3 of the CBD). Hence, States may need to directly take legal actions against acts of misappropriation. On the other hand, is indigenous/traditional communities may need to file legal actions in a foreign country as a group. These aspects would require appropriate treatment to ensure that legal remedies are effectively available.

**Conclusion**

In the absence of an international regime against the misappropriation of genetic resources and TK and of an internationally recognized disclosure obligation, cases of 'biopiracy' may remain untraceable and the countries where genetic resources and TK have been accessed be deprived of a fair participation in the benefits of their commercial exploitation.

Developing countries have pursued for almost twenty years a mechanism to increase transparency in the intellectual property system (notably patents) to prevent and remedy non-compliance with access and benefit sharing legislation. The main tool proposed to this end has been the establishment of an internationally recognized obligation to disclose the origin/source of genetic/biological resources and TK claimed in patent applications. Although such a disclosure would not, by itself, prevent misappropriation, it would assist the interested countries and other stakeholders in monitoring the utilization of their resources and knowledge and facilitate appropriate legal actions.

Negotiations regarding a disclosure obligation have been blocked by a small group of countries in both WIPO and WTO. A breakthrough does not seem possible in the foreseeable future; this situation illustrates how important are the obstacles faced to develop an international regime against misappropriation in a multilateral context. Although multilateral fora would be the first option to address this problem, the lack of any progress calls for considering alternatives to enhance compliance with access and benefit sharing regimes. While several options exist (including the adoption of substantive standards), this could be done by a system, initially negotiated by a group of

countries (and open for adhesion by others) for the mutual recognition and enforcement of judgments regarding compliance with national access and benefit sharing legislation. Of course, a plurilaterai regime, if adopted, may not include countries where cases of misappropriation may be frequent and of particular economic importance, but would represent an important first step towards an international regime capable of curbing misappropriation.