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978-0-521-19944-5 - The Protection of Biodiversity and Traditional Knowledge in International Law of Intellectual Property
Jonathan Curci
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# The Protection of Biodiversity and Traditional Knowledge in International Law of Intellectual Property

The relationships between international intellectual property treaties, the United Nations international environmental treaties (first and foremost the convention on Biological Diversity), the relevant customary norms and soft law form a complex network of obligations that sometimes conflict with each other. The first set of treaties creates private rights while the latter affirms the sovereignty rights of States over genetic resources and related knowledge and creates international regimes of exploitation of the same.

Jonathan Curci proposes solutions to the conflicts between treaties through the concept of "mutual supportiveness," including the construction of a national-access and benefit-sharing regime, mandatory contractual provisions in relevant international contracts, a defensive protection when genetic-resource-related traditional knowledge is unjustly patented through the analysis of the concepts of "*ordre public* and morality," "certificate of origin" in the patent application and "novelty-destroying prior art" and positive protection through existing and *sui generis* intellectual property rights and misappropriation regimes.

JONATHAN CURCI is the Legal Counsel of Quantam Business Group, Ltd, Israel and Academic Counsel of Touro International University, Rome.

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CAMBRIDGE UNIVERSITY PRESS
Cambridge, New York, Melbourne, Madrid, Cape Town, Singapore, São Paulo, Delhi

Cambridge University Press
The Edinburgh Building, Cambridge CB2 8RU, UK

Published in the United States of America by
Cambridge University Press, New York

www.cambridge.org
Information on this title: www.cambridge.org/9780521199445

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First published 2010

Printed in the United Kingdom at the University Press, Cambridge

*A catalogue record for this publication is available from the British Library*

ISBN 978-0-521-19944-5 Hardback

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# List of abbreviations

| | |
|---|---|
| ABS | access and benefit sharing |
| ACP | African Caribbean Pacific |
| AIPLA | American Intellectual Property Law Association |
| AIPPI | Association internationale pour la protection de la propriété intellectuelle |
| ARIPO | African Regional Industrial Property Organization |
| ATRIP | International Association for the Advancement of Teaching and Research in Intellectual Property |
| CAF | Corporación Andina de Fomento |
| CBD | Convention on Biological Diversity |
| CBE | Convention sur le brevet européen |
| CFR | Code of Federal Regulations |
| CGIAR | Consultative Group on International Agricultural Research |
| CGRFA | Commission on Genetic Resources for Food and Agriculture |
| CHM | clearing house mechanism |
| CIEL | Center for International Environmental Law |
| CIT | Court of International Trade |
| CLR | compulsory liability regime |
| CNRS | Centre nationale de la recherche scientifique |
| COP | Conference of the Parties |
| CPGRFA | Commission on Plant Genetic Resources for Food and Agriculture |
| CRADA | Cooperative Research and Development Agreement |
| CSD | Commission on Sustainable Development |
| CSIR | Council for Scientific and Industrial Research |
| DC/DCs | developing country/developing countries |
| DDAGTF | Doha Development Agenda Global Trust Fund |
| DNA | deoxyribonucleic acid |
| DSB | dispute settlement body |
| DSU | dispute settlement understanding |



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| | |
|---|---|
| EC | European Community |
| ECHR | European Convention of Human Rights. |
| ECJ | European Court of Justice |
| ECOSOC | United Nations Economic and Social Council |
| EPC | European Patent Convention |
| EPO | European Patent Office |
| EU | European Union |
| FAO | Food and Agriculture Organization |
| FTA | free trade agreement |
| FTC | Federal Trade Commission |
| GAOR | General Assembly Official Records |
| GATT | General Agreement on Tariffs and Trade |
| GIs | geographical indications |
| GMO | genetically modified organism |
| GNU | general public license |
| GPA | Global Programme of Action for the Protection of the Marine Environment from Land-based Activities |
| GR/GRs | genetic resource(s) |
| GRAIN | Genetic Resources Action International |
| GRULAC | Group of Countries of Latin America and the Caribbean |
| HIV | human immunodeficiency virus |
| IAO | Instituto Agronomico per l'Oltremare |
| ICANN | Internet Corporation for Assigned Names and Numbers |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| ICJ | International Court of Justice |
| ICTSD | International Centre for Trade and Sustainable Development |
| IGC | intergovernmental committee |
| ILA | International Law Association |
| ILC | International Law Commission |
| ILM | International Legal Materials |
| ILO | International Labor Organization |
| INBio | Costa Rican National Biodiversity Institute |
| INDECOPI | Instituto Nacional de Defensa de la Competencia y de la Protección de la Propiedad Intelectual |
| IP | intellectual property |
| IPGRI | International Plant Genetic Resources Institute |

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| | |
|---|---|
| IPGRTKF | intellectual property and genetic resources, traditional knowledge and folklore |
| IPR | intellectual property right |
| ITPGRFA | International Treaty on Plant Genetic Resources for Food and Agriculture |
| IUCN | The World Conservation Union |
| IUPGR | international undertaking on plant genetic resources |
| LDC | least developed country |
| MEA | multilateral environment agreement |
| MFN | most favored nation |
| MNC | multinational corporation |
| MTA | material transfer agreement |
| NAFTA | North American Free Trade Agreement |
| NGO | non-governmental organization |
| NIF | national innovation fund |
| OAU | Organization of African Unity |
| OEB | Office européen des brevets |
| OECD | Organization for Economic Cooperation and Development |
| OSD | open source definition |
| OSI | open source initiative |
| PBR | plant breeders' right |
| PCIJ | Permanent Court of International Justice |
| PCT | Patent Cooperation Treaty |
| PGM | plant genetic material |
| PGR/PGRs | plant genetic resource(s) |
| PGRFA | plant genetic resources for food and agriculture |
| PGS | plant genetic systems |
| PIC | prior informed consent |
| PLO | Palestine Liberation Organization |
| PLT | Patent Law Treaty |
| PVP | plant variety protection |
| R&D | research and development |
| RAFI | Rural Advancement Foundation International (now Action Group on Erosion, Technology and Concentration, ETC Group) |
| RNA | ribonucleic acid |
| RSA | Recueil des sentences arbitrales |
| SAA | Round Statement for Administrative Action |
| SAARC | South Asian Association for Regional Cooperation |
| SADC | Southern Africa Development Community |

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| | |
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| SCP | Standing Committee Law of Patents |
| SINGER | System-wide Information Network for Genetic Resources |
| SPLT | Substantive Patent Law Treaty |
| SPS | Sanitary and Phytosanitary Measures |
| SRISTI | Society for Research and Initiatives for Sustainable Technologies and Institution |
| TAK | traditional agricultural knowledge |
| TEK | traditional ecological knowledge |
| TIPR/TIPRs | traditional intellectual property right(s) |
| TK | traditional knowledge |
| TKUP | traditional knowledge of the uses of plants |
| TMK | traditional medicinal knowledge |
| TRIPS | Agreement on Trade-Related Aspects of Intellectual Property |
| UDHR | Universal Declaration on Human Rights |
| UNCTAD | United Nations Conference on Trade and Development |
| UNEP | United Nations Environment Program |
| UNESCO | United Nations Educational, Scientific and Cultural Organization |
| UNFOF | United Nations Forum on Forests |
| UNHCR | United Nations High Commissioner for Human Rights |
| UNTS | United Nations Treaty Series |
| UPOV | Union internationale pour la protection des obtentions végétales (International Union for the Protection of New Varieties of Plants) |
| URAA | Uruguay Round Agreements Acts |
| USPTO | United States Patent and Trademark Office |
| VCLT | Vienna Convention on the Law of Treaties |
| WHO | World Health Organization |
| WIPO | World Intellectual Property Organization |
| WIPO IGC on IPGRTKF | Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore |
| WSSD | World Summit on Sustainable Development |
| WTI | World Trade Institute |
| WTO | World Trade Organization |

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# Acknowledgments

The present work is based on a doctoral dissertation deposited at the Library of the Graduate Institute of International and Development Studies University in Geneva (Switzerland) that is much richer in terms of footnotes and legal reasoning because broader in scope than the present book. I thank the University of Torino (Italy) and the Brigham Young University in Provo, Utah (United States of America) for providing the necessary education, their libraries and work place to draft this work. I owe a special thanks to the Research Fund of the European Patent Office (EPO) for the grant that has allowed me to carry on this work under more comfortable conditions.

I wish to express my gratitude to the supervisor of the underlying doctoral work Marcelo Kohen (Professor of International Law at the Graduate Institute of International Studies in Geneva, Switzerland), Thomas Cottier (Director of the World Trade Institute – WTI – at the University in Berne, Switzerland) and Marco Ricolfi (Professor of Intellectual Property at the Law School of the University of Turin, Italy). Their extensive expertise in the technical aspects of the new and cutting-edge topic of international trade law and the opportunities each of them were able to offer me as a researcher or consultant on projects under their direction provided me with invaluable experience, as well as much-needed motivation.

I also wholeheartedly thank Dr. Anthony Taubman, Acting Director and Head of the WIPO Global IP Issues Division, and Dr. Shakeel Bhatti, former Head of the WIPO Genetic Resource Traditional Knowledge and Biotechnology Section. A special thanks to my friends Daniel Stewart (Attorney-at-Law), David Newell and Peter Bradford (Patent Attorney) for having thought, discussed and researched with me related topics in our professional and research projects.

A very special thanks for the linguistic insights and corrections by Alison Craig and William Marconi.



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