
Arianna Broggiato, Tom Dedeurwaerdere, Fulya Batur and Brendan Coolsaet

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization (hereafter, “the Nagoya Protocol”) to the Convention on Biological Diversity (CBD) was adopted in 2010. Its objective is the fair and equitable sharing of the benefits arising from the utilization of genetic resources and traditional knowledge, with the aim of contributing to the conservation of biological diversity and the sustainable use of its components. As an international agreement, the Nagoya Protocol complements the international legal regime related to the management of genetic resources and traditional knowledge. However, this introductory chapter illustrates an innovative perspective aimed at demonstrating that the inception of this legal regime long predates the discussion on access and benefit-sharing (ABS) of the CBD and is the product of the interaction of different legal fields: the international laws on development, trade, environment and intellectual property protection. The negotiation history (see Section II of this chapter) of the different international documents related to these domains shows three core motives that have driven international policy makers and civil society in promoting the development of a specific regime for access and benefit-sharing as a protocol to the CBD. The first motive is the fight against misappropriation of natural resources, which is predominant in the global social movements focusing on the right to development and environmental justice. The specific misappropriation of genetic resources and traditional knowledge (TK) was particularly brought to light through the debate on the emergence of highly exclusive intellectual property rights' legislations in various countries around the world. The second political motive is the ethical duty to conserve the Earth's limited resources, which gained public attention through the emergence of the internationally prominent environmental movement in the 1970ies, and was

---

1 The hypothesis that the concept of benefit-sharing long predated the discussion on ABS of the CBD and it is the product of the interaction between three fields of international law is here presented for the first time by the authors of this chapter, therefore the argumentations lack in references to previous literature.
institutionalized through the 1972 Declaration of the United Nations Conference on the Human Environment2 (hereafter, “Stockholm Declaration”) and the numerous subsequent international and regional conservation treaties.3 The third motive is the promotion of international cooperation for scientific research in support of the two first motives.

Traces of these three political motives can be found in all of the main international documents related to genetic resources and traditional knowledge. They have however had different weights in the development of the different sectors of international law making. The core foundation of the first motive is the fundamental principle of sovereignty of a State over its natural (tangible) resources, which inspired the first claim to the right to development and which already included the basic principles of benefit-sharing within the early international documents.4 This motive is still very important in the current debate, in particular because of its focus on people centred development which announced the current emphasis on the protection of traditional knowledge associated with genetic resources. The environmental motive emerged to balance the risk of the depletion of the resource. However, although biodiversity conservation is the official underlying principle of the CBD, it can be argued that the more utilitarian “sustainable use” objective focusing on a monetization of biodiversity got the upper hand.5 Finally, the central role of research and the consequent necessity to support the development of scientific capabilities of developing countries was felt strongly in the 1970s. It nonetheless lost its weight at a later stage and disappeared from the international law making, to arguably regain momentum in the beginning of this century through

---

4 UNGA Resolution 1803 (XVII) of 14 December 1962 “Permanent sovereignty over natural resources”; UNGA Resolution 523 of 12 January 1952 on “Integrated economic development and commercial agreements.”