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**gLAWcal
Comment #222**

THE ROLE OF THE INTERNATIONAL COMMUNITY IN THE PROTECTION OF GENETIC RESOURCES

Based on

Jianqiang Nie “The Relationship between the TRIPs Agreement and the Convention on Biological Diversity (CBD)”



A gLAWcal comment on Jianqiang Nie "The Relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD)" in Paolo Davide Farah and Elena Cima (Eds.) China's Influence on Non-Trade Concerns in International Economic Law

In the past, Multinational Companies (MNCs) have benefited from the absence of international agreements and regulations that would regulate their operations in countries with huge biodiversity such as India or Brazil and so on. Because of that, these companies were capable of getting the maximum benefits without giving back to the societies and communities from which they extracted Genetic Resources (GR) such as plants that were used for making medicines that cured millions of people and in the same time allowed these companies to make fortunes over the decades. Not only these MNCs took advantage of the existing GR but also of the Traditional knowledge (TK), and Traditional Cultural Expressions (TCE) of the communities that were located near these sources in particular the indigenous communities which became the principal victims of such practices. Moreover, the states in which these operations were occurring were either poor, lacked the rule of law or lacked the knowledge about the value of these resources and the ways they could benefit from their exploitation and were very weak in the face of great MNCs that were only giving a small share of the

benefits for the sake of formality and to say that the companies are operating under fair terms while in reality, they got the lion share from each transaction that was made and the ones that were affected the most were the populations that were the closest to these GR. One could mention many examples in which these realities occurred. The best examples could be made with regard to pharmaceutical companies that have for years used the GR for the production of medicine saving people lives but in the same time gaining a lot of profits without really giving a fair share of that profit to the state or the communities where the GR are located. Yet this situation has started to change with the constant push from the international community in particular on behalf of the countries in which the GR are located towards the adoption of agreements that would protect the latters and force the MNCs to also respect specific binding instruments that in a way would restore the lost balance in this context. Indeed, several international instruments have been adopted in this regard such as the convention on Biological Diversity (CBD) and so on. In the chapter "The Relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD): Intellectual Property and Genetic Resources, Traditional Knowledge, and Folk Protection from a Chinese Perspective" of the book "China's Influence on Non-Trade Concerns in International Economic Law", the author Jianqiang Nie examined these issues in details. In particular, the author analyzed these matters from a Chinese perspective where he stated that "China's biological diversity is greatly threatened, its genetic resources are disappearing, its traditional knowledge is being lost, and its traditional cultural expressions are being exploited by cultural pirates."



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