

Intellectual Property Policy Making Processes: Divergent Global Positions of Middle-Income Countries

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Thanks to the gratitude of the Sylff Research Abroad Award by the Tokyo Foundation, I conducted my PhD field research in Geneva, Switzerland in the fall of 2013 for 10 weeks. My position as a visiting scholar at the Graduate Institute of International and Development Studies (GIID) provided me with valuable intellectual support such as the opportunity to exchange ideas and to discuss my research agenda with the faculty and graduate community of GIID. During my stay in Geneva, I attended several talks and symposiums, participated in workshops organized by different international organizations, and enjoyed the access to a large and dense network of international policy-makers, representatives and officials. As the GIID offered critical logistical support such as comfortable office space, a desktop computer, and access to the libraries in Geneva and printing facilities.

As part of my PhD field research, my strategic goal was to make observations about the policy-making processes of intellectual property rights at the international level. In this regard, I particularly focused on the divergent positions taken by developing countries. Geneva, home to the key players in the global policymaking of intellectual property rights, is a perfect research field to assess the relations among the related actors. Different international organizations, permanent missions of states to these organizations, and NGOs and advocacy groups have their branches or headquarters in Geneva. These agencies not only serve as intergovernmental forums for global debates and negotiations but also set global standards for intellectual property rights. GIID is perfectly located at the center of this international political agora. For my field research, I conducted 34 semi-structured in-depth interviews with the officials of the international organizations, representatives of the country missions, and representatives of the related NGOs.

One of my fundamental questions that contextualize the practical research questions was: What makes intellectual property? It was only with the 1970s that the term intellectual property became a popular concept among the academic and policymaking circles. Beforehand, a variety of terms such as 'industrial property', 'patent', 'authorship right', 'trade secret', and 'copyright' were used to describe what we now call 'intellectual property'.

Agreement on Trade-Related Intellectual Property Rights (TRIPS), signed in 1994 as a part of the World Trade Organization (WTO), set minimum standards to all member states and rendered intellectual property rights part of the international trade regime. The scope of these categories has been expanding more than ever in the last half century: Copyright now includes computer programs and multimedia products. Plant varieties, life forms and designs are now patentable. The content of these legal concepts is not firmly established and stable. Not only the scope of the existing categories expanded, but also new ones are regarded as intellectual

property. Indigenous knowledge and geographical indications are now included in the intellectual property classifications. However, the conceptual connection among these terms is still a matter of debate. What makes human genes, plant varieties and software algorithms to be expressed through the lens of the same term? What is the underlying logic that gathers all of these subjects under the umbrella of intellectual property? The answer lies in the long history of the conceptualization of intellectual property. The wording of the term is by no means a matter of coincidence. The processes that turned intellect, knowledge and information into a special form of property went hand in hand with a broader transformation pertinent to the reification of intellect.

Such philosophical justifications and debates had a synchronic evolution with the global and national policymaking of intellectual property. Although the protection of intellectual property most of the time falls under the jurisdiction of the national authorities, policymaking takes place at the international, national and sub-national levels. Thus, actors active in different realms of policymaking are in constant interaction. Diverse issues ranging from copyrights to medicine patents are discussed by these agencies in the intergovernmental forums in Geneva. Understanding the historical foundations of this multifaceted structure and the transformation of policy debates is in this regard the key to project the future implications of intellectual property protection that penetrate into every aspect of our daily lives. This inquiry required mapping the global policy network of intellectual property, studying the original resources, and acquiring firsthand information by the practitioners. These concerns shaped the structure of my interviews during the field research with the negotiators, officials of the international organization secretariats, policy advocates, and activists and the interviews yielded a great deal of fresh insights to elaborate the questions set in my research proposal.

The global scene of intellectual property policymaking is in the process of a constant transformation. When the TRIPS Agreement was first signed, low- and middle-income countries faced a pre-set agenda to incorporate to their national legislation. Some resisted this 'one-size-fits-all' schema and aggressively negotiated to stall the global imposition of intellectual property standards. Some others accepted the new rules on paper yet belated the actual implementation of the new regulations in their territory. In fact, the issue accounted for a brand new area for most of the actors and most of them practically were in a struggle to understand the advantages and disadvantages of the upcoming regulations. This was also the time of the global geographical shift of global production to the low-wage areas of the world, which eventually brought about the deindustrialization of the advanced economies. As the advanced economies began to focus more on services and high-technology production, copyright and creative industries became strategic areas for further domestic growth and the very survival of these inchoate sectors were dependent on the global enforcement of intellectual property rights. The last two decades witnessed that the leading middle-income countries and some of the low-income countries began to successfully negotiate for flexibilities in the global intellectual

property regime. These negotiations underlined the differences within the Global South due to the particularities in the interests of individual countries. It gradually became apparent that picturing high-, middle- and low-income countries as three distinct and homogenous groups with members sharing identical interests distorts the reality about the way individual countries act in the ongoing negotiations. In my interviews with the representatives of the missions of the leading developing countries, I was able to compare their distinct positions and to assess which particularities shape the way they form alliances with other countries.

Intellectual property in pharmaceutical research illustrates this issue in a clear-cut manner. The relationship between public health issues and intellectual property rights is a matter of contentious debate that involves global pharmaceutical business, nation states, NGOs, human rights advocates, public health laborers such as medical doctors, and patients all around the world. In order to assess the implications of the intellectual property norm setting for public health, it is essential to understand the arguments of different actors since they are the negotiators of the global policy. Humanitarian organizations, local activists, patients, some developing countries such as India and South Africa frame the issue as a problem about the access to medicine, while monopolies in the pharmaceutical market lobby for stronger and extended patent protection on medicines. The former group of actors argues for flexibilities in the patent regime and improvements for access to medicines, more specifically for essential drugs. Provision and procurement of the lifesaving drugs at affordable rates is a strategic priority for these actors. In this regard, the two key policy options are to promote cheaper generic drugs and to provide flexibilities under the global intellectual property standards such as the compulsory licenses or Paragraph 6 mechanism of the TRIPS Agreement.

Although all actors including the large-scale pharmaceutical companies agree on the vital importance of the access to critical medicine, the position of the high- and middle-income countries differ from one another and with respect to the individual issues on the basis of their relationship with the local operation of the pharmaceutical companies, with other countries, and with the grassroots activist movements. For instance, India promotes its own generic drug industry and acts as a leading actor in terms of the pharmaceutical patents, while it is also for stronger protection on traditional knowledge and geographical indicators. In a contrasting manner, in Turkey, transnational pharmaceutical companies mostly hold the control of the local pharmaceutical production and the local generic industry has been weakening. Unsurprisingly, Turkey is not vocal about the global regulations regarding pharmaceutical patents. Moreover, as a part of the Customs Union with the European Union, Turkey's international policies on intellectual property are aligned with the European Union. In short, even though India and Turkey are both regarded as "developing" countries, their positions illustrate a deep contrast with regard to a number of key issues of the existing intellectual property regime.