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WIPO's New Treaty on Intellectual Property, Genetic Resources and Traditional Knowledge – A Turning Point for Indigenous Heritage?

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Since the late 1990s, the World Intellectual Property Organization ('WIPO') has been placing increasing attention on issues concerning the intellectual property implications for different aspects of Indigenous peoples' cultural heritage. In this context, in 2000, WIPO General Assembly established the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore ('IGC'). The IGC has enabled focused discussions to address the connections between intellectual property law and genetic resources ('GRs') associated with traditional knowledge ('TK'), as well as for TK as a standalone aspect, and traditional cultural expressions. These discussions, for instance, have considered issues such as how to protect as intellectual property an Indigenous community's ancestral knowledge (that is, their TK) on how to use the seeds of a specific plant (that is, its GRs) to cure an illness. In this example, without legal protection to GRs and associated TK, pharmaceutical companies can take this knowledge from the source Indigenous community, profit from its use in producing new medicine, but without recognising that the knowledge behind that new drug came from that Indigenous group, nor sharing any of the profits with that source group.

Following a proposal in 1999 by Colombia, in 2001 WIPO began negotiations for a treaty tackling the (lack of) legal protection for GRs and associated TK, considering the importance of the topic for the usual holders of such TK: Indigenous peoples and local communities ('IPLC'). After over two decades of negotiations, on May 24, 2024, the Diplomatic Conference on Genetic Resources and Associated Traditional Knowledge finally adopted, by consensus of over 150 member states,[1] the *Treaty on Intellectual Property, Genetic Resources and Traditional Knowledge* ('new treaty'). While the new treaty focusing on GRs and associated TK has been adopted, negotiations continue at WIPO regarding (a) separate treaty(ies) focusing on TK (beyond its associations with GRs, like TK on celestial navigation, climate, craft skills, midwifery, hunting techniques) and traditional cultural expressions (like dances, rituals, ceremonies).

The interest within WIPO to address the intellectual property concerns related to Indigenous heritage originated from Indigenous peoples' consistent mobilisation, mainly since the late 1960s, 'for the right to control their own heritage, […] define who they are and how the rest of the world sees them'.[2] This mobilisation drew attention to how Indigenous cultural elements (GRs and associated TK, broader TK, and traditional cultural expressions) had been looted, stolen, appropriated, that is, taken without their consent or authorisation, by outsiders since colonisation, with no targeted international legal response to such threats and violations of their heritage. In other words, as the law in colonial times was developed and employed disregarding the need to protect Indigenous peoples' cultural elements, being in fact used by colonisers to legitimise the theft or appropriation of Indigenous cultures, such traditional cultures continued largely unprotected post-colonisation, enabling outsiders to continue to appropriate Indigenous heritage without the communities' consent. As follows, Indigenous peoples' mobilisation for cultural heritage rights has sought to fill a legal gap in international regimes that do no adequately protect Indigenous TK and traditional cultural expressions, while reappraising the limited protection offered in regimes like intellectual property law, which often do not present culturally adequate tools for safeguard. Now, after decades of discussions and negotiations, WIPO's new treaty comes as a first, long-awaited, intellectual property-based legal response (albeit partial) to those claims. In that way, the new treaty has a significant symbolic value as it shows the ability and willingness in state-centric international organisations, such as WIPO, to listen and respond to Indigenous peoples' claims and concerns, which may pave the way for more change in the intellectual property framework making it fairer for Indigenous groups.

[1] WIPO Media Center, 'WIPO Member States Adopt Historic New Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge', *WIPO Press Release* (24 May 2024) <https://www.wipo.int/pressroom/en/articles/2024/article_0007.html>.
[2] Laurajane Smith, *Uses of Heritage* (Routledge, 2006) 277.

This reflection contextualises the new treaty in the history of international law's and intellectual property law's relationship with Indigenous peoples, and considers what the new treaty might be capable of achieving beyond its symbolic (albeit highly valuable) contribution towards inclusiveness and fairness in the international intellectual property framework. From this assessment, it appears that the new treaty does represent a very positive development in the international safeguard of Indigenous heritage and, more broadly, in international intellectual property law. Yet, the actual substantive protection it offers might have been made too abstract and flexible, hence somewhat undermined, by the need for (possibly inevitable) compromise between varying interests among different groups of states, and between some states and Indigenous representatives, in the negotiations, as discussed below.

Ultimately, the new treaty's capacity to generate concrete changes in how the intellectual property system deals with Indigenous heritage will depend on some factors following its adoption at WIPO. One of the factors is the ratifications of the new treaty, or, more specifically, which states —more resource-rich or resource-dependent ones?— will become contracting parties, and how soon it will enter into force. Another key factor in determining the new treaty's capacity to effectuate change is the states' processes to incorporate the new treaty into domestic law and the creation of mechanisms to implement it. As to incorporation and implementation, the impact, effectiveness, and usefulness of the new treaty might depend highly on how states choose to engage the key stakeholders: IPLC, in those processes. Without IPLC's active participation and inclusion in decision-making, the new treaty could be limited to its symbolic value, which, although meaningful and positive, is not enough in responding to the long-standing claims of those stakeholders. However, if IPLC's voices lead those domestic processes, the new treaty could reflect a turning point for the legal safeguard of Indigenous heritage by enabling IPLC more direct control over their own cultural resources. To start the analysis of the possibilities laying ahead for WIPO's new treaty, first, I consider its scope and some background.

New Treaty's Scope and Background

With its scope limited to GRs and associated TK,[3] the new treaty protects inventions based on genetic material like 'any material of plant, animal, microbial or other origin containing functional units of

[3] WIPO, *Treaty on Intellectual Property, Genetic Resources and Traditional Knowledge*, WIPO Doc No. GRATK/DC/7, 24 May 2024, Art 2 ('*Treaty on IP, GRs and TK*').

heredity'[4] with actual or potential value, such as medicinal plants, seeds, agricultural crops, and animal breeds. Accordingly, GRs are extremely important in advancing science and tackling a variety of issues and challenges in many areas and industries, such as 'pharmaceuticals, health and food supplements, cosmetics, agriculture, and biotechnology.'[5] GRs themselves, as part of those genetic materials found in nature, which are not human creations, cannot be the object of intellectual property protection, yet inventions based on GRs can be protected, often through patents.

Finally, TK associated with GRs is not defined in the new treaty, but given its relevance in areas like sustainability, biological diversity, and, broadly, environmental law, the *Convention on Biological Diversity* ('*CBD*') has suggested that it refers to 'knowledge, innovations and practices of [I]ndigenous and local communities embodying traditional lifestyles relevant for the conservation and sustainable use of biological diversity'.[6] The *CBD* also requests states to promote 'the approval and involvement of the holders of such knowledge' and the 'equitable sharing of the benefits arising from the utilization of such knowledge, innovations and practices',[7] which are elements that the new treaty may help reinforce, as discussed below.

WIPO had also previously defined TK broadly as 'a living body of knowledge that is developed, sustained and passed on from generation to generation within a community, often forming part of its cultural or spiritual identity', and can be 'knowledge, know-how, skills, innovations or practices',[8] similar to the *CBD*'s approach. TK associated with GRs can, therefore, be understood as knowledge, know-how, skills, innovations or practices of IPLC that are connected to genetic materials of actual or potential value, and as such can also be very valuable in the creation of new patentable inventions in various industries. Examples of TK associated with GRs identifiable from these definitions include traditional knowledge related to ethnobotany, traditional medicine based on natural resources, ecology, and knowledge related to animal breeds and agricultural crops.

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[4] Ibid Art 2.

[5] Aparna Watal, 'New WIPO Treaty on Patents, Genetic Resources and Traditional Knowledge', *Halfords IP* (30 May 2024) <https://halfords.com.au/30-may-2024-new-wipo-treaty-on-patents-genetic-resources-and-traditional-knowledge/>.

[6] *Convention on Biological Diversity*, opened for signature 5 June 1992, 1760 UNTS 79 (entered into force 29 December 1993), Art 8(j).

[7] Ibid.

[8] WIPO, *Intellectual Property and Genetic Resources, Traditional Knowledge and Traditional Cultural Expressions* (WIPO, WIPO Publication No. 933E, 2020) 13.

Despite these possible connections between TK and GRs, not all GRs are necessarily associated with TK, and 'permission to access genetic resources does not necessarily imply permission to use associated knowledge and vice versa'.[9] That is, a cosmetics company, for example, might receive authorisation from a foreign government to explore the flora of a certain region (thus access GRs of plants in that area). In the process of exploring the area, the company representatives may learn the local community's traditional knowledge regarding uses of certain local plants in preventing or treating allergies. In that case, having received authorisation to access the GRs (from the local plants) in that area, does not necessarily also entail authorisation to the cosmetics company to use the local community's TK about the plant's anti-allergenic properties to create new products in the cosmetics industry. However, as there is no specific, binding, norm to uphold this distinction, there has been a usual practice, coined 'biopiracy', where various actors (such as pharmaceutical companies, researchers, food industries, etc) patent creations based on GRs associated with TK without consent from, acknowledgment of, nor benefits-sharing with, the TK source community.[10]

This 'misappropriation' of TK has been the subject of Indigenous international and domestic mobilisation for better cultural heritage protection for decades as, since colonial times, outsiders would access and use Indigenous ancestral knowledge, without authorisation, for their own benefit and to the detriment of the source community. The colonial remnants underlying current practices like biopiracy and misappropriation of Indigenous heritage reflect the historic misconception of Western cultural superiority in relation to Indigenous peoples in colonies, which legitimised assimilation, or marginalisation and eradication practices, that often directly affected Indigenous cultures. Such colonial practices, arising from settler states' 'civilising mission' in the colonies, would validate the dispossession of Indigenous heritage under the claim 'to be saving [I]ndigenous peoples from their own culture',[11] while also disregarding their customary laws.[12] Subsequently, as outsiders realised how valuable and profitable elements of Indigenous heritage can be, the colonial legacy that endorsed the appropriation of Indigenous cultures by colonisers has now translated into a gap in the mainstream legal system regarding the culturally adequate safeguard of Indigenous heritage, hence perpetuating unsanctioned appropriation.

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[9] UNEP, *Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of the Benefits Arising out of their Utilization* (Secretariat of the CBD 2002).

[10] E Wanda George, 'Intangible Cultural Heritage, Ownership, Copyrights, and Tourism' (2010) 4(4) *International Journal of Culture, Tourism and Hospitality Research* 376, 378.

[11] Lana Tatour, 'The Culturalisation of Indigeneity: The Palestinian-Bedouin of the Naqab and Indigenous Rights' (2019) 23(10) *The International Journal of Human Rights* 1568, 1572.

[12] Karolina Kuprecht, *Indigenous Peoples' Cultural Property Claims: Repatriation and Beyond* (Springer, 2014) 49.

For instance, since TK is often part of a community's intergenerational traditions, 'scarcely disseminated beyond the community', when third-parties access and appropriate the TK without community consent and use it in patentable creations, 'this knowledge may not be evident to Patent Office experts in their searches of the state of the art.'[13] That is also to say, since the intellectual property system has been historically designed without the safeguard of Indigenous heritage in mind, and was never adjusted to offer more culturally adequate protection to Indigenous communities' TK, their heritage and its associated intellectual property are often outside the purview or scope of protection of the legal framework. That way, patents may be granted to third-parties, yet there will be no recognition, and consequently no compensation or benefit-sharing, for the community from which the TK originated.

Strengths and Main Contributions

The new treaty then represents an initial effort to tackle this 'blind spot' in TK recognition and, more broadly, in the intellectual property system as it concerns intangible elements of Indigenous heritage. The new treaty establishes a 'disclosure requirement' so that '[w]here the claimed invention in a patent application is based on traditional knowledge associated with genetic resources', states shall require applicants to disclose the Indigenous people or local community who provided the relevant TK.[14] The rationale is thus to prevent the granting of intellectual property rights, especially patents, over inventions based on GRs and associated (and often appropriated) TK which 'are not novel or do not involve sufficient inventive steps in relation to such resources and knowledge.'[15] That is, the idea is to prevent non-Indigenous patent applicants to use Indigenous traditional knowledge, which has existed for a long time within the source community (hence not novel), as 'new' knowledge in patent applications, instead requiring such applicants to recognise that the knowledge used is, in fact, IPLC's TK.

States incorporating the disclosure requirement and patent applicants complying with it would thus showcase a commitment to transparency, 'ethical innovation and corporate responsibility in the global

[13] Diego Bilbao, 'WIPO New Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge: Top Points', *DLA Piper* (17 June 2024) <https://www.dlapiper.com/en/insights/publications/2024/06/wipo-new-treaty-on-intellectual-property>.
[14] *Treaty on IP, GRs and TK* (n 3) Art 3.2(a).
[15] Bilbao (n 13).

marketplace'[16] by acknowledging the significant contribution of IPLC and countering the trivialisation of biopiracy and misappropriation of Indigenous peoples and local communities' TK.

The consideration of IPLC's interests in the new treaty is, therefore, one of its most innovative features and a key contribution to the international intellectual property system. The new treaty is the first binding instrument at WIPO focusing on intellectual property as related to aspects of IPLC's heritage, even acknowledging the *United Nations Declaration on the Rights of Indigenous Peoples* in its preamble. It also favours benefit-sharing with source communities through the disclosure requirement for TK associated with GRs, reinforcing that aspect of the *CBD*'s rationale, and especially, its *Nagoya Protocol*. The *Nagoya Protocol* is particularly relevant here in that it directly promotes 'fair and equitable sharing of benefits arising from the utilization' of TK associated with GRs with IPLC, and asks states to take measures to ensure benefit-sharing with IPLC 'in accordance with domestic legislation' regarding the latter's rights.[17] The *UN Declaration on the Rights of Indigenous Peoples*, and the *UN Declaration on the Rights of Peasants and Other People Working in Rural Areas* are also important in this discussion. The former recognises, by way of declaration, a right for Indigenous peoples 'to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions' and 'their intellectual property over' such elements (Art. 31), which would include controlling their TK associated with GRs. Meanwhile, the latter declares the rights of IPLC 'to the protection of traditional knowledge relevant to plant genetic resources for food and agriculture' (Art. 18) and their right 'to maintain, control, protect and develop their own seeds and traditional knowledge' (Art. 19.2), complemented by states' duty to take measure to protect IPLC's TK (Art. 20).

Thus, the implementation of the new treaty's disclosure requirement might impact, hopefully facilitating, the implementation of the *Nagoya Protocol* rules on benefit-sharing with IPLC holders of TK associated with GRs, and reinforce the two declarations mentioned above by pushing for domestic legislation that recognises IPLC's rights over their TK. So, in the example above where a non-Indigenous company uses Indigenous TK about a plant's non-allergenic properties to create new products, the new treaty reinforces the *Nagoya Protocol*'s requirement that states should promote the company's fair sharing of benefits arising from the new products with the TK source community. Yet, the disclosure requirement probably still falls short of promoting IPLC's control over their TK as

[16] Watal (n 5).

[17] *Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization to the Convention on Biological Diversity*, opened for signature 29 October 2010, UN Doc UNEP/CBD/COP/DEC/X/1 (entered into force 12 October 2014) Preamble and Art 5.2.

proposed in the two UN declarations. In any case, the new treaty itself establishes that it should 'be implemented in a mutually supportive manner with other international agreements relevant'.[18] This provision confirms the potential of mutual reinforcement between the new treaty, the *CBD* and the *Nagoya Protocol*, and generates hope that the two UN declarations will at least serve as important interpretative tools for the new treaty, capable to bridging the treaty's text to the rationales and goals of the declarations.

Therefore, the new treaty has the potential to steer the development of the intellectual property framework in ways more considerate of the interests and needs of Indigenous peoples and local communities, and more respectful of their rights, promoting transparency, ethical progress, and some level of inclusiveness. Ultimately, at the very least, the new treaty does have a symbolic value that acknowledges and starts exploring new (more Indigenous-oriented) pathways for the intellectual property framework, and may boost similar initiatives domestically or at the international level. However, given the contrasting views at stake and the necessary compromise in finding common ground among stakeholders (IPLC, states, industries, consumers, etc), the new treaty presents weaknesses that could undermine or minimise its potential to effectuate change in practice.

Weaknesses and (Inevitable) Compromises

As regards the balancing of interests and the compromises in the adoption of the new treaty, on one hand, it was adopted by consensus by more than 150 states and it only requires ratification by 15 states to enter into force, which means the compromise reached seems to have generated a general positive attitude in relation to it and it may enter into force quickly. Yet, on the other hand, negotiations have largely been pushed forward by developing (and resource-rich) states, like Brazil, South Africa, and India,[19] and Indigenous representatives (in their limited capacity as observers, with no direct decision-making power). Meanwhile, some developed (industrially advanced and intellectual property-rich) countries or regions, as the United States, Japan, and the European Union, have tended to push back, asking for flexibility, more abstract provisions, and wide deference to domestic laws and systems.[20]

[18] *Treaty on IP, GRs and TK* (n 3) Art 7.
[19] See Watal (n 5); Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs, 'Historic WIPO Treaty Adopted on Intellectual Property and Genetic Resources - European Commission', *European Commission* (27 May 2024) <https://single-market-economy.ec.europa.eu/news/historic-wipo-treaty-adopted-intellectual-property-and-genetic-resources-2024-05-27_en>.
[20] See Watal (n 5).

While some flexibility and balancing of interests might have been essential for consensus in the adoption of the new treaty,[21] the high-level framing of the disclosure requirement and the language used to enable that flexibility might jeopardise the potential impact and usefulness of the requirement on the ground. Looking at the *International Labour Organization Convention n.169*,[22] which is another binding international instrument focusing on Indigenous rights (albeit broader and more Indigenous-focused than the new treaty), it has very low rates of ratification by those developed states, while most of its ratifications come from developing regions, especially Latin America. A similar pattern of ratifications for the new treaty might hinder its effective impact precisely on those countries that experience the use of IPLC's TK in patent applications the most. Commentators have confirmed this divide in the discussions leading up to the new treaty at WIPO, with 'developed countries, concerned about the potential impact on innovation and patents', and resource-rich countries, alongside IPLC, 'advocating for transparency and recognition of the origin of [GRs and TKs].'[23]

Taking the disclosure requirement as the main example of weakness arising from the necessary compromise, if the applicant does not know the IPLC from which the TK originates, and further does not know the TK's source more broadly (as the country of origin),[24] they can simply make a declaration to that end, affirming its truth and correctness to the best of their knowledge.[25] Therefore, there does not seem to be any expectation of some level of due diligence by patent applicants to actively seek that information, keeping the threshold of the disclosure requirement rather low. Further, the weakened deterrent effect of the new treaty seems to also favour developed countries and patent applicants, as it refutes the imposition of an obligation on Patent Offices to 'verify the authenticity of the disclosure',[26] which means patents might still be granted even where disclosures of origin are incorrect or lacking.

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[21] *WIPO Member States Adopt Historic New Treaty on Intellectual Property, Genetic Resources and Associated Traditional Knowledge* (n 1).

[22] *Convention (no. 169) Concerning Indigenous and Tribal Peoples in Independent Countries*, opened for signature 27 June 1989, 1650 UNTS 383 (entered into force 5 September 1991).

[23] Viviane Kunisawa, 'The Biotechnology Revolution: The Impact of the New WIPO Treaty', *IP Watchdog* (7 June 2024) <https://ipwatchdog.com/2024/06/07/biotechnology-revolution-impact-new-wipo-treaty/id=177647/>. See also Chidi Oguamanam, 'The New WIPO Genetic Resources and Associated Traditional Knowledge Treaty: A Symbolic and Modest Step toward an Inclusive and Just IP System', *Chidi Oguamanam* (Blog, 24 May 2024) <https://www.oguamanam.com/publications/new-wipo-treaty>.

[24] *Treaty on IP, GRs and TK* (n 3) Art 3.2(b).

[25] Ibid Art 3.3.

[26] Ibid Art 3.5.

Nevertheless, despite being largely state-centric, the new treaty positively asks states to establish information systems, like databases, of GRs and associated TK, *in consultation with IPLC*,[27] and 'make such information systems accessible to Offices for the purposes of search and examination of patent applications',[28] which might minimise the risk of incorrectly granted patents. Finally, failure to comply with the disclosure requirement can be sanctioned with 'legal, administrative, and/or policy measures',[29] yet, in case of failure, states should first provide an opportunity for rectification.[30] Only if such failure is the product of fraudulent intent is that states *may*, according to their national law, eliminate the possibility for rectification and apply the sanction directly.[31] Ultimately, however, states must not 'revoke, invalidate, or render unenforceable the conferred patent rights solely on the basis of an applicant's failure to disclose'.[32] That is, if a patent is granted and it is based on GRs and associated TK, yet the IPLC source of the TK is not disclosed, that would not affect the conferred patent rights, unless the failure was based on a fraudulent intent, in which case there is a 'narrow discretionary'[33] possibility for a post-grant sanction, including revocation. Similarly, the new treaty does not retroact to cover patent applications filed or granted prior to its entry into force,[34] which leaves unfairly and erroneously granted (or filed) patents untouched, and the already violated rights of source IPLC with no avenue for redress. In a nutshell, the new treaty itself enables a number of openings that loosen the disclosure requirement, potentially hindering its consistent enforcement, and weakening its effects in terms of protecting IPLC's rights over their TK.

These layers of flexibility not only lower the threshold of the disclosure requirement significantly, but also create room for states to adopt very different approaches in incorporating the new treaty into domestic law and creating the mechanisms to implement it, which is likely to 'lead to inconsistencies and increased litigation risks.'[35] Thus, even after ratification, the effect of the disclosure requirement in practice may ultimately come down to political will, depending heavily on how seriously and diligently states are willing to implement it domestically.

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[27] Ibid Art 6.1.
[28] Ibid Art 6.2.
[29] Ibid Art 5.1.
[30] Ibid Art 5.2.
[31] Ibid Art 5.2bis.
[32] Ibid Art 5.3.
[33] Oguamanam (n 23). See also Kunisawa (n 23).
[34] *Treaty on IP, GRs and TK* (n 3) Art 4.
[35] Fabrice Mattei, 'New WIPO Treaty Integrates Patents with Sustainability, Poses Challenges', *Rouse* (27 May 2024) <https://rouse.com/insights/news/2024/new-wipo-treaty-integrates-patents-with-sustainability-poses-challenges/>.

Against this background, the ratifications in the coming years might paint an initial picture of the role played by the compromises in the new treaty in its effectiveness on the ground, while the domestic processes to be undertaken to operationalise the new treaty will also be crucial. A key element in these domestic processes to help pursue the desire set out in the new treaty's preamble to promote the 'efficacy, transparency and quality of the patent system',[36] is to ensure Indigenous peoples' active participation in decision-making. Further, this participation cannot simply reflect a normative goal, but must be enabled consistently through adequate mechanisms that allows Indigenous voices to be heard front and centre in relevant discussions and decision-making processes. Finally, states must also ensure awareness-raising and 'invest in capacity-building and the preparedness of IPLC for this symbolic and modest milestone.'[37] The way states engage with IPLC domestically and incorporate the new treaty into national law may, in turn, shape the future of similar international efforts.[38]

Main Insights and Ways Forward

Despite significant potential weaknesses, the new treaty is groundbreaking in the context of WIPO instruments as it is 'the first of its kind under WIPO that focuses on traditional knowledge (TK), the Global South, as well as Indigenous Peoples and Local Communities'.[39] By promoting the recognition of TK in intellectual property systems and rights claims, the new treaty draws attention to the valuable contributions of IPLC and their knowledge in the use of GRs to advance science in various areas, like pharmaceutics, food, agriculture, and biodiversity, and foster development and innovation through new patents. It also privileges the interests of the Global South as it requires disclosure of the source of TK associated with GRs for patent applicant even when the source IPLC is not known or the disclosure of a IPLC does not apply.[40] The disclosure requirement may thus lead to more recognition of the contributions of IPLC and resource-rich countries in patent applications filed in developed states, which can also facilitate access and benefit-sharing favouring developing regions and IPLC.[41] Yet, although the new treaty affirms the role of the intellectual property system in promoting 'the mutual advantage of providers and users of [GRs and associated TK]',[42] the hope that benefit-sharing will be

[36] *Treaty on IP, GRs and TK* (n 3) Preamble, para 1.
[37] Oguamanam (n 23).
[38] Mattei (n 35).
[39] Oguamanam (n 23).
[40] *Treaty on IP, GRs and TK* (n 3) Art 3.2(b).
[41] Kunisawa (n 23).
[42] *Treaty on IP, GRs and TK* (n 3) Preamble, para 6.

a consistent consequence of disclosure could be an overly optimistic expectation,[43] possibly dependent on how the new treaty will be accommodated domestically.

Overall, the new treaty does provide an important initial response to long-lived claims by the Global South for changes in the international intellectual property system that takes their particular interests and circumstances into account, as well as consistent claims by IPLC for protection of their TK against frequent and unpunished misappropriation. For Indigenous communities, the treaty has a further symbolic value of finally recognising their status as important stakeholders in the discussion,[44] and hopefully paving the way for increasing consideration of Indigenous voices in (re-)framing the intellectual property framework to provide a fairer and more adequate protection to their heritage. An example of this recognition is the provision in the new treaty asking states to consult with IPLC in establishing information systems of GRs and associated TK.[45]

The next step is, therefore, to ensure that the rationale of effectiveness, transparency, mutual advantage, and inclusiveness[46] of the new treaty also guides states' attitudes in ratifying the new treaty and accommodating it within the national system. The new treaty's capacity to achieve substantive change on the ground, particularly as an enabler or facilitator of IPLC's right to control their TK, might depend heavily on how this process of domestic incorporation will unfold. IPLC should be an integral and active part of this process with leaders and representatives sitting on the table to guide the debates and make their voices heard in decision-making. Additionally, states must make real efforts to ensure that IPLC are fully informed, through culturally adequate means, on how to engage the intellectual property system and the domestic mechanisms operationalising the new treaty in their benefit, for the protection of their rights, and to safeguard their cultural heritage. This new treaty can be a significant first step towards reshaping the intellectual property system to reduce or cease the unfair losses and threats it has enabled upon IPLC, yet this reshaping cannot reach goals of efficacy through fairness and inclusiveness without IPLC leading the way.

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[43] See Mattei (n 35).
[44] See Kunisawa (n 23).
[45] *Treaty on IP, GRs and TK* (n 3) Art 6.1.
[46] Ibid Preamble, para 8.