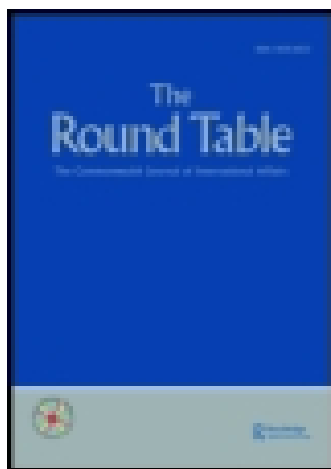


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Opinion

Why and How Should the Commonwealth of Nations Engage in the Access and Benefit-sharing Issue

AMANDINE ORSINI

The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilisation (hereafter Nagoya Protocol), adopted in 2010 during the 10th Conference of the Parties to the Convention on Biological Diversity, entered into force in October 2014. The idea behind the protocol is that biodiversity, and more precisely the genetic resources of plants and animals, is useful for a number of commercial applications, including pharmaceutical, cosmetic and agricultural. As a result, the protocol proposes a legal basis asking the users of genetic resources to share part of their commercial profits with the providers of these resources. Sometimes, users also take inspiration from traditional knowledge to develop their commercial applications. The protocol therefore applies to genetic resources and to the associated traditional knowledge.

The Commonwealth of Nations cannot be considered as an active multilateral association in global environmental politics. As early as 1989 the Commonwealth Heads of Government Meeting adopted the Langkawi Declaration on the Environment. Yet, 25 years later, the Commonwealth Secretariat announced on its website its political engagement for only two environmental issues: climate change and rapid urbanisation. These topics were added to its agenda owing to the real threat they pose to several of its members. In particular, small island states are highly vulnerable to a potential sea-level rise and developing countries face issues of urban overpopulation and poverty.

While the Commonwealth has been reactive so far, there is room for it to embrace proactively certain environmental problems. Engaging in new issues, such as the recent access and benefit-sharing one (ABS issue), would be beneficial for the intergovernmental body in terms of economic benefits and reputational gains.

Such an engagement would not require exaggerated efforts. Overall, 19 Commonwealth members have already ratified the Nagoya Protocol: 16 individually and three under the banner of the European Union. Despite its general label as 'environmental', the ABS issue stands at the crossroads of at least three other key international concerns: economic gains, development and the recognition of indigenous peoples. While several

Commonwealth countries are already active on these aspects of the ABS issue individually, the uniqueness of its membership may provide the Commonwealth with the potential to embrace collectively the role of a leader.

Encouraging industrial sectors such as forestry and fisheries is already on the agenda of the Commonwealth. The sectors using genetic resources could be added to the list of economic activities to be encouraged by the organisation. Several Commonwealth states, such as the United Kingdom and Australia, are important users of genetic resources, in particular for biotechnology applications. Conversely, several Commonwealth states are providers of genetic resources. This is particularly the case for Malaysia, South Africa, Kenya and India, members of the Group of Like-minded Megadiverse Countries, a coalition gathering 15 countries owning more than 70% of the world's biodiversity. On the part of users, adopting the protocol could bring certainty in international exchanges of genetic resources. On the part of providers, it would help countries put an end to biopiracy cases, whereby genetic resources are exploited without compensation. The cases of the Hoodia cactus in South Africa or of Basmati rice in India are renowned cases of biopiracy, involving the misappropriation of indigenous knowledge.

The generated economic benefits could be reinvested to solve some of the development problems of several Commonwealth states. The ABS issue is closely linked to development, particularly for poor countries that rely heavily on natural resources for their livelihoods. Moreover, within these countries, it is mostly local actors who will benefit from ABS measures.

Development in the ABS context is closely related to the status of indigenous and local populations who use and develop knowledge on genetic resources. In December 2007, the United Nations General Assembly adopted the Declaration on the Rights of Indigenous Peoples. This declaration came at a time when the Commonwealth risked attracting criticism, with one reason being the poor performance of its member states in acknowledging and promoting the human rights of indigenous peoples located in their territories. Countries such as Canada, Australia and New Zealand even acted collectively to try to prevent the adoption of the declaration. Moreover, several African states, members of the Commonwealth, actively delayed the adoption of the declaration for almost a year. The Commonwealth should anticipate reputational problems related to indigenous rights. Anticipating these problems can be done through the ABS issue. While some Commonwealth members have sometimes been laggards on indigenous issues, others, such as India, have proposed innovative solutions to protect indigenous knowledge, such as the creation of official registers and databases.

Finally, engaging in the ABS treaty would confirm the commitment of Commonwealth states to environmental protection. Investing in the use of genetic resources is equivalent to granting them an economic value and therefore creating the incentive to protect them *in situ*. According to the Nagoya Protocol, the benefits generated by the compensation for access to genetic resources could be reinvested in biodiversity conservation.

More than the economic benefits to be drawn from a clear framework for the use of genetic resources, being engaged in the ABS issue could bring several reputational benefits to the Commonwealth of Nations. It would demonstrate that the organisation engages in topical environmental issues, is concerned by indigenous rights, and is able to go beyond a traditional north/south divide. Indeed, a rather strong north/south divide

animates the ABS issue because countries rich in biodiversity are mostly developing countries, while countries skilled at using genetic resources are mostly developed countries. The Commonwealth of Nations would show that it is possible to overcome such differences, embracing the positive role of ‘leader by example’.

One solution would be for the Commonwealth to produce a collective position in favour of the adoption of the Nagoya Protocol by all its members. To facilitate the implementation of the agreement, the organisation could also take inspiration from the European Union, which adopted a special Regulation on ABS—Regulation (EU) No. 511/2014—in April 2014. This regulation does not impose a unique law for all European member states but establishes a common framework and minimum requirements for the harmonisation of future national legislations on the issue.