Questions about...

# Patents and Quaker action

The esoteric and complicated rules about patents, copyright, trademarks and other so-called 'intellectual property rights (IPRs)' increasingly affect Quaker concerns with justice, conflict prevention and the envirnoment. These rules:

- may restrict access to medicines, seed saving, use of traditional knowledge, and the sharing of scientific and other knowledge;
- affect the distribution of power and wealth, influence who drives the direction and pace of technological change and what individuals can do.

Today these rules are often set globally in remote international bodies like the World Trade Organisation (WTO) and World Intellectual Property Organisation (WIPO), both based in Geneva.

**"Wealth is attended with power, by which bargains and proceedings contrary to universal righteousness are supported"**

John Woolman, *A Plea for the Poor*, Chapter 10

## How did Quakers get involved?

Our current work grew from the concerns of British Friends about unjustly made rules leading to possible conflicts over the environment and genetic resources. In the early 1990s, global rules governing plants, animals and micro-organisms were being negotiated in powerful international bodies. It was often without the participation of many countries, especially those in developing regions with their rich biological resources and disadvantaged groups. At first, in a programme in what is now Quaker Peace & Social Witness in London, the aim was to ensure Southern African voices were heard in negotiations on an international treaty on plant genetic resources for food and agriculture. Later, the focus shifted to the WTO rules that affected genetic resources. These rules were in the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and were to be reviewed in 1999. The work on TRIPS was passed to the Quaker United Nations Office (QUNO) in Geneva. Later, Canadian Friends also took up these concerns and began work in Ottawa.

## Why work in Geneva and Ottawa?

### A. Quaker UN Office, Geneva

Work in Geneva is important because it is a centre where crucial decisions are negotiated that affect people throughout the world. Two Quaker UN Offices represent Quakers at the United Nations and other multilateral institutions in Geneva and New York. QUNO Geneva has long-standing relationships with various government negotiators, having done work on arms control, disarmament, child soldiers, human rights and labour standards over many years. The TRIPS work became a key issue for QUNO's trade and development work.

Our aim is to help prevent and defuse conflict as well as seeking greater justice for all in the negotiations. The experience of Friends has often shown that conflict can arise when very unequal parties make agreements in which the strong dominate the weak. Indeed, the QUNO programme on patents, copyright and other monopoly privileges - and their effects on biodiversity, food security, traditional and indigenous communities and access to medicines – is helping, in a small but focussed way, to redress the imbalances between rich and poor countries. It is a quiet, thoughtful voice that complements the work of others.

**B. Quaker International Affairs Programme (QIAP)**

Trade negotiators from developing countries frequently commented on the need for greater understanding of their concerns in the capitals of developed countries. They urged QUNO to do what it could to enable them to be heard. QIAP is working closely with QUNO to address Quaker concerns in Canada about these issues. Canada is part of a key group of developed countries known as 'the QUAD' that help set the WTO agenda. The other members are the USA, EU and Japan.

For several years, Friends at both Canadian Yearly Meeting and at regional gatherings had engaged with government over concerns about biotechnology and the patenting of life forms. After hearing about QUNO work in December 2000, Canadian Friends decided that their new Quaker International Affairs Programme would build upon QUNO's approach within a Canadian context. The decision was made to work on 'intellectual property rights' and development as its first project. QIAP began work in November 2001.

QIAP has been able to draw on QUNO's activities, approach, materials and experts and organised and used its various resources to engage with Canadian officials, non-governmental and intergovernmental organisations to raise concerns about the intellectual property regime and development. To date, QIAP has convened or facilitated formal and informal meetings on issues concerning traditional and indigenous knowledge and access to medicines – again trying to engage in a dialogue that enables a range of people to hear and consider the concerns of developing countries. As is clear from the Canadian experience, rules on patents can, among other things, affect access to medicines in developing countries.

**"Developing countries…negotiate from a position of relative weakness"**

UK Commission on Intellectual Property Rights, *Integrating Intellectual Property Rights and Development Policy,* p7

## What do QUNO and QIAP hope to achieve?

Quite simply – a better, more just world, with rules that are fair and equitable for those who are poor and powerless. We work to acieve this by:

- supporting the capacity of developing country governments to negotiate on intellectual property issues;
- promoting greater dialogue between developed and developing countries; and,
- widening the base of dialogue.

So far, with relatively little, it has made a difference. For example, QUNO's work complemented the widespread activities around the world focussed on access to medicines, in particular related to HIV/AIDS. It helped in the development of a declaration on TRIPS and public health that was adopted at the WTO Doha Ministerial in 2001. The declaration's aim is to ensure the patent regime does not impede access to essential medicines for poor people globally. QUNO and QIAP are also involved in supporting follow-up to that declaration. Yet with so very far to go, it is just a beginning.

Our hope is that others too will see the importance of the rules on intellectual property in shaping people's lives and opportunities. The more people who work to reshape the current regime in a more just manner the better it will be for all of us. Only then are the rules likely to promote developing countries' access to science and technology, defend basic rights to food, medicines and other essentials, as well as safeguard the public ownership of shared knowledge and resources.

## Are we advocating a specific position?

Unlike individual Quakers and some other Quaker organisations, QUNO and QIAP do not advocate specific positions in their work on intellectual property. They work to create greater justice in international negotiations in Geneva and a better understanding in national capitals. They do so in a way that allows different voices to be heard, especially those representing the poor and powerless in developing countries. It is practical action to help to achieve a fairer balance in international negotiations. To be effective, QUNO and QIAP have to understand and work within the processes in which policy decisions are made.

**"…we prefer to regard IPRs as instruments of public policy which confer economic privileges on individuals or institutions solely for the purposes of contributing to the greater public good."**

UK Commission on IPRs, p 6

## What happens?

QUNO and QIAP provide space for the people who negotiate on these issues in the WTO to meet in a quiet, informal setting. Here they are able to meet informally, not only with various experts but also to hear often unheard voices of those affected by their trade decisions. QUNO and QIAP:

- have help from a specialist consultant and a panel of experts;
- listen to the negotiators' concerns, in the light of Quaker concerns for peace, justice and sustainable living;
- develop a programme of activities that includes small off-the-record meetings that allow dialogue, sometimes with negotiators from North and South, sometimes with people with different perspectives;
- produce publications to better inform negotiators and others; and,
- co-operate with other organisations as needed, for example, in making sure unnecessary overlap is avoided.

An example from QUNO is the work begun in connection with a review in 1999 of a specific part of the TRIPS Agreement (Article 27.3(b)) that deals with exceptions to patents for plants and animals. A QUNO Discussion Paper led to a series of follow-up meetings (including residential seminars) with negotiators and specialists from around the world. These discussions have helped inform negotiators throughout the review process. The outcome of the review is yet to be resolved. The need for continued work was included in the declaration issued at the WTO ministerial meeting in Doha in November 2001.

## What difference does it make?

This work contributes to making the processes of rule-making more just and does not claim responsibility for successful results. Whatever is achieved is inevitably done so by the parties involved. Those involved may be influenced by a wide range of factors.

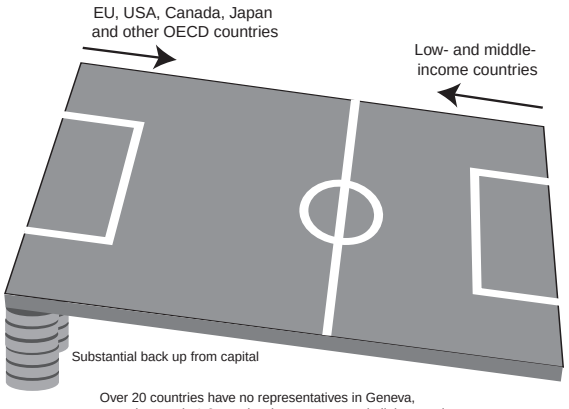
Informal feedback from developing countries makes it clear that QUNO facilitated processes have helped their negotiators to develop their understanding and activities on food and biodiversity. Their experience of QUNO's work on these areas (in 1999-2000) led to requests to facilitate similar processes on TRIPS and public health. Again, informal feedback, and various academic reviewers, suggest QUNO was able to play a useful role in Geneva. It is too soon to comment on the impact of QIAP's work but early feedback is positive.

The original concerns also remain, however. As the UK Commission on Intellectual Property Rights pointed out "...developing countries have been obliged to adopt the protection of plant varieties, by patents or by other means,

# What's wrong with the negotiating process?

**"Active participation by developing countries is essential to ensure the legitimacy of standard setting and its appropriateness and relevance to nations at very different levels of development"**

UK Commission on IPRs, p164




Over 20 countries have no representatives in Geneva, many have only 1-2 people who cannot attend all the meetings. EVEN if the pitch was level it would still not be equitable.

One problem is the imbalance between the parties. Another problem is that trade policy-setting processes in developed country capitals fail to give appropriate consideration to development concerns, and generally prioritise narrower commercial interests.
Even so, multilateral negotiations tend to allow the weaker parties to gain more through coalitions than in bilateral negotiations.

Thanks: *Food Ethics Council*

**"The immediate impact of intellectual property protection is to benefit financially those who have knowledge and inventive power, and to increase the cost of access to those without"**

UK Commission on IPRs, p7

without any serious consideration being given to whether such protection would be beneficial, both to producers and consumers, or its possible impact on food security." (p58)

Broader concerns have also arisen about the development impact of the intellectual property regime introduced by TRIPS. The current programme of work continues to respond to these concerns. As part of their work, both QUNO and QIAP publish a considerable range of material that is widely referred to in discussions about these issues.

## Who's paying?

British Friends funded the initial work in 1999-2000 as part of their Environmental Intermediaries Programme, with the first discussion paper being funded by the UK Department for International Development. Subsequent funding for this work has been provided by a range of individual donors, agencies, foundations and governments including the development agencies of the British, Canadian, Dutch and Norwegian governments, the Rockefeller Foundation and Oxfam UK.

## What else is there?

This is just the tip of the iceberg. There are several short briefing sheets available from QUNO and QIAP on various aspects of the issues we have been dealing with, for example in relation to health, food, and development.

These give a short introduction and suggestions for moving forward. Much more detailed information is freely available from QUNO and QIAP and on their websites – the addresses are given below. The four major discussion papers and three TRIPS Issues papers are listed below. Other, more technical, occasional papers as well as seminar reports are also on the websites:

or

**http://www.qiap.ca**.

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### *Discussion Papers*

***Food Security, Biotechnology and Intellectual Property:*** *Unpacking some issues around TRIPS*, Geoff Tansey, July 2002

**Sui generis** ***Systems for Plant Variety Protection:*** *Options under TRIPS*, Biswajit Dhar, April 2002

***Traditional Knowledge and Intellectual Property:*** *Issues and options surrounding the protection of traditional knowledge*, Carlos Correa, November 2001

***Trade, Intellectual Property, Food and Biodiversity:*** *Key issues and options for the 1999 review of Article 27.3(b) of the TRIPS Agreement*, Geoff Tansey, February 1999

### *Issues Papers*

**1.** ***Regional and bilateral agreements and a TRIPS-plus world*****:** *the Free Trade Area of the Americas (FTAA)*, David Vivas-Eugui, August 2003

**2.** ***Special and Differential Treatment of Developing Countries in TRIPS,*** Constantine Michalopoulos, October 2003

***3. Multilateral agreements and a TRIPS-plus world:*** *the World Intellectual Property Organisation (WIPO)*, Sisule F Musungu and Graham Dutfield, December 2003

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