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CHAPTER TWO

Egypt's Role in the A2K Movement: An Analysis of Positions and Policies

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The past two decades have witnessed a vibrant global debate on the effects of intellectual property rules on public policy objectives and development. The access to knowledge (A2K) movement emerged from these debates, and as noted in the previous chapter, Egypt is one of the key developing countries which have contributed to its formation. The Egyptian role has been instrumental in A2K discussions at the international level, particularly in the context of the Development Agenda of the World Intellectual Property Organization (WIPO), a landmark initiative launched in 2004 by a group of fourteen developing countries, including Egypt. Egypt's role, in this regard, reflects its wider role in the setting of the international agenda on many global issues as well as its engagement in favor of a more development-oriented global trade and intellectual property (IP) architecture. This chapter aims to examine Egypt's role in a number of international fora and processes, which have played a significant role in the development of the A2K movement.

The chapter proceeds in four parts. The first section will look at the global knowledge architecture as it impacts developing countries, providing a background to the emergence of the A2K movement and an overview of the most salient developments in this regard. The second examines Egypt's participation in international deliberations on A2K issues in a number of international organizations and fora such as the World Trade Organization (WTO) and the World Summit on the Information Society (WSIS), as well as WIPO. The third section considers how Egypt has strived to achieve a

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balanced implementation of its international obligations in the areas of trade and IP, taking into consideration the possible impact of the recent free trade agreements (FTAs) it has concluded on A2K priorities. The final section examines A2K at the domestic level in Egypt, including the domestic policy-making structure on A2K issues, which involves a number of government ministries and agencies as well as civil society organizations. It is suggested that Egypt's government should explicitly adopt A2K as a public policy objective. Such a move will boost A2K efforts at the domestic level as well as provide enhanced momentum for the country's involvement in the A2K movement at the international level.

Developing countries and the global knowledge architecture

In recent years, knowledge has come to be increasingly recognized as a key factor in meeting development objectives as well as in achieving growth and competitiveness. At the same time, globalization and new information technologies have had a profound impact on the dissemination of knowledge. Nonproprietary models of knowledge creation, open collaboration and alternative innovation models are acquiring greater importance in generating wealth.

Within this new economic reality, intellectual property rights (IPRs) remain the predominant framework for arbitrating legal claims over the ownership of knowledge. IPRs, such as patents and copyright, have a major impact on the generation and dissemination of knowledge both nationally and internationally. Yet the global knowledge architecture – understood as the set of rules, arrangements and institutions governing knowledge flows at the international level – remains fragmented among a number of international organizations and processes dealing mainly with IPRs.

With the globalization of IPRs and the expansion of the scope of intellectual property (IP) protection, the main international organizations involved in IP deliberations and rule-making, particularly the WTO and WIPO, have acquired unprecedented importance. This explains why recent efforts of developing countries toward adapting and reforming global rules governing knowledge have been centered on these two organizations.

Already since the 1960s, developing countries had sought to reform the main international IP conventions such as the Berne Convention on the protection of literary and artistic works (1886) and the Paris Convention

on the protection of industrial property (1883), with a view toward making these instruments more responsive to their socioeconomic needs in terms of access to educational material, scientific knowledge and technology. These efforts did not result in the expected reforms pursued by developing countries and have progressively fallen into oblivion (Sell 1998, May and Sell 2006).

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) represented a turning point in the evolution of the global knowledge architecture. Until then, global IP norms were negotiated and concluded at the WIPO and represented a largely self-contained area of technical regulation, which remained confined to a limited number of experts and specialists. With the introduction of IP rules in the multilateral trading system, IP became inextricably linked with other trade areas, such as trade in goods, agriculture and textiles. Developing countries reluctantly accepted this in exchange for concessions in other areas of priority to them in the Uruguay round negotiations.

The novelty of the TRIPS Agreement, in comparison with existing IP instruments, resided in several features: for the first time, one single instrument encompassed all categories of IPRs – such as patents, copyright, trademarks, industrial designs, geographic indications, integrated circuits and undisclosed information. TRIPS harmonized terms of protection among WTO member countries, stipulating a fifty-year protection term for copyright and a twenty-year term for patents. The Agreement also expanded the scope of IP protection by requiring the protection of computer programs by copyright and the extension of patent protection to pharmaceutical products, which many countries had previously excluded on grounds of public health needs. TRIPS also laid down minimum standards for the enforcement of IPRs and brought all these commitments under the aegis of the WTO dispute settlement system, which could be invoked in cases of noncompliance (Correa 2001, UNCTAD and ICTSD 2005). A powerful discourse also accompanied the conclusion of TRIPS, arguing that strengthened IP protection in developing countries would promote innovation and lead to increased flows of investment and technology transfer (Sell 2003).

The TRIPS Agreement became the main pillar of the international IP system as it established minimum international IP standards binding on all WTO members, with transition periods for developing countries and

least-developed countries (LDCs). From the perspective of developing countries, the TRIPS Agreement marked a significant strengthening of IPRs at the global level with an important bearing on other public policy areas such as health, nutrition, the environment and education.

The TRIPS Agreement was thus one of the most controversial and contested results of the Uruguay Round. It substantially reduced the ability countries had enjoyed under earlier international agreements to devise IP regimes in accordance with their particular social needs and levels of development. Many developing countries and non governmental organizations (NGOs) saw in it a “one size fits all” approach to global IP norm setting, in which all WTO countries, regardless of their level of socioeconomic development, would ultimately comply with a unified set of IP obligations. Of particular concern were the effects of the Agreement on areas such as public health and biodiversity (Khor 2002).

The concerns with regard to public health soon materialized, when thirty-nine pharmaceutical companies brought a lawsuit against the South African government in 1998. The companies claimed that South Africa's 1997 Medicine Act, which allowed the government to import cheap versions of patented medicines, undermined their patent rights. The court case generated significant global media interest and international concern about the impact of new global patent rules on public health and access to medicines. In face of growing public pressure and NGO mobilization, the pharmaceutical companies ultimately withdrew the lawsuit.

The South African case triggered an international campaign, which was extremely effective in firmly putting the issue of patents and access to medicines on the global agenda. The resulting “access to medicines” mobilization proved exemplary in framing the issue of patents’ impact on health and in forging a coalition made of developing countries – including Brazil, India and the African Group and international civil society. Key international NGOs included Médecins Sans Frontières (MSF), OXFAM, Third World Network and the Consumer Project on Technology (CPTech) – since renamed Knowledge Ecology International (KEI) – working with grassroots public health NGOs in countries such as Brazil, Thailand and South Africa (Sell 2002).

The campaign culminated with the adoption of the Doha Declaration on TRIPS and Public Health in 2001 (WTO 2001). The Doha Declaration proved to be a landmark development in global deliberations on intellectual

property. Contrasting with the IP-maximalist discourse prevalent at that time, its formulations embodied a more balanced approach to IP protection. Paragraph four of the Declaration reaffirms the parties' commitment to the TRIPS Agreement, while also affirming "the need to interpret and implement the agreement in a way that is supportive of WTO members' right to protect public health and promote access to medicines to all" (WTO 2001). For many developing countries, this balanced message had a wider significance, as it emphasized the importance of implementing IP protection in a manner that was supportive of social and development objectives more broadly.

Nonetheless, developed countries quickly signaled their determination to expand IP protection going beyond the minimum standards contained in the TRIPS Agreement. New "TRIPS-plus" standards resulted either from norm setting activities in WIPO or through comprehensive IP chapters in bilateral and regional trade agreements (Musungu and Dutfield 2003, Vivas-Eugui 2003). At WIPO, the 1996 Internet Treaties strengthened copyright protection in the digital environment, setting new obligations in an area that had not been specifically addressed by the TRIPS Agreement. The 1999 WIPO Digital Agenda promoted adherence to these instruments in the context of efforts to grapple with the challenges brought by the Internet and information and communication technology (ICT) to traditional copyright protection (WIPO 1999). The European Union, which had adopted a *sui generis* regime for the protection of non-original databases, pressed for the adoption of a similar regime of protection in the context of WIPO's Standing Committee on Copyright and Related Rights (SCCR).

Nevertheless, after the success of the campaign on access to medicines, developing countries and NGOs continued in their efforts to achieve a more development-friendly and balanced global IP system. Soon after the adoption of the Doha Declaration, the influential report of the UK Commission on Intellectual Property Rights (CIPR) was released (CIPR 2002). The report underlined the need to achieve a more balanced international IP system, which would take into greater consideration the different needs of countries as well as their levels of development. The CIPR report had a significant impact in intellectual property and development circles. It captured very accurately a growing opinion trend, which distanced itself both from a maximalist discourse that promoted the absolute benefits of IP and from a discourse that was unequivocally critical of IP as a matter of principle. It

thus recognized both the benefits and costs of IP protection, emphasizing the need to ensure that the costs do not outweigh the benefits, particularly for developing countries.

In many instances, the CIPR report echoed several of the criticisms of developing countries toward the international IP system and the TRIPS Agreement. Furthermore, the report contained the first direct criticism of WIPO's approach to intellectual property to be advanced in international policy debates beyond specialized circles of IP scholars and NGOs. In this regard, the Report underlined that WIPO "should give explicit recognition to both the benefits and costs of IP protection" and "should act to integrate development objectives into its approach to the promotion of IP protection in developing countries" (CIPR 2002, 157).

The publication of the CIPR report coincided with the launch by the United Nations Conference on Trade and Development (UNCTAD) and the International Centre for Trade and Sustainable Development (ICTSD) of the Bellagio Dialogues on Development and Intellectual Property Policy, with the support of the Rockefeller Foundation. These Dialogues also pointed to the need toward achieving a more balanced and development-oriented IP system (UNCTAD and ICTSD 2002). More generally, a more nuanced discourse on the costs as well as benefits of globalization, from the North and the South, was emerging and gaining ground on the international scene after the more optimistic views that had prevailed in the 1990s (Khor 2001, Stiglitz 2002).

All these developments persuaded a number of like-minded developing countries – including Argentina, Brazil, Egypt and India – that the debate should move beyond TRIPS and public health to address other substantive areas where global IP rules had a significant impact on public policy objectives such as access to educational material and scientific knowledge. These developing countries shared the belief, along with a number of NGOs active in this area, that the most effective way to mobilize on these issues was to replicate the elements that had proven successful in the access to medicines campaign. This was the premise of the Access to Knowledge (A2K) movement.

The World Summit on the Information Society (WSIS) was the first major international process in which the loose elements of what was to become the Access to Knowledge movement were able to advance their ideas and views. The objective of the summit, as approved by the United Nations General Assembly in 2001, was to discuss the new challenges and opportunities created by the digital revolution and the role of information and communication

technology (ICT) in improving living standards, bridging the digital divide between countries and within societies, and achieving the UN Millennium Development Goals.¹

WSIS convened in two parts: the first part in Geneva in December 2003 and the second part in Tunisia in November 2005. The Geneva Declaration, the political declaration adopted by the first part of the summit, included many A2K concerns regarding access to knowledge and information, which appeared for the first time in a major policy document endorsed by heads of state and government. The Declaration's references to the role of the public domain as a necessary element for the growth of the information society, to the importance of raising awareness about the possibilities offered by different models of software, including Free and Open Source Software (FOSS) and to open access initiatives in the area of scientific publication, were groundbreaking from this perspective. The Internet Governance Forum (IGF), established after the Tunis part of the summit, would prove a useful vehicle for developing countries and civil society to continue advancing some of these priorities.

After the success of their mobilization in the WSIS context, and the campaign on patents and access to medicines at the WTO, developing countries realized that their reform efforts needed to include WIPO, the other major pillar of the international IP architecture. In effect, developed countries were already advancing a number of proposals at WIPO, such as the Substantive Patent Law Treaty (SPLT), to further harmonize IP laws beyond the TRIPS Agreement. WIPO's centrality in shaping the global IP discourse, particularly in developing countries, was becoming manifest, as well as its role in the implementation of the TRIPS Agreement, through its technical assistance programs and legislative advice, in the context of the 1995 WIPO–WTO Agreement on technical cooperation.

In 2004, fourteen developing countries, including Egypt, launched the WIPO Development Agenda – a major proposal to integrate the development dimension in all of WIPO's activities. After two years of intense

1 The eight Millennium Development Goals (MDGs) – ranging from halving extreme poverty, to halting the spread of HIV/AIDS, to providing universal primary education – were adopted in September 2000 at a meeting of world leaders in New York. The meeting endorsed the United Nations Millennium Declaration, which set out a series of time-bound targets – with a deadline of 2015 – that have become known as the Millennium Development Goals.

debates, the WIPO Assemblies, in 2007, adopted by consensus forty-five recommendations aiming at the establishment of a Development Agenda for WIPO.² The recommendations include language and formulations on IP flexibilities, public policy objectives and technical assistance, which represented an important departure from the more narrow approach to IPRs prevalent until then at WIPO.

Beyond WIPO and the WTO, a number of international and regional organizations, bodies, fora and processes are also increasingly participating in international IP standard-setting activities and deliberations. Most recently, for example, the World Health Assembly (WHA) adopted a landmark Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property to address in particular diseases disproportionately affecting developing countries (WHA 2008). Within the World Customs Organization, new proposals for higher IP enforcement standards – such as the SECURE standards (Munoz Tellez 2008) – and new IP enforcement agreements – such as the Anti-Counterfeiting Trade Agreement (ACTA) – are also being advanced, which could have significant implications for the global regulation of knowledge.

As the above short overview shows, the emerging global knowledge architecture has dramatically increased in complexity at the turn of the millennium. A greater number of international fora have become relevant to IP policymaking. A significant new body of international law now binds countries in the area of IP legislation and enforcement. The relationship between multilateral standards and standards adopted at the bilateral and regional levels – particularly in the context of free trade agreements (FTAs) – is complex and sometimes not clear even for legal scholars. The expanding scope of IP protection has made these processes and norms newly relevant to areas of domestic policymaking such as public health, biodiversity, nutrition and ICT.

This increasing complexity has magnified the immense challenges faced by developing countries in coherently articulating and advancing their views in these different fora and processes. In effect, many developing countries

2 The 45 recommendations are divided into 6 clusters: Cluster A – Technical Assistance and Capacity Building; Cluster B – Norm setting, flexibilities, public policy and public domain; Cluster C – Technology Transfer, Information and Communication Technology (ICT) and Access to Knowledge; Cluster D – Assessments, Evaluation and Impact Studies; Cluster E – Institutional Matters including Mandate and Governance; and Cluster F – Other Issues. Available at <http://www.wipo.int/ip-development/en/agenda/recommendations.html>.

have limited expertise and resources to effectively participate in them and influence the outcomes they reach. In addition, they face coordination problems between different government departments and agencies in the formulation of their international positions (Abdel Latif 2005).

Despite these limitations and constraints, however, developing countries have attained a number of important achievements at the multilateral level – such as the Doha Declaration and the WIPO Development Agenda – in their efforts to shape an international knowledge architecture that is supportive of access to knowledge and development efforts. In achieving this, they have been able to capitalize on strategic collaborations and partnerships with international civil society and NGOs. Their actions also coincided with an increasingly vivid debate within developed countries themselves on the most effective means to disseminate knowledge and promote innovation through the use of alternative and open business models.

As has been described above, the globalization of IP rules at the end of the twentieth century, particularly through the landmark TRIPS Agreement, triggered substantial concerns regarding the impact of new intellectual property rules on public policy objectives and in particular public health and access to medicines. With leadership from a group of developing countries, in tandem with civil society partners, a broad A2K movement emerged seeking to expand on the successes of the access to medicines campaign to address the impact of IP rules on access to educational material, scientific knowledge and development objectives in general. This movement became active in a variety of international fora, including WIPO, WSIS and other arenas. With this global background in mind, the next section looks more closely at Egypt's role in advancing A2K concerns in these international processes and fora.

Egypt's role in international A2K processes and negotiations

Egypt has traditionally been highly active in multilateral fora, which it considers as a key vehicle for its foreign policy and influence. In these settings, Egypt is able to effectively capitalize on its memberships in a vast number of regional groups (such as the League of Arab States, the African Union and the Organization of the Islamic Conference) and political groupings (such as the Non-Aligned Movement and the Group of 77). The United Nations system (UN), with its specialized agencies, is the primary focus of Egypt's multilateral diplomacy.

In this regard, Egypt has been one of the more influential developing country members in defining the orientations of the UN in past decades, in areas ranging from decolonization to human rights and the environment. An Egyptian, Dr. Boutros Boutros-Ghali, held the position of UN Secretary General from 1992 to 1996. Other Egyptian nationals have headed UN specialized agencies and bodies such as the International Atomic Energy Agency (AIEA), the United Nations Environment Programme (UNEP), the United Nations Industrial Development Organization (UNIDO) and the World Meteorological Organization (WMO).

As part of its general dynamic participation in the multilateral system, Egypt has taken an active role in seeking to influence the global knowledge architecture.

Egypt's historical role in global trade and IP negotiations

From the 1960s to the early 1980s, Egypt took an active part in efforts by developing countries to reform international economic and trade relations. In the 1970s, these countries called for the establishment of a New International Economic Order (NIEO) as part of their drive to restructure international economic relations and make them more adapted to their socioeconomic priorities.

In the area of trade, Egypt was one of the main developing countries behind the creation of the United Nations Conference on Trade and Development (UNCTAD) in 1964. In the area of intellectual property, it participated in attempts to reform the main IP convention – the Berne Convention on Literary and Artistic works and the Paris Convention on Industrial Property – during the 1960s and 1970s, with a view toward making these instruments more responsive to the socioeconomic needs of developing countries in terms of access to educational material, scientific knowledge and technology.

Egypt was also one of the proponents of the UN Draft Code of Conduct on Transfer of Technology, which figured prominently on the international agenda in the 1970s and early 1980s. After first resisting the incorporation of intellectual property in the Uruguay round of negotiations, Egypt then participated in negotiations which led to the adoption of the TRIPS Agreement.

Egypt's role in these rounds of international negotiations provides an important context for understanding its later involvement in the A2K movement.

The UN Draft Code of Conduct on Transfer of Technology

In May 1974, the UN General Assembly adopted the Programme of Action on the NIEO, which assigned a high priority to the formulation of an international code for the transfer of technology. The purpose of such a code was to facilitate international transfer of technology flows on more favorable terms to developing countries (Patel, Roffe and Yusuf 2000).

The push for the code came particularly from a number of developing countries – such as Argentina, Brazil, Mexico and the Andean Pact countries (Colombia, Bolivia, Ecuador and Peru) – which had already adopted a number of key domestic legislations and policies regulating foreign investment and the transfer of technology in the 1970s, reflecting their dissatisfaction with the market principles governing technology transactions. These countries considered that the restrictive business practices of many transnational corporations limited their possibilities of obtaining access to the right technology under the right terms and conditions at the right time, thus constraining the development of their national scientific and technological capabilities.

Egypt was closely involved in these early efforts to draft a code of conduct through the figure of Essam Galal, an Egyptian government representative to the code negotiations and advisor to the then Egyptian Minister of State for Foreign Affairs, Boutros Boutros-Ghali (Freymond 2001). In May 1974, a group of experts met in Geneva to draft a code of conduct on the international transfer of technology, at the instigation of the Pugwash Conference on Science and World Affairs.³ The purpose of the exercise was to show the viability and feasibility of the elaboration of such a code and lend greater intellectual weight to the proposal (Galal 2001). The draft proposal presented by the G77 to the first Expert Group meeting convened by UNCTAD in 1975 was largely based on the Pugwash draft.

The negotiations on the draft code lasted nearly ten years (1975-1985) under the aegis of UNCTAD, with the Group of 77 leading the negotiations on behalf of developing countries. With Mexico, Brazil, Argentina and India, Egypt was one of the most active G77 countries in the code negotiation and sent experts to participate in the negotiations, which many other developing

3 The Pugwash Conference on Science and World Affairs is an international NGO forum established in 1955 for technical deliberations among scientists from the East and West. It was particularly active in the area of nuclear disarmament.

countries did not do (Sell 2001). During the years of negotiations, Egypt strived to maintain the solidarity and cohesion of the G77 coalition. The Group's more advanced economies – notably Latin American countries – gave priority to enhancing technology transfer by controlling restrictive practices, particularly parent/subsidiary relationships. The less-advanced members of the Group – such as African countries – gave more weight to enhanced technology flows, preferential treatment and effective international machinery for technical and resource support.

Egypt was the chief G77 negotiator at the 1983 meeting of the conference, which witnessed the last serious attempt to salvage the code negotiations from failure. It displayed enormous efforts to try to reach an agreement on a compromise text at a critical stage of the negotiations where many developed countries had expressed views on the futility of the exercise and some developing countries, such as Brazil, were reluctant to compromise on several basic issues and were considering withdrawal from the negotiations. The Egyptian negotiator argued that the G77 had a “vested interest in sustaining the exercise at any cost,” adding that while “it would not be possible to reach agreement without compromise [...] compromise should not mean forsaking the basic interests of the South” (Galal 2001, 203). Ultimately, however, the negotiations were unsuccessful in reaching final agreement on a text. Divergences between developing and developed countries – focused on issues such as the legal character of the code, its legal effects, the nature of special treatment for developing countries, restrictive practices, applicable law and the settlement of disputes – proved insurmountable.

Moreover, by the mid-1980s, the global economic environment during which the code negotiations had originally been launched had changed. With the debt crisis and the decline in the price of commodities, most developing countries faced severe economic difficulties. Many of them sought to reverse their previous economic policies, taking measures to liberalize their policies toward transnational companies and foreign technology suppliers in an effort to attract foreign investment. As a result, the original impetus and rationale for the code eroded. Developed countries, on their part, were preparing a major shift to capitalize on these changes by seeking to introduce IP in multilateral trade negotiations. This highly successful move eventually resulted in the conclusion of the TRIPS Agreement, which would have significant impact in the allocation and regulation of international knowledge and technology flows.

The TRIPS Agreement: the journey from its negotiation to addressing its effects on public health

Egypt, which had joined the General Agreement on Tariffs and Trade (GATT) in 1970, was among many developing countries opposed to the inclusion of intellectual property issues in the new round of multilateral trade negotiations being considered in the first half of the 1980s.

The main argument put forward by developing countries was that IP rules, which consecrate monopolies, did not belong in a forum for trade liberalization dealing primarily with tariffs and trade in goods. They argued that WIPO should continue as the sole specialized forum for negotiating international IP standards. From this perspective, the introduction of IP rules in the context of the GATT would create an inevitable duplication with the work of WIPO (Sell 2003).

Ultimately, however, developing countries yielded to the pressures by developed countries and in 1986 a formulation was reached on the consideration of “trade-related aspects of IPRs” within the mandate launching the Uruguay Round negotiations.

During the Uruguay Round, Egypt was part of the small group of developing countries that were active in the negotiations on IP issues. At the early stages of discussions, they sought to confine negotiations to what had originally been envisaged in the Uruguay Round mandate, i.e. measures to address the trade in counterfeit goods. When the US, the EU and Japan pressed toward the conclusion of an agreement of a broader scope, developing countries tried to resist such attempts. Unsuccessful, they then worked toward integrating some of their main concerns and priorities in the agreement under negotiation.

In 1990, Egypt joined a number of developing countries – Argentina, Brazil, Chile, China, Colombia, Cuba, India, Nigeria, Peru, Tanzania and Uruguay – in submitting a developing countries’ draft text proposal for the IP agreement then under negotiation (Drahoš 2002). The proposal included a first part on IP and international trade concerning measures on trade in counterfeit goods and border measures. The second part of the proposal dealt with standards and principles of IP protection. It included a first article on objectives and a second one on principles that addressed issues such as social and economic welfare, technological and public interest objectives, in particular those of developing countries. For instance, Article 2 on Principles states that “Parties recognize that intellectual property rights are

granted not only in acknowledgement of the contributions of inventors and creators, but also to assist in the diffusion of technological knowledge and its dissemination to those who could benefit from it in a manner conducive to social and economic welfare [...]” (WTO 1990, 7). The wording of these two articles would provide much of the current wording of Articles 7 (objectives) and 8 (principles) of the TRIPS Agreement.

On the substantive rights, developing countries also suggested some provisions to reflect their concerns regarding the effects of patent protection on public policy objectives. For instance, under Article 4 on patent protection, developing countries proposed to exclude from patentability, “on grounds of public interest, national security, public health or nutrition, certain kind of products or processes for the manufacturing of those products.” The wording of such provision ultimately did not find its way into the TRIPS Agreement.

At the same time as developing countries were seeking to advance development and public policy considerations in the TRIPS negotiations, the global stage was significantly changing. The fall of the Soviet Union, the spread of liberal democracy and market economics resulted in a global discourse advocating the benefits of free trade and economic globalization. In the area of intellectual property, such discourse advanced persuasively that the strengthening of IPRs in developing countries would lead to an increase in investment flows, transfer of technology and levels of innovation. In addition, most developing countries, including Egypt, were experiencing important economic difficulties during the 1980s and early 1990s because of a decline in the price of oil and other basic commodities, which was accompanied by a significant increase in public debt and deficits.

Many key developing countries active in the TRIPS negotiations such as Brazil, Argentina and India were also facing bilateral pressures in the area of IP particularly from the United States under the Special 301 procedure, which allows the US to take measures against foreign goods or an economic sector including suspension or withdrawal of US trade concessions. Under Special 301 authority, the United States Trade Representative (USTR) issues a list of countries which are considered to deny adequate and effective protection of IPRs or deny fair and equitable market access to US persons relying on IP protection. The countries listed are divided into three categories: priority foreign countries whose acts and practices have the

greatest adverse impact, priority watch countries and watch countries where particular problems exist with respect to IPR protection and enforcement. Egypt was placed on the list of priority watch countries in 1992 and 1993 (Stewart 1999, 503).

All these factors ultimately contributed to the acceptance by developing countries of the TRIPS Agreement. They hoped that the conclusion of this new multilateral instrument would put an end to the resort to bilateralism, such as through the Special 301 procedure.

However, efforts to ensure that the TRIPS Agreement was effectively responsive to public policy concerns and adequately took into consideration the needs of developing and least developed countries did not end with the agreement's conclusion in 1994. As previously mentioned the access to medicines campaign soon put the issue of patents and public health on the global agenda, leading to the adoption of the Doha Declaration on TRIPS and Public Health (2001). The African Group at the WTO played a key role in raising the issue of public health at the TRIPS Council. Along with India and Brazil and a number of other developing countries, the African Group was instrumental in the negotiations leading to the Doha Declaration. Egypt played an active role in these negotiations through its membership of the African Group, and was supportive of the Group's effort to reach a satisfactory outcome.

Of particular concern to Egypt was that the outcome of these efforts be broadly applicable to a wide spectrum of public health concerns. Although access to medicines to fight HIV/AIDS was one of the main root causes of the entire patents and public health debate, it was not a primary concern for Egypt, which had a small HIV-infected population. Nevertheless, questions of public health in general are of paramount importance in Egyptian society. Egypt also suffered from a number of important diseases and epidemics where the infection rate was particularly high, such as in the case of bilharzia (also known as schistosomiasis) and Hepatitis C. For these reasons, during the deliberations leading to the Doha Declaration, Egypt argued for the need not to restrict the statement to HIV/AIDS medicines. In the context of this process, Egypt stressed that "the proposed special session of the TRIPS Council would not be about the AIDS pandemic, but about the relationship between the relevant provisions of the TRIPS Agreement and access to essential drugs on affordable terms" (WTO 2000a, para. 249). Consequently, during the negotiations on the wording

and formulations of the Doha Declaration, Egypt played a particular important role toward ensuring that the scope was not restricted to any specific disease.

The World Summit on the Information Society (WSIS)

Since the early 1990s, Egypt began to take a number of measures toward increasing the use of ICT in implementation of public policies, notably with the establishment of the Information and Decision Support Centre (IDSC). These efforts witnessed an important acceleration with the creation of a specific ministry for ICT in 1999.⁴ As a later chapter in this volume will discuss in greater detail, the new ICT ministry devised a comprehensive policy to raise awareness about the importance of ICT, modernize and liberalize the ICT sector and generalize the use of ICT in government agencies. In this regard, several initiatives were introduced, such as expanding the use of ICT in upgrading education standards, improving health services and facilitating e-business transactions. Partnerships among the government, the private sector, and civil society were launched with the aim of providing free Internet, making available a computer for every home at affordable prices, and establishing IT clubs nationwide. To encourage the development of an ICT industry, a "Smart Village" was established in 2001 as a state-of-the-art high-tech business park which would attract investors eager to benefit from a supportive environment and special incentives in order to address a strong emerging local and regional market.

These developments at the domestic level coincided, at the international level, with the convening of the World Summit on the Information Society (WSIS), to discuss the challenges and opportunities created by the digital revolution and the role of ICT in improving living standards and achieving the UN Millennium Development Goals (MDGs). Egypt thus took a great interest in the WSIS process and actively participated in the first part of the Summit held in Geneva in December 2003, as well as in the second part held in Tunis in November 2005. Egypt participated in many preparatory events and meetings for WSIS. It hosted the Pan Arab Regional Conference on WSIS (Arab African Dialogue) during 16-18 June 2003. Moreover, it participated in formulating the WSIS Arab Action Plan, which was endorsed by the Arab Summit of Amman in 2001, as well as the African Action Plan

4 The Ministry of ICT was headed by Dr. Ahmed Nazif, who was later appointed Prime Minister in 2004.

of Bamako (2002). In addition, it actively participated in the preparatory meetings to the two phases of the Summit in Geneva and Tunis.

Most importantly, the priority given by Egypt to WSIS was reflected in President Mubarak's participation in the first part of the Summit in Geneva. In his statement, President Mubarak made a call "to deepen the concept of universality in information society," emphasizing "that all peoples should have a chance to effectively take part in developing, manufacturing, and utilizing ICT which should become an effective instrument in exercising the right to development in its broader sense, in a manner that entrenches the principles of equality, justice, and active community participation" (Mubarak 2003). The President underlined that this required "support, particularly to developing countries, through promoting their scientific and research capabilities, and in transferring needed technology and know-how" (ibid). These statements capture several of the key long-standing priorities advanced by Egypt in the global knowledge architecture in relation to development, equity and transfer of technology.

Overall, during the WSIS process, Egypt was actively supportive of the demands by developing countries – particularly African countries – in underlining that an adequate infrastructure was instrumental to benefit from ICT. In addition, Egypt played an important role in a number of controversial areas in the negotiations such as financing, human rights, Internet governance and the role of the media. Intellectual property was also one of the controversial areas that emerged in the preparatory process leading to the Geneva phase of the Summit, particularly after the February 2003 preparatory meeting.

During the WSIS negotiations, developed countries and the private sector advanced the view that IP protection was "essential in the Information Society" and that "existing IP regimes and international agreements should continuously provide this protection, [...] thus promoting the necessary balance between owners and users of IP."⁵ On the contrary, developing countries such as Egypt – along with NGOs, stressed that the continuous expansion in IP protection could negatively impact creativity and the

5 The quoted language was introduced in the text of intercessional work between the 2nd and 3rd Preparatory Committee meetings. See new paragraph 40 in the document WSIS03/PCIP/DT/4(Rev.3)-E, Draft Declaration of Principles – Refined version (June 5th) incorporating government contributions received by established deadline (rev. 3), available at http://www.itu.int/wsis/documents/doc_single.asp?lang=en&id=699.

dissemination of information. In addition, they opposed the qualification that international IP agreements were “balanced” or “promoting the necessary balance” in view of the numerous criticisms made at the TRIPS Agreement in this respect. After long and tortuous negotiations, a compromise formulation was included in the WSIS Geneva Declaration of Principles – the political declaration adopted by the Summit (WSIS 2003, para. 42). The paragraph states that:

IP protection is important to encourage innovation and creativity in the Information Society; similarly the wide dissemination, diffusion, and sharing of knowledge is important to encourage innovation and creativity. Facilitating meaningful participation by all in IP issues and knowledge sharing through full awareness and capacity building is a fundamental part of an inclusive Information Society.

The final language thus qualifies IP protection only as “important” in the Information Society – not “essential” as first advocated by developed countries and the private sector. In addition, the placement of IP protection and the dissemination of knowledge on an equal footing implied, from the viewpoint of developing countries and NGOs, that IP protection did not necessarily equate the wide dissemination, diffusion, and sharing of knowledge, particularly if such protection was not balanced and supportive of public policy objectives. Such a distinction was an anathema for many advocates of an IP-maximalist discourse, which considered that IP, by recognizing the rights of authors and inventors, automatically encouraged the wide dissemination and diffusion of knowledge.

Egypt was also among the developing countries and many NGOs that were keen to raise, within the context of WSIS, the larger issue of “access” to information and knowledge. Ultimately, these concerns were included in the section on principles governing the Information Society, under the title: “access to information and knowledge.” In this regard, the WSIS Geneva Declaration states that the “sharing and strengthening of global knowledge for development can be enhanced by removing barriers to equitable access to information [...] and by facilitating access to public domain information” (para. 25).

Retrospectively, WSIS appeared as a landmark development for the emerging A2K movement as it succeeded, for the first time, in including A2K concerns in a major UN policy document endorsed by heads of state

and government. These same elements would be later raised by developing countries and NGOs in WIPO.

Advancing the WIPO Development Agenda

While developing countries had built expertise in engaging with WTO and TRIPS issues, their engagement with WIPO processes had remained limited throughout the 1990s (Musungu and Dutfield 2003, Abdel Latif 2005). The linkages between the discussions on TRIPS at the WTO and the deliberations at WIPO were not evident for most of them. Only a handful of developing countries were actively engaged in both fora – namely Argentina, Brazil, India and Egypt. Starting in 2003, however, the momentum for change in WIPO began to gain strength. NGOs were becoming increasingly active, particularly in the context of discussions on the proposed broadcasting treaty, which would have created new property rights including for webcasting as advocated by some countries. Developing country participation in WIPO's substantive debates had also witnessed a significant increase, particularly in relation to the proposed Substantive Patent Law Treaty (SPLT), which raised a number of concerns for developing countries in terms of its impact on the flexibilities they enjoyed under the TRIPS Agreement (Correa and Musungu 2002).

At this juncture, a number of workshops and seminars played a catalyst role in articulating and coalescing the demands of developing countries and of NGOs to promote an agenda for change in WIPO. Most prominent were the Bellagio Dialogues convened by UNCTAD and ICTSD in 2003, as well as two meetings organized by the Trans-Atlantic Consumer Dialogue (TACD) Special Group on Intellectual Property. The first of these, entitled "WIPO's Work Programme and How to Involve Consumers," was held in Lisbon on October 17, 2003. The second, on "Global Access to Essential Learning Tools," convened on April 5, 2004 in New York.

Around 2003-2004, developing countries active in WIPO discussions, including Egypt, were beginning to realize that only a major policy initiative could bring change to WIPO. The idea began to emerge to introduce a major policy proposal at the WIPO General Assembly. Such an initiative would go beyond the immediate efforts to address specific standard-setting proposals for increased IP protection to address in a systematic and comprehensive manner the organization's IP-maximalist culture. On a substantive level, the initiative would seek to include many of the proposals and recommendations that developing countries had put forward in WIPO since 2002 – in particular,

the CIPR report and the outcomes of the UNCTAD-ICTSD Bellagio Dialogues. It would also offer an opportunity to bring to WIPO the global debate of ideas on IP that was taking place outside of it, in which the A2K coalition had become an important actor.

In September 2004, Egypt was part of a group of fourteen developing countries – including Brazil, Argentina, Bolivia, Cuba, Dominican Republic, Ecuador, South Africa, Egypt, Kenya, Iran, Peru, Sierra Leone, Tanzania and Venezuela – that presented a comprehensive proposal to establish a Development Agenda for WIPO during the organization's General Assembly. The proposal of this group of countries, which chose the name "Friends of Development," aimed at integrating the development dimension in all aspects of the organization's work. This implied that differences in the levels of development between countries and the impact of IP rules on development objectives should be systematically taken into consideration in all of the organization's activities from norm setting to technical assistance.

At the time the proposal for a WIPO Development Agenda was launched, Egypt was coordinating the work of the African Group at WIPO, a responsibility it had assumed since January 2004. This responsibility, which rotates between the members of the Group, involves presenting the positions of the African Group regarding issues discussed at WIPO. Egypt indicated that the African Group welcomed this important proposal, as "the integration of the development dimension would contribute towards ensuring that intellectual property norms would be fully and unequivocally supportive of important public policy objectives, such as the protection of public health, bio-diversity, the dissemination of information and access to knowledge in particular, through the incorporation of public policy related flexibilities" (WIPO 2004b, para. 160). Thus with Egypt as its coordinator, the African Group came in general support of the Development Agenda initiative, contributing toward ensuring a favourable momentum for it.

As an active member of the Friends of Development, as well as an important link between the Friends of Development and other regional groups such as the African Group, Egypt was key in ensuring coordination and consistency among developing countries during the WIPO Development Agenda discussions.

Although the WIPO Development Agenda initiative was not only about A2K, access to knowledge issues were clearly an important component of the proposals and ideas that the initiative was seeking to advance. This

was reflected in the original document containing the initiative, which incorporated key elements and concerns of the A2K movement. These included: controversy surrounding the use of technological protection measures (TPMs) in the digital environment, the importance of exceptions and limitations existing in the laws of member states, the relevance of open access models for the promotion of innovation and creativity, and an invitation to WIPO to explore the role of open collaborative projects to develop public goods as exemplified by the Human Genome Project and Open Source Software.⁶

At the substantive level, Egypt interacted with many of the proposals and ideas put forward in relation to access to knowledge. For instance, it manifested its agreement with Chile that “there should be an effective mechanism for protecting and supporting the public domain, because it constituted a basis that was required in the domain of innovation, creation and development” (WIPO 2006, para. 44). Egypt also expressed its belief that “systems, complementary to the intellectual property system, were worthy of discussion and study, particularly in view of the fact that there were many other experiments in this field” (ibid.).

Ultimately, many of these ideas and proposals were reflected in the 45 WIPO Development Agenda recommendations adopted in 2007. Recommendation 19, for instance, calls for the initiation of “discussions on how, within WIPO’s mandate, to further facilitate access to knowledge and technology for developing countries and LDCs to foster creativity and innovation and to strengthen such existing activities within WIPO.” Recommendation 16 affirms the importance of considering the preservation of the public domain within WIPO’s normative processes (WIPO Development Agenda Recommendations 2007). As the WIPO Development Agenda enters its implementation phase, the challenge facing developing countries and civil society is to translate these recommendations into concrete activities and actions, which would contribute toward the further development of the A2K paradigm.

Reviewing Egypt’s role in promoting A2K internationally

As can be observed from this overview, Egypt has played an important role in the overall efforts by developing countries to achieve a more

6 The proposals are contained in document WO/GA/31/11 available at http://www.wipo.int/edocs/mdocs/govbody/en/wo_ga_31/wo_ga_31_11.pdf.

development-friendly trade and IP architecture in recent decades. The country's efforts in this regard are also characterized by a great deal of continuity. Egypt's participation in the A2K movement is but one facet of its long-standing engagement in favor of greater access to education, science and technology for developing countries. These demands have been at the heart of policy debates in the context of discussions and negotiations from the 1970s UNCTAD Code of Conduct, to the TRIPS Agreement, and up to WSIS and the WIPO Development Agenda.

Of course, the international context has dramatically changed in this time period. The contested globalization of IP rules through the TRIPS Agreement, the public health and patents debate, the ICT revolution, the involvement of civil society in debates on the regulation of knowledge, the emergence of open models of innovation, and more recently the magnitude of the climate change challenge, have reinvigorated demands by developing countries for greater access to drugs, education, science and technology.

For reasons previously mentioned, the formulation of these demands has centered in IP related processes and negotiations. Yet the recent emergence of the "A2K movement" reflects a positive agenda beyond the IP system. The involvement of developing countries, including Egypt, also reflects a growing maturity on the part of these countries – moving from the simple contestation of IP rules to the formulation of concepts and new paradigms that embody a positive agenda for economic and social change. Within this dynamic of growing developing country involvement, Egypt has played a pivotal role in fostering links, synergies and coordination between the different groups of developing countries it belongs to and their respective priorities. It has been, in particular, a valuable link between African countries and their priorities relating to enhanced capacity building and increased technical assistance and other developing countries from Latin America and Asia, which have had a longer and more systemic experience in dealing with global trade and IP rules and efforts to reform them.

As will be seen in the next section, Egypt has also strived to ensure a degree of consistency between its international postures and the demands brought by domestic reforms and expanding trade relations with developed countries such as the United States and the European Union. In particular, free trade agreements (FTAs) concluded with developed countries have included new IP obligations exceeding the requirements of the TRIPS Agreement and carrying possible detrimental implications for the pursuit of A2K objectives.

Balancing TRIPS obligations and TRIPS-plus demands

As seen in the previous section, Egypt joined most developing countries in criticizing the TRIPS Agreement as a “one size fits all” approach to intellectual property, which inappropriately applied uniform rules of IP protection to all countries, even with the transition periods given to developing and least developed countries.

After the entry into force of the TRIPS Agreement, Egypt argued during WTO deliberations that it was important for developing countries to take advantage of the flexibilities contained in the TRIPS Agreement and to implement IP policies in a manner supportive of their development goals. Egypt also consistently drew attention to the broad Objectives and Principles sections of TRIPS (Articles 7 and 8), which highlight the importance of goals such as the transfer and dissemination of technology, mutual advantage of producers and users of technological knowledge, social and economic welfare, and the balance of rights and obligations (WTO 2008b, para.183).

Egypt was also of the general view that the TRIPS Agreement represented the international agreed-upon standards of IP protection and that countries should not be required to implement higher levels of protection through provisions going beyond these requirements (known as “TRIPS-plus” standards). At the same time, Egypt was eager to conclude bilateral trade agreements with the United States and European Union to increase access of Egyptian products to those markets. Since the early 1990s, Egypt had embarked on an ambitious program of economic and financial reforms that entailed important trade liberalization measures, including concluding FTAs. At this time, however, the FTAs being concluded by developed countries with developing countries often included TRIPS-plus standards.

How well did Egypt manage to reconcile its international role as a developing country and the demands placed upon it by the bilateral and regional trade liberalization agenda?

Domestic implementation of the TRIPS Agreement

The TRIPS Agreement is a framework agreement, to be implemented through national laws. In this regard, the TRIPS Agreement leaves some flexibility to member states. Discussions on a draft law to implement the TRIPS Agreement started in Egypt in the late 1990s and the law was finally enacted in 2002 (Law 82 of 2002). Discussions on the draft law were

controversial in Parliament, particularly in relation to the issue of TRIPS and public health. Egyptian policymakers were particularly concerned with the effects of the introduction of patent protection on pharmaceutical products, in view of the country's sizeable generic industry, mostly state-owned, and because public health was a sensitive issue within Egyptian public opinion. Article 18 of Law 82 reflected this concern as it provided for the creation of a "Drug Stability Fund" in order to "maintain stability in the prices of drugs [...] with a view to achieve health development and to guarantee that drug prices are not affected by incidental changes" (Article 18 of Law 82).

In the area of patents, Egypt's implementation of the TRIPS Agreement reflects a rather minimalist approach. In effect, the chapter on patents of the Egyptian legislation integrates many of the public health related flexibilities of the TRIPS Agreement. This is evident both in relation to the exclusions from patentability (Article 2 of Law 82) and the provisions for compulsory licenses – the use of the subject matter of a patent without the authorization of the rightsholder under certain conditions (Articles 23 and 24). Parallel importation is also permitted by Law 82 and an international exhaustion of rights is provided (Article 10). Egypt also availed itself of the ten-year transitional periods it was entitled to under the TRIPS Agreement, particular in relation to the protection of pharmaceutical products by patents. This was not the case of Brazil, for example, which implemented this obligation starting 1995 and incorporated several TRIPS-plus provisions (Guise et al. 2010).

In the area of copyright, the substantive provisions are more mixed from an A2K perspective (El Badrawi and El Saghir 2008). On the one hand, Law 82 (Article 160) stipulates a fifty-year term of copyright protection in accordance with the minimum TRIPS requirement. It includes a broad provision for the compulsory licensing of copyrighted works for reproduction or translation or both (Article 170). It also contains an interesting provision on translation (Article 148), which stipulates that copyright and translation rights into another language shall lapse with regards to the translation into the Arabic language, unless the author or the translator himself exercises this right directly or through a third party within three years of the date of first publication of the original or translated work (Law 82, 2002). This provision has important implications in view of the importance of the role of translation in access to knowledge, in particular for educational material.

On the other hand, the Egyptian legislation included provisions on technological protection measures (TPMs) for the enforcement of copyright which went beyond what was required by the TRIPS Agreement, as TRIPS did not contain provisions on TPMs. Thus Article 181, paragraph 5, includes sanctions against the manufacturing, assembling or importing for the purpose of sale or rent of any device, tool or implement especially designed or made to circumvent a technical protection measure, such as encryption or the like, used by the author or the owner of the related right (Law 82, 2002). This article reflects provisions contained in the 1996 WIPO Internet Treaties, although Egypt is not a party to them. Another copyright provision exceeding Egypt's TRIPS obligations relates to the protection of databases. In this regard, Article 141 of Law 82 extends copyright protection to both original databases, as required by TRIPS, but also to non-original ones whose selection is by mere virtue of "any other personal effort deserving protection."

Overall, Egypt implemented the TRIPS requirements in a manner that integrated the main public policy flexibilities in the Agreement relevant to A2K objectives and priorities. Copyright obligations exceeded in some aspects TRIPS requirements, such as in relation to TPMs and databases. This could be dealt with in any future revision of the law. It should also be seen in connection with a perception at the time that the presence of important cultural industries in Egypt (publishing and audiovisual production) could possibly benefit from such strengthened copyright protection.

It is important to note, however, that despite the fact that the Egyptian legislation incorporates many TRIPS flexibilities relevant to public policy objectives in areas such as public health and education, the government has not seen fit to use such flexibilities until now. Egypt has never, for instance, issued a compulsory license for access to medicines. So the incorporation of flexibilities in the Egyptian legislation, while a positive step, must still be complemented by efforts to consider the possible use of such flexibilities.

EU Association Agreements and Action Plans

While negotiating FTAs as well, Egypt tried to the extent possible to avoid new IP obligations going significantly beyond the requirements of the TRIPS Agreement. These efforts were largely successful in the case of European Union and European Free Trade Association trade agreements.

In the context of the Barcelona process launched in 1995, which envisages the creation of a Euro-Mediterranean Free Trade Area (EMFTA) by

2010, Egypt was one of several Arab countries to conclude bilateral Euro-Mediterranean Association Agreements (AA) with the EU.⁷ The Association Agreements have a comprehensive scope covering a large variety of political, economic, social, cultural and financial co-operation themes, including free trade and IP (El-Said 2007, Santa Cruz 2007). They typically contain a general provision on intellectual property, requiring the signing countries to provide “suitable and effective protection of intellectual property rights, in line with the highest international standards of IP protection” (EU-Tunisia AA and, EU-Morocco AA, Article 39.1). This vague wording leaves it unclear to which standards this formulation refers: EU standards, WTO standards or WIPO standards? This lack of a precise definition could be used in the future to induce AA countries to implement new international IP standards, which they are not currently bound by. Egypt appears to have reached a more favorable formulation in its negotiations with the EU. Article 37 of the EU-Egypt AA makes reference only to “prevailing international standards.”

As is typical in such Agreements, the EU-Egypt AA also contains a specific annex on IP requiring adherence to a certain number of multilateral IP conventions, which are administered by WIPO, by the end of the fourth year after the AA's entry into force.⁸ Adherence to these conventions is not required by the TRIPS Agreement and thus can be considered a “TRIPS-plus” obligation. It is worth noting, however, that most of these treaties are of a procedural nature in the area of IPR administration and do not have significant substantive implications; the exceptions are the UPOV Convention and the Rome Convention.⁹ As of 2009, Egypt had adhered to three of these instruments: the Patent Cooperation Treaty in 2003, the Nice Classification Agreement in 2005, and the Madrid Protocol in 2009. Procedures to adhere to the remaining conventions have been engaged.

- 7 The European Union has concluded Association Agreements with Tunisia (1998), Morocco (2000), Algeria (2001), Lebanon (2002), Jordan (2002), Egypt (2004) and, on an interim basis, the Palestinian Authority (1997). The text of these agreements can be obtained from: <http://ec.europa.eu>.
- 8 These conventions are: 1) The Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Rome, 1961); 2) The Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure (1977, amended 1980); 3) The Patent Cooperation Treaty (Washington 1970, amended in 1979 and modified in 1984); the International Convention for Protection of New Varieties of Plants (UPOV) (Geneva Act 1991); 4) The Nice Agreement concerning the international Classification of Goods and Services for the Purpose of the Registration of Marks (Geneva Act 1977 and amended in 1979); and 5) The Protocol relating to the Madrid Agreement concerning the international registration of Marks (Madrid 1989).
- 9 Adherence to the UPOV Convention, in particular, restricts developing countries' use of one of the flexibilities in the TRIPS Agreement. TRIPS Article 27.3(b) requires that members shall provide for the protection of plant varieties either by patents or by an “effective sui generis system,” or by any combination thereof, without specifying UPOV in particular. For further detail, see commentary on Article 27.3(b), Chapter 21 of UNCTAD and ICTSD 2005.

In addition to the EU Association Agreement, Egypt has also signed, in 2007, an Action Plan as part of the European Neighbourhood Policy (ENP). The ENP is a new framework of co-operation with neighbouring countries developed by the EU in 2004.¹⁰ The central element of the ENP is the agreement on bilateral ENP Actions Plans between the EU and each partner. The ENP Action Plans include political and economic measures with short and medium-term priorities. IPRs are one of the areas addressed by these Actions Plans. For instance, the ENP Action Plans concluded with Lebanon and Morocco affirm the commitment of both countries to “ensure a level of protection [of intellectual and industrial property rights] similar to that of the EU” (EU-Morocco Action Plan, 2.3.5(36)). The ENP reached with Tunisia instead echoes the language of the AA in committing Tunisia to “ensure a level of protection compatible with the highest international standards” (EU-Tunisia Action Plan, 2.3.5(36)). The EU-Egypt Action Plan contains neither of these formulations (EU-Egypt Action Plan, 2.2.4(c)). In the area of enforcement, most ENP Action Plans also contain language committing countries to reinforce the fight against piracy and counterfeiting. Such formulations were included in the ENP Actions Plans with Jordan, Lebanon and Tunisia (EU-Jordan Action Plan, 2.3.6(35), EU-Lebanon Action Plan, 2.3.5(c), EU-Tunisia Action Plan, 2.3.5(36)). The ENP Action Plan with Egypt includes similar language, which may be considered of a TRIPS-plus nature, although it does not create specific legal obligations (EU-Egypt Action Plan, 2.3.4(c)).

European Free Trade Association Agreement

The European Free Trade Association (EFTA) is an intergovernmental organization established in 1960 to promote free trade and strengthen economic relations between its member states: Iceland, Liechtenstein, Norway and Switzerland. In 2007, Egypt concluded a free trade agreement with the EFTA, nearly ten years after negotiations on such agreement had started.¹¹

The EFTA free trade agreements feature IP clauses and annexes similar to those contained in the EU Association Agreements, particularly in relation to the international IP treaties that countries are required to accede to. However, they also go beyond the EU-AA in some respects. For example,

10 The ENP applies to the EU's immediate neighbours by land or sea: Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Morocco, the Palestinian Authority, Syria, Tunisia and the Ukraine.

11 In past years, several other Arab countries have concluded FTAs with the EFTA, including: Morocco (1997), the Palestinian Authority (1998), Jordan (2002), Lebanon (2004), Tunisia (2004).

one EFTA free trade agreement stipulates that the concluding country “will do its utmost to accede to the international conventions concerning IPRs to which EFTA states are Parties” (EFTA-Tunisia 2004, Annex 5, Article 2.3). In addition, several of these EFTA free trade agreements contain an article on “additional substantive standards,” which typically requires States Parties to ensure patent protections on a level similar to that prevailing in the European Patent Convention (EFTA-Morocco 1997, Annex V, Article 3.1, EFTA-Jordan 2001, Annex VI, Article 3, EFTA-Tunisia 2004, Annex V, Article 3). Some EFTA free trade agreements also contain TRIPS-plus obligations in relation to data exclusivity (EFTA-Lebanon 2004, Annex 5, Article 4, EFTA-Tunisia 2004, Annex V, Article 4).

Again, it is noteworthy that the EFTA Agreement with Egypt contains none of the examples of language mentioned above. It is to a great extent similar to the level of obligations Egypt has accepted in the AA with the EU, particularly in relation to the international conventions the country should accede to (EFTA-Egypt 2007). The EFTA Agreement with Egypt also addresses a number of matters that are not addressed in the AA. However, these mostly reaffirm TRIPS standards in a manner consistent with the Egyptian law but in some cases exceed it. For example, the EFTA Agreement grants a fifteen-year term of protection for industrial designs (Article 3a), while the Egyptian law grants only a ten-year term of protection that can be extended for a further period of five years, when the owner of the industrial design applies for renewal within the last year of the protection period.

Trade and investments relations with the United States

Apart from the EU and EFTA, trade and economic relations between the United States and Egypt have acquired increasing importance in recent years. In May 2003, then-President George W. Bush proposed a Middle East Free Trade Initiative, which entailed a plan of graduated steps to increase trade and investment between the US and Middle East countries. This proposal was made with a view to establishing a Middle East Free Trade Area (MEFTA) by 2013. According to this plan, the US would deepen economic ties with countries of the region, through supporting WTO accession of non-WTO members, as well as establishing trade and investment frameworks (TIFAs), bilateral investment treaties (BITs), and comprehensive FTAs (USTR 2003).

Egypt concluded a bilateral investment treaty (BIT) with the US, which entered into force in 1992 (US-Egypt 1986). Under BITs, IPRs are treated as an investment. It has been argued that this may create difficulties for countries in using certain flexibilities in international IP agreements to achieve public policy objectives, such as compulsory licenses. Arguably these could run counter to the limitations enshrined in these bilateral investment treaties on possible measures to be taken against foreign investments (Correa 2004).

The Trade and Investment Framework Agreements (TIFAs) are brief documents outlining shared goals and instituting bilateral Trade and Investment councils to explore a more substantive trade agreement. They typically have a general pre-ambular provision on IP. For instance, the US-Lebanon TIFA includes the language: “recognizing the importance of providing adequate and effective protection and enforcement of intellectual property rights and of membership in and adherence to intellectual property rights conventions” (US-Lebanon 2006, Preamble para. 11). As with the EU’s Association Agreements, it is not clear which conventions are referred to in this formulation. The concluded FTAs which are the ultimate goal of this process, however, typically spell these terms out in more detail. For instance, the US-Jordan FTA contains four pages of substantive commitments in the area of intellectual property (US-Jordan 2000, Article 4).

The IP provisions in the FTAs concluded with Morocco (US-Morocco 2004, Article 5) and Bahrain (US-Bahrain 2004, Article 14) are of much more comprehensive nature in comparison with those with Jordan (US-Jordan 2000, Article 4) – even more so if compared with EU-AA or EFTA agreements – and concern all areas of intellectual property rights (IPRs) such as patents, trademarks and copyright. These TRIPS-plus provisions significantly erode the flexibilities available to countries under the TRIPS Agreement (Fink and Reichenmiller 2005). Examples of such TRIPS-plus provisions include narrowing the grounds of exclusion from patentability, limiting the grounds of issuance of compulsory licenses, obliging parties to provide for an extension of patent term to compensate patent owners for regulatory delays and envisaging longer protection terms for copyright.

Although Egypt signed a TIFA with the United States in 1999, nearly ten years later no free trade agreement has resulted (Sharp 2007, 20). A limited protocol to establish Qualified Industrial Zones in Egypt was signed by Egypt,

the United States and Israel in December 2004. It removes all US tariffs on goods produced in these Egyptian zones using a percentage of Israeli inputs. However, it falls short of a comprehensive free trade agreement. In this regard, it is yet unclear whether formal negotiations toward concluding such an agreement might begin in the near future. It is widely recognized by both parties that IPRs would be one of the thorny areas of negotiations, not only in relation to patents and public health, but also in relation to other issues such as criminalization of end-use piracy. Even staunch supporters of a US-Egypt FTA caution against the difficulties in this area. As stated by Galal and Lawrence: "Some of these provisions in a US-Egypt FTA would go further than TRIPS and could increase Egyptian obligations in what is still a controversial area. It would behoove Egyptian negotiators to be particularly wary" (Galal and Lawrence 2005, 38).

Egypt's TRIPS implementation in the balance

As the previous section demonstrates, Egypt has, in general, successfully resisted significant new TRIPS-plus obligations in both its national implementation legislation, as well as through bilateral agreements. This situation stands in stark contrast with that of many other developing countries, and particularly a number of Arab countries, which have accepted significant new obligations in the area of IP as a result of trade agreements with the EU, EFTA or the US.

There might be two important reasons behind this relative success. First, Egypt has been one of the active developing countries in global trade and IP deliberations. It has thus been able to harness the expertise acquired in this area at the multilateral level and use it in bilateral negotiations with developed-country partners. Second, because of the greater size of its domestic market and its economic as well as political weight, Egypt has had greater leverage in negotiations with developed countries toward refusing extensive TRIPS-plus obligations.

From an A2K perspective, this negotiating position means that Egypt has a noticeable policy space to formulate and adopt public policies supportive of A2K objectives in areas such as public health, education, environment, and information and communications technology. The final section of this chapter will examine how Egypt might best take advantage of this policy space to promote access to knowledge domestically, as well as at the international level.

Toward A2K-supportive public policies

As we have seen, Egypt has played an important role in the emergence of the A2K movement at the international level, repeatedly advocating a balanced IP regime that serves the interests of developing countries, both before and after TRIPS. Its careful avoidance of incurring significant TRIPS-plus obligations in bilateral treaties, and balanced implementation of international IP norms and trade obligations have created the foundation to further pursue A2K-supportive policies at the domestic level. To date, however, this potential has not been fully realized. The final section of this chapter suggests ways in which Egypt's international involvement in A2K could become fulfilled domestically as well.

The adoption of A2K as a public policy objective

In reality, there are a wide range of policies, initiatives and measures in Egypt that closely relate to A2K objectives without carrying explicitly this denomination. These efforts are carried out by government agencies or civil society organizations in areas such as education, ICT, culture, health, and knowledge diffusion more generally. Among the many examples, we find high-profile initiatives by the Ministry of Communication and Information Technology (MCIT) in the area of e-education – such as the computer for every student initiative, the IT clubs in the governorates – and the annual Reading for All Festival sponsored by the First Lady of Egypt starting 1990. These activities and initiatives could greatly benefit from being brought together under the umbrella concept of access to knowledge.

The adoption of A2K as a public policy objective in Egypt would create an important momentum toward establishing a cohesive framework for activities and initiatives that are at present fragmented and dispersed. It would also ensure a greater visibility for traditional A2K-related policies, which have not received adequate attention in Egypt. The issue of open source software is a case in point. As a later chapter in this volume will discuss in more detail, Egypt significantly lags behind in this area compared to both developed and developing countries, particularly in relation to use by government agencies. Other A2K priority issues include the promotion of Creative Commons Licenses, the use of exceptions and limitations in the area of copyright, as well as other public policy flexibilities contained in IP legislations, but little used in practice.

The adoption of A2K as a public policy objective will also require a number of efforts, starting with raising awareness about the importance for A2K for development. Brazil in this regard is an interesting example of a leading advocate of A2K at the international level, while also having a very dynamic domestic A2K movement. A similar synergy between the international and domestic levels would be desirable in Egypt. The adoption of A2K as a public policy objective should not be considered a mere slogan. Rather, this commitment implies a number of related policy choices, and should induce changes in a number of regulatory regimes and policy areas. The latter contributions of this volume suggest a number of specific reforms or measures to ensure that such regimes and policies are supportive of A2K priorities in the context of a long-term process.

The convening of a national conference on A2K could contribute toward achieving this objective in relation to awareness and advocacy. Such a conference would act as a catalyst for many initiatives and groups that are currently involved in A2K-related activities in a loose and dispersed manner. It could also be pivotal in advancing the A2K agenda in Egypt while contributing toward identifying Egyptian priorities and pressing issues on the A2K agenda. The A2K conferences organized by the Information Society Project at Yale Law School since 2006 have had such a galvanizing effect on the A2K movement at the international level. A national conference could have a similar impact on A2K efforts in Egypt while providing a valuable link between national and international advocacy efforts. The ultimate goal of such a conference should be to cement national commitment to access to knowledge as an explicit goal of public policy.

Toward greater domestic coordination

The adoption of A2K as a public policy objective could also spur efforts toward greater domestic coordination. Access to knowledge is a multidimensional issue cutting across public policy areas in many fields such as education, health, environment, trade, IP and ICT. These areas fall under the responsibility of different government ministries and agencies, which often formulate and implement public policies without sufficient interagency coordination and consultation. As a result, these government departments may pursue contradictory objectives at the national and international level.

The fragmentation of national policymaking is particularly apparent in the area of IP, which comes under the jurisdiction of a myriad of government departments and agencies. In this regard, Law 82 of 2002 defines the responsibilities of different government departments in the area of IP. These include the Ministries of Trade and Industry for TRIPS and trademarks, Higher Education and Scientific Research for patents, Culture for copyright and ICT for computer software. The Ministry of Justice has also been a central player in the drafting of IP legislation, and the Ministry of Foreign Affairs in international negotiations in WIPO in particular. This fragmentation is not specific to Egypt and is present in many countries including developed and developing countries.

Efforts toward greater coordination have been made in Egypt in past years, particularly in the area of trade. In 2000, the Ministry of Trade established a Central Department for WTO affairs as well as a Committee that follows current negotiations in the WTO, including negotiations in the context of the TRIPS Council. The sub-committee on TRIPS-related matters comprises representatives of different government departments and agencies in charge of TRIPS-related issues. However, this coordination mechanism does not extend to IP issues included in bilateral and regional FTAs or those discussed in the context of WIPO.

In 2006, the Ministry of Foreign Affairs established a coordination mechanism on IP issues in general. The mechanism is consultative in nature so as not to interfere with the mandates or attributions of any of the existing government departments or agencies. It includes officials from all relevant government agencies and departments dealing with IP issues, and meets several times each year to examine IP issues raised at the international level with a view to exchange views and coordinate positions.

Interministerial and interagency coordination is required in relation to public policies which have a cross-sectoral effect in different areas of development such as environment or trade. It has not been easy to achieve in the area of IP, however, as this issue has only recently come into the public spotlight (Abdel Latif 2005). There are a number of interesting experiences in interministerial coordination both in developing countries and in developed countries to learn from in this regard, in the area of IP and beyond (OECD 2008). So there is much room in Egypt to continue efforts at improving coordination at the domestic level, ensuring that positions adopted on A2K-related issues

particularly in international fora are consistent and supportive of development goals and objectives.

Balancing knowledge production and consumption

Egypt is both a producer and a consumer of knowledge goods. It is a producer of knowledge goods mainly in the area of creative industries such as publishing, cinema and audio-visual services in general. It is also ultimately a developing country, and thus predominantly a consumer of scientific and technological knowledge. The diversity of private sector and civil society entities engaged in domestic IP debates reflects this dual role.

On the one hand, private sector organizations representing creative industries – such as the Egyptian Federation of Publishers and the Movies section of the Egyptian Federation of Industries – in addition to a number of international IP right-holders associations which have been present in Egypt for some time – such as the Society of Authors and Composers, which goes back to the 1930s, or the local branch of the Association Internationale pour la Protection de la Propriété Intellectuelle (AIPPI). On the other hand, an increasing number of public sector entities are representing the other side of the spectrum – such as libraries on top of which comes the Bibliotheca Alexandrina, universities, and NGOs such as the Egyptian Initiative on Personal Rights (EIPRs) in the area of health and access to medicines.

Private sector organizations, particularly local representatives of foreign rightsholders such as multinational software or pharmaceutical companies, tend to push for stronger IP protections, which provide greater rights for IP rightsholders. NGOs and consumer organizations have on the contrary argued against such an increase in the scope of IP protection and advocated the need to use the flexibilities in IP instruments to serve the public interest.

The formulation of public policies in Egypt supportive of A2K objectives should fully take into account this reality. The development of creative industries in Egypt is not mutually exclusive to enhanced A2K. As later chapters in this volume will show, the weaknesses of these industries are often the result of other factors than low enforcement of IPRs. Furthermore, open source innovation and collaboration models are increasingly playing a role in business development of some newer creative industries, such as software.

It is for legislators and policymakers to arbitrate between the claims of these competing forces and adopt policy and laws that give paramount consideration to Egypt's level of development as a developing country and economic and social circumstances, in which the dissemination of knowledge is the most important priority.

Conclusion

The advent of the TRIPS Agreement transformed the global knowledge architecture, globalizing IPRs and expanding IP protection significantly. Efforts to advance the interests of developing countries in this field have not always succeeded. The Doha Declaration on TRIPS and Public Health, the WIPO Development Agenda and the emergence of the A2K movement, however, are important achievements to which Egypt has significantly contributed. Not surprisingly, given its long history of diplomatic engagement in this field, Egypt has played an important role in the emergence and development of the access to knowledge paradigm at the international level. The implementation phase of the WIPO Development Agenda brings both challenges and opportunities for developing a number of A2K-related priorities and making it a tangible reality, and Egypt should continue to play a key role in this area.

Egypt's international leadership in A2K issues would also benefit greatly from increased awareness and advocacy on access to knowledge at the domestic level. As in many developing countries, the prioritization of access to knowledge at the international level has not always translated into domestic policy. Doing so will require strengthened coordination among the various ministries and agencies with responsibilities in the areas of health, trade, education, culture and foreign affairs. In its trade and IP agenda, meanwhile, Egypt should continue to be wary of adopting significant new TRIPS-plus commitments that could have an adverse impact on its development efforts and public policy objectives, preserving the policy space it currently enjoys to pursue A2K-supportive policies.

Finally, Egypt should consider adopting access to knowledge as a public policy objective, to ensure that A2K considerations are prioritized at both the national and international level. This in turn requires raising awareness about the ways in which access to knowledge issues cut across many policy areas. The present volume is certainly a valuable contribution to such efforts. It may also be a trigger to the organization of a national A2K conference, which should mirror

the priorities and issues debated at the international level within a domestic focus, taking into consideration Egypt's national priorities, circumstances and development objectives. It is ultimately a strong government commitment that could put access to knowledge at the heart of public policies.

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