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**Research Project :**

**Protection and Revitalization of Local Health Traditions and  
Biodiversity - An Intercultural Challenge**

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## 1) General scope

In numerous non-Western countries traditional systems of healing continue to provide the majority of health services to the population. Modern medicine, even where *programmes* exist to make it available on the grassroots, as for example in India, continues to be mainly reserved for the urbanized middle classes and do not touch the majority of the *rural* population (see Antia & Bhatia 1993). Nevertheless, *the healing* traditions are “highly endangered cultures” and active and urgent measures must be taken to protect and promote them. This seems vital on the local levels to be able to ensure primary health care for all in developing countries, but also on the more global levels where sensitivity to the issues of protection and promotion of biodiversity and of cultural diversity is on rise. Our research project on the Protection and Revitalization of Local Health Traditions and Biodiversity will thus closely link reflections on biodiversity and on cultural diversity and will confront us with an intercultural challenge. As Vandana Shiva (2001 : 48) notes in the Indian context, but which can be generalized to other traditional societies of the world :

“The biological diversity of India has always been a common resource for millions of our traditional communities, who have utilized, protected and conserved their biodiversity heritage over centuries. Their collective and cumulative innovation has been the basis of local culture and local economies, which constitute the dominant economies in terms of livelihoods provided and the needs met. In fact, traditional knowledge in medicine, agriculture and fisheries is the primary base for meeting food and health needs. For many communities, conserving biodiversity means conserving the integrity of the ecosystem and species, the right to resources and knowledge and the right to the production systems based on this biodiversity. Therefore biodiversity is intimately linked to traditional indigenous knowledge systems as well as to people’s rights to protect their knowledge and resources.” Further, Darshan Shankar, the director of the Foundation for Revitalization of Local Health Traditions (1994 : 100), notes, more specifically in the context of the protection and revitalization of local health traditions : “In the area of

medicinal plants, we are faced with a very interesting relationship between biodiversity and cultural diversity (...). *The largest single use of wild flora and fauna in India is for human and veterinary health-care.* Conservation efforts that have been going on in this country (India) almost for three decades or so *recognize the need for conserve biological resources but ignore the context of the cultural diversity which has offered social protection to these resources*".

Our research project intends to link those two concerns together introducing and deepening an aspect which remains for the moment almost unexplored : the question of an intercultural approach to "Law" in this protection and revitalization endeavour. We understand Law here in the anthropological sense as "that which puts forms and puts into forms a society's reproduction in the domains it considers as being vital", and thus we do not limit ourselves to Western type Law, but take into consideration traditional law and "living law" experiences, thus plunging in the field of interculturality. Studies on the articulation of traditional laws and modern type laws for the management of land issues and for issues of environmental protection have constituted since numerous years a major field of study at the Laboratory of Legal Anthropology of Paris (Laboratoire d'Anthropologie Juridique de Paris – LAJP) where we propose to carry out our research, although in partnership with other institutions listed at the end of the project.

Four main challenges can be distinguished in the research project. They are all distinct but nevertheless profoundly interrelated. The three first ones are more directly related to questions of Law, especially from an anthropological perspective, but the fourth gives us the necessary epistemological and intercultural horizon :

1) Traditions of healing rely for their pharmacopea on the biodiversity of their local settings. But this biodiversity is increasingly threatened and more and more medicinal plants are either disappearing completely, or at least become very rare. It thus seems paramount to look for ways of protecting this biodiversity. And this should be done in participation with the local communities who are the *repositories* of the healing traditions,

of the knowledge of the plants and more generally speaking of the ecosystems they live in. Relying solely on modern forms of state regulation to protect the ecosystems and thus the biodiversity does not seem to be very efficient. It seems necessary to open up to traditional practices of Law alive in these communities and seek for ways of articulating them with more modern approaches. This articulation seems paramount so that the local communities can on the one hand actively participate in the protection of their environment, but that on the other hand requirements of the modern state and market are also taken into consideration. Thus the first challenge is related to an intercultural approach to environmental Law aiming at the protection of biodiversity thus enabling the perennity of local health traditions.

2) Local traditions of healing are under constant pressure from modernizing dynamics. They not only get eroded through the vanishing of the resources constituted by *traditionally known* medicinal plants, but also through their marginalization in the official discourses on health and official health policies. Even in cases such as India or China where traditional systems of healing are recognized and even taught in Universities, one must be aware that the modern form of institutionalization of these traditions does not pay attention to the fact that the latter are also socio-cultural phenomena. They are not just contents whose recipient can be changed without affecting the traditions themselves in their core. Thus arises the question of the recognition and protection of local healing traditions in their traditional forms. Two things are at stake : on the one hand the continuation of these traditions as traditions of knowledge, but also on the other hand the embedding of these traditions in their socio-cultural contexts so that they continue to be effective in their diverse local settings. Here again ways of articulating traditional forms of organization (ex : master-disciple relationships and social sanction of knowledge) with modern forms of insitutionalization (University curriculums, state diplomas) seem paramount.

3) The last issue concerning the protection of local healing traditions and biodiversity and which is more directly related to Law is the question of intellectual property rights –

especially since they have been introduced into GATT in the Uruguay round in 1989 with the Trade Related Intellectual Property Rights (TRIPS). From a “Southern perspective”, rather than protecting intellectual property, intellectual property rights appear as tools for “biopiracy” in favour of multinationals and developed countries and on the detriment of local communities and developing countries. Vandana Shiva (1994 : 4-5) notes “(IPRs) are also based on the usurpation of the creativity emerging from indigenous knowledge and the intellectual commons. Further, since IPRs are more a protection of capital investment than a recognition of creativity per se, there is a tendency for ownership of knowledge and products and processes to move towards where the capital is most concentrated and away from poor people without capital. Knowledge and resources are therefore systematically alienated from the original custodians and donors and become the monopoly of the transnational corporate sector.” Here again it seems paramount to rethink the question of IPRs in a more intercultural way, which does not only protect capital investment but also responds to the issue of protecting existing local traditions so that they can continue to exist and play their paramount role as health dispensers for the vast majority of developing countries’ populations<sup>1</sup>.

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<sup>1</sup> Compare Vandana Shiva (2001 : 44-48) : “The ‘enclosure’ of biodiversity and knowledge is the final step in a series of enclosures that begun with the rise of colonialism. (...) In the globalization era, the commons are being enclosed and the power of communities is being undermined by a corporate enclosure in which life itself is being transformed into the private property of corporations. The corporate enclosure is happening in two ways. Firstly, IPR systems are allowing ‘enclosure’ of biodiversity and knowledge, thus eroding the commons and the community. Secondly, the corporation is being treated as the only form of association with legal personality. (...) Biodiversity has always been a local community-owned and utilized resource for indigenous communities. A resource is common property when social systems exist to use it on the principles of justice and sustainability. This involves a combination of rights and responsibilities among users, a combination of utilization and conservation, a sense of co-production with nature and sharing among members of diverse communities. They do not view their heritage in terms of property at all, i.e., a good which has an owner and is used for the purpose of extracting economic benefits, but instead they view it in terms of possessing community and individual responsibility. For indigenous people, heritage is a bundle of relationships rather than a bundle of economic rights. That is the reason no concept of ‘private property’ existed among the communities for common resources. Within indigenous communities, despite some innovations being first introduced by individuals, innovation is seen as a social and collective phenomenon and results of innovation are freely available to anyone who wants to use them. Consequently, not only the biodiversity but its utilization has also been in the commons, being freely exchanged both within and between communities. (...) Today we have to look beyond the state and the market place to protect the rights of the majority of Indians – the rural communities. Empowering the community with rights would enable the recovery of the commons. Commons are resources shaped, managed and utilized through community control. In the commons, no one can be excluded. The commons cannot be monopolized by the economical powerful citizen or corporations or by the politically powerful

4) Point three brings us to a last more epistemological problem, which can nevertheless not be ignored when thinking about the protection and revitalization of local health traditions and of bio-diversity, and which will deepens our awareness to the deep intercultural challenge we are facing in this research project and of which we could already get a glimpse in the first three points. This epistemological issue is the question of the meeting of different epistemologies and worldviews. Let us illustrate these two points through two examples.

a) In the treatment for malaria only Western style drugs are prone to be protected by IPR, as our Law fits the epistemology of modern scientific research where infectious diseases are basically seen as caused by bacteria, viruses, etc. which can be isolated and *for* whom remedies can be sought for in Laboratory research. This modern scientific approach permits to distinguish different “inventions” and to patent them. But we run into problems if we want for example to protect approaches from Ayurveda, one of the most important Indian healing traditions which is dating back to millennia. Ayurveda does not know bacteria, parasites and viruses and its treating of diseases is not based on this premise. It rather has a wholistic approach which is based on *maintaining* homeostatis and improving general immunity which then can protect the patients from different types of infections. What we see as “malaria” caused by parasite from a Western perspective is seen as four or five different types of systemic imbalances and corresponding treatments from the point of view of Ayurveda and where furthermore the management of these imbalances is not terms of a fight against parasites but through treatment packages which can restore the systemic imbalances. How to protect this kind of knowledge which has proved its efficiency over millenniums, but which does not fit into the Western medical and scientific categories and epistemology, and thus can also not really be assessed through conventional Western scientific logic and methodology in a Laboratory?

b) Underlying the different epistemologies, we find different worldviews constructing different relationships, between Man and its environment, which from an intercultural

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state. While tribal and rural communities are still overwhelmed by state-driven ‘enclosures’, tools for new corporate and WTO driven ‘enclosures’ are being shaped in the form of patents on life and biodiversity.”

perspective cannot be reduced to the physical environment, but must be understood as the whole Cosmos, with its invisible and sacred dimensions – and which also has implications on the aim we set for our Law and the procedures we put into place. We have to recognize that the pluralism of cultures and their underlying worldviews leads to a pluralism of epistemologies and thus necessarily to a pluralism in legal (in the anthropological sense) protection measures. As well as it is not tenable anymore to reason in evolutionist terms placing Western culture on the peak of a hierarchy of cultures and even equating it with “civilization per se”, it is not tenable to a priori establish a hierarchy between different knowledge systems topped by the Western “scientific” system which imposes itself, through modern legal institutionalization on the diverse cultural contexts and evicts the traditional systems of knowledge which are dismissed as being “non-scientific”. It thus also becomes paramount to develop a pluralist and intercultural approach to IPR so that it does not only reflect the interests of the dominant economic systems of the West, but also that of traditional communities, and of “humankind as such”, if we see biodiversity and cultural diversity as the common heritage of humankind<sup>2</sup>.

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<sup>2</sup> Vandana Shiva (2001 : 50-51) very well sums up the epistemological challenge and its legal consequences : “With knowledge plurality mutating into knowledge hierarchy, a horizontal ordering of diverse but equally valid and diverse systems is converted into a vertical ordering of unequal systems, with the epistemological foundations of the system being imposed on others to invalidate them. This translation of knowledge diversities into knowledge hierarchies is then used to claim acts of translation as acts of invention. Translation is misconstrued as the ‘creation’ of knowledge. A sociological shift is thus fallaciously treated as an epistemological shift. This fallacy of sociological and cultural displacement as an epistemological shift generating new knowledge is made possible as a result of colonial biases which have treated western knowledge as exclusively scientific and non-western knowledge systems as unscientific. However, the difference in epistemological foundations does not make indigenous knowledge systems inferior ; it just makes them different. This diversity of knowledge needs to be recognized and respected, and a pluralistic IPR regime needs to be evolved which makes it possible to recognize and respect indigenous knowledge, and protect the indigenous knowledge systems and practices and livelihoods based on it. We, therefore, need diverse legal regimes to protect the diverse knowledge systems and the diverse communities.”

## 2) Fields of Research

To carry out my research I would like to follow a comparative approach between two countries who host major medical traditions dating back to millennia but which are still alive today : India and China. This comparative approach will have two sides.

First, and in a more contemporary perspective, it will permit to compare the way these two huge countries with very different legal and political regimes approach the issues of the protection of biodiversity and of the existing healing traditions. This seems extremely interesting as despite of the different political and legal frameworks and the different socio-cultural settings, these two countries share a number of things : (1) the fact that big parts of their population continue to live in traditional ways, (2) the fact that large amounts of population have to rely on traditional health practices for health care, (3) the fact that biodiversity as well as cultural diversity is threatened there through industrialization and modernization processes, (4) the fact that they are more and more pressured by international WTO standards, and (5) their concern to protect traditional systems of healing, through even introducing some of them in academic curricula and giving them state recognition.

Second, there have been a lots of exchanges between the Indian healing traditions, especially Ayurveda, and the Chinese healing systems from 100 B.C. until more or less the tenth century A.D., following the exchanges on the Silk Road and also the exchanges of Buddhist scholarship in the two regions. The Muslim invasions in the eighth century which blocked travel on the Silk Road as well as decline of Buddhism in India and China from the eighth century onwards seem to be partly responsible for stopping of these interactions (Svoboda & Lade 1998 : 92). It thus seems very interesting to carry out a comparison of these health traditions and of their integration in different cultural contexts. Indeed although being specific, these traditions have exchanged a lot. To make an analysis of the dynamics of their interplay, their mutual cultural interpretations and their mutual enrichment may provide us with clues on possible exchanges between “traditional healing systems” and “modern medicine” in the contemporary context. The



research could on the long term maybe even being expanded to the Japanese context. Indeed, there also we find healing traditions that had been in touch with especially Chinese traditions but we find ourselves there nowadays in the context of a “developed country”, which can be an interesting complement of comparison to our research on India and China.

In order to have continuity in our research, and compare things which it is sensible to compare, we propose to focus our research on those health traditions and their socio-cultural and environmental surroundings which are linked to Martial Arts traditions. Indeed the Southern Indian art of Kalaripayatu is closely linked to an elaborate system of healing and seems to be the ancestor, through the intermission of a South Indian Buddhist monk of the fifth century A.D., Boddhidharma, of Shaolin Kung Fu, the most famous school of Chinese martial arts which is also linked to traditional healing systems and has in turn greatly influenced Japanese martial arts (cf. Svoboda & Lade 1998 : 85).

Our research project, thus starting on legal issues surrounding the questions of the protection and the revitalization of local health traditions and biodiversity, could then be deepened through comparative and historical research on the exchange dynamics between different traditions in India, China and Japan, thus permitting to unravel new paths for intercultural exchange and enrichment in the fields of our relationship to our environment, biodiversity and cultural diversity through a focus on the protection and revitalization of local health traditions.

### 3) Proposed partners

Centre d’Etude du Droit de l’Environnement (CEDRE), Facultés Universitaires Saint Louis, Bruxelles, Belgique

Foundation for the Revitalization of Local Health Traditions (FRLHT), Bangalore, India

Institut Interculturel de Montreal (IIM), Montreal, Canada

Laboratoire d'Anthropologie Juridique de Paris (LAJP), Université Paris 1 Pantheon-Sorbonne

National Law School, Bangalore, India

Center for Indian Knowledge Systems, 30, Gandhi Mandapam Road, Chennai 600 085

#### 4) Selected bibliography

ANTIA N.H. & BHATIA Kavita (eds.), *People's Health in People's Hands. A model for Panchayati Raj*, The Foundation for Research in Community Health – FRCH, Tilakwadi-Belgaum, 1993, 394 p

BANWARI, Pancavati. *Indian Approach to Environment*, Shri Vinayaha Publications, Delhi, 1992, 185 p

DENAUD Patrick, 1996, *Kalaripayat. L'origine des arts martiaux*, Budostore, Clamecy, 189 p

GAGDIL Madhav et al., “Conservation. Where are the people ?”, *The Hindu. Survey of the Environment* 1998, p 107-137

KIT Wong Kiev, 1996, *The Art of Shaolin Kung Fu*, Vermilion, London, 215 p

SHANKAR Darshan, “Medicinal Plants and Biodiversity Conservation”, in SHIVA Vandana (ed.) *Biodiversity Conservation. Whose Ressource? Whose Knowledge?*, INTACH, New Delhi, 1994, 315 p (101-110)

SHIVA Vandana (ed.), Biodiversity Conservation Whose Ressource? Whose Knowledge?, INTACH, New Delhi, 1994, 315 p

SHIVA Vandana, “Biodiversity Conservation, People’s Knowledge and Intellectual Property Rights – An Overview”, in SHIVA Vandana (ed.) Biodiversity Conservation. Whose Ressource? Whose Knowledge?, INTACH, New Delhi, 1994, 315 p (3-31)

SHIVA Vandana, Patents, myths & reality, Penguin Books, New Delhi, 2001, 146 p

SVOBODA Robert & LADE Arnie, Chinese Medecine anmd Ayurveda, Motilal Banarsidass Publishers Private Limited, Delhi, 1998, 155 p

ZARRILLI Philip B., *When the Body Becomes All Eyes. Paradigms, Discourses and Practices of Power in Kalarippayattu, a South Indian Martial Art*, Oxford University Press, New Delhi, 310 p