

Multilateral agreements and a TRIPS-plus world: *The World Intellectual Property Organisation (WIPO)*

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About these papers

In these issues papers, authors are invited to examine a subject of importance in the developing international intellectual property regime and highlight key issues they see arising. The topics have been chosen following consultations with negotiators from developing countries, and respond to their concerns. Our aim is to contribute to a greater understanding of the impact of changes in this area upon people's lives and better inform debate and negotiations.

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Summary

The World Trade Organisation's (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) substantially changed the international intellectual property regime by introducing the principle of minimum intellectual property standards. In effect, this principle means that any intellectual property agreement negotiated subsequent to TRIPS among and/or involving WTO members can only create higher standards – commonly known as “TRIPS-plus”. The TRIPS-plus concept covers both those activities aimed at increasing the level of protection for right holders beyond that which is given in the TRIPS Agreement and those measures aimed at reducing the scope or effectiveness of limitations on rights and exceptions. Such intellectual property rules and practices have the effect of reducing the ability of developing countries to protect the public interest and may be adopted at the multilateral, plurilateral, regional and/or national level.

This paper focuses on the development of TRIPS-plus standards at the multilateral level, in particular, at the World Intellectual Property Organisation (WIPO). Three broad concerns have prompted the focus on WIPO. First, despite the major role that WIPO has played in globalising intellectual property rules, the overwhelming majority of recent literature on intellectual property and development issues has been devoted to the TRIPS Agreement. Secondly, a perception that WIPO's mandate – as contained in its founding convention – is limited to the promotion of intellectual property and does not embrace development objectives. The final concern arises over WIPO's actual activities especially those aimed at harmonising patent law standards and at providing technical assistance to developing countries.

Following the introduction, part 2 provides a brief background on the origins and evolution of WIPO. It traces the organisation's history from the creation of a secretariat to administer the Paris Convention in 1883 to the creation of WIPO itself in 1970 and to WIPO becoming a specialised agency of the United Nations (UN) in 1974. Part 3 outlines the mandate and objectives of WIPO, the scope and purpose of the treaties administered by the organisation, its structure and decision-making organs and processes as well as its vision.

Part 4 examines the Patent and Digital agendas as well as technical assistance activities of WIPO and their potential TRIPS-plus implications:

- The harmonisation of substantive patent law standards as proposed in the current negotiations in WIPO is likely to result in TRIPS-plus standards for developing countries which will reduce their flexibility in defining patentability requirements, among other flexibilities. The harmonisation process is also unlikely to accommodate the interests of developing countries because of the stance of the

International Bureau of WIPO and the disproportionate influence of industry groups in the negotiations.

- In the Digital Agenda, although the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) are fairly balanced, the ongoing negotiations about possible protection of broadcasters rights outside the framework of the Rome Convention may result in TRIPS-plus standards. The proposed treaty may create expansive rights for up to 50 years for broadcasters, cable and webcasters over materials that they had no hand in creating.
- There are dangers in WIPO's technical assistance activities over-emphasising the benefits of intellectual property over the costs and the need to use TRIPS flexibilities. There are also dangers that the International Bureau might through technical assistance activities, exercise undue influence over the representatives of developing countries.

Part 5 highlights several issues that developing countries, civil society groups and development organisations need to take into account to ensure that WIPO's current and future activities are development-oriented. In particular, the paper considers:

- the possibilities of reconfiguring and/or reinterpreting the mandate of WIPO as a specialised agency of the UN to serve development objectives;
- increasing the participation and influence of developing countries at WIPO;
- dealing with entrenched business interests;
- increasing the role of civil society and other development organisations in WIPO processes; and,
- how to improve the design and delivery of technical assistance.

Part 6 concludes that for WIPO processes and activities to fully take into account the development perspective and to ensure that new multilateral treaties do not result in TRIPS-plus standards, there is a need to:

- properly construe the mandate of WIPO in the context of its agreement with the UN;
- increase the participation and influence of developing countries, civil society and other development organisations in WIPO processes as a counterweight to developed countries and business interests that currently dominate WIPO's processes;
- ensure that the International Bureau serves the interests of all WIPO members and does not cave in to threats of withdrawal by industry players; and,
- separate the norm setting functions of the International Bureau from its technical assistance activities.

1. Introduction

The adoption and entry into force of the WTO's TRIPS Agreement¹ substantially changed the international intellectual property regime by introducing the principle of minimum intellectual property standards. The principle constitutes a significant conceptual and strategic basis for subsequent multilateral and bilateral intellectual property negotiations aimed at setting higher and more expansive standards. Its effect is that any intellectual property agreement negotiated subsequent to TRIPS among and/or involving WTO members can only create higher standards. Higher standards, which could result from bilateral, plurilateral or multilateral treaties, have come to be commonly referred to as "TRIPS-plus". Although referred to as minimum standards, the appropriateness of the standards contained in the TRIPS Agreement for technology and development needs of developing countries has been seriously questioned and one predominant view is that these standards are too high for these countries².

TRIPS-plus is a concept which refers to the adoption of multilateral, plurilateral, regional and/or national intellectual property rules and practices which have the effect of reducing the ability of developing countries to protect the public interest. TRIPS-plus includes any new standards that would limit the ability of these countries to:

- promote technological innovation and to facilitate the transfer and dissemination of technology;
- take necessary measures to protect public health, nutrition and to promote the public interest in sectors of vital importance to their socio-economic and technological development; or,
- take appropriate measures to prevent the abuse of intellectual property rights by right holders or the resort by right holders to practices which unreasonably restrain trade or adversely affect the international transfer of technology.

Consequently, the concept covers both those activities aimed at increasing the level of protection for right holders beyond that which is given in the TRIPS Agreement and those measures aimed at reducing the scope or effectiveness of limitations on rights and exceptions under the TRIPS Agreement.

Such an outcome will limit the ability of developing countries to design and implement measures to protect sectors of vital importance to their socio-economic and cultural development including health, environment, and food and nutrition.

A number of recent papers have examined the TRIPS-plus implications and the challenges posed by bilateral treaties and on-going plurilateral negotiations to the flexibilities in the TRIPS Agreement including the first paper in this series by

Vivas-Eugui³ and the forthcoming paper on TRIPS-plus conditions in bilateral trade and investment agreements by Weissman⁴. This paper focuses specifically on the multilateral negotiations taking place at WIPO. Three broad concerns have prompted the focus on WIPO:

1. Despite the major role that WIPO has played in globalising intellectual property rules, the great majority of recent literature on intellectual property and development issues has been devoted to the TRIPS Agreement.
2. A perception that WIPO's mandate – as contained in its founding convention – is limited to the promotion of intellectual property and does not embrace development objectives. Such a reading of WIPO's mandate implies that WIPO's activities after 1995 (when TRIPS came into force) are by definition intended to be TRIPS-plus. It would mean that the organisation should not be concerned with the preservation of the flexibilities that developing countries currently have in designing their intellectual property laws to take into account their development objectives.
3. Its actual activities especially those aimed at harmonising patent law standards. These activities are likely to exert an upward force on developing countries' national laws and policies with the result that the scope of limitations on patent and other rights and exceptions to those rights will be eliminated or significantly narrowed.

The paper reviews the mandate, activities and vision of the WIPO as well as the TRIPS-plus implications of the standard setting negotiations that are taking place in its various bodies. It also discusses how to ensure that WIPO activities and processes take into account the development dimension and do not result in TRIPS-plus standards. The paper is divided into six main parts. Following this introduction, part 2 provides a brief background on the origins and evolution of WIPO. Part 3 contains an overview of the mandate and objectives of WIPO, the scope and purpose of the treaties administered by the organisation, its structure and decision making organs and processes. Part 4 examines the potential TRIPS-plus implications of WIPO's activities including the patent and digital agendas and technical assistance. Part 5 highlights several issues developing countries, civil society groups and development organisations need to take into account to ensure that WIPO activities are development-oriented. Part 6 concludes the paper with some final remarks.

¹ The TRIPS Agreement was adopted as part of the Final Act of the Uruguay Round of Trade Negotiations in 1994. For full text of the Agreement see WTO, 1999

² See, for example, the Commission on Intellectual Property (IPR Commission), 2002 and Maskus, 2000

³ See Vivas-Eugui, 2003

⁴ Weissman, 2003. This paper examines the TRIPS-plus effects of a number of bilateral trade agreements on health-related TRIPS flexibilities. The agreements examined include, among others, the North America Free Trade Agreement (NAFTA), the US-Sri-Lanka Intellectual Property

Rights Agreement, the US-Ecuador Intellectual Property Rights Agreement, the US-Nicaragua Intellectual Property Rights Agreement, the US-Jordan Free Trade Agreement, the US-Cambodia Trade Relations and Intellectual Property Rights Agreement and the proposed Free Trade Area of the Americas (FTAA)

2. Background: the origins and evolution of WIPO

The international intellectual property system as we know it today can be traced back to the Paris Convention of 1883⁵ and the Berne Convention of 1886. These two conventions ushered in the era of international cooperation in intellectual property⁶. In Europe, the period leading to the negotiations of the Paris and Berne Conventions had, however, been characterised by intense controversies especially about patents. In England and continental Europe, the controversy was at its height between 1850 and 1875⁷. During that period, the anti-patent movement did not merely demand the reform of the system but its abolition altogether. Patents were then correctly understood to be monopoly privileges. Eventually, the combination of the pro-patent movement propaganda, the weakening of the free trade movement in Europe, the severe depression in the early 1870s and other factors such as the pressure from the USA for protection of its exhibitors at European fairs as well as the lobbying efforts of Austrian and German patent attorneys and engineers led to the disappearance of the anti-patent movement. This paved the way for the negotiations on and eventual adoption of the Paris Convention. However, the initial text of the Convention contained certain measures to satisfy governments that remained ambivalent about free trade⁸.

Treaty making in intellectual property in the late 19th Century heralded the rise in related international organisational forms⁹. The adoption of both the Paris and Berne Conventions was accompanied by the establishment of secretariats in the form of international bureaux. The two bureaux were merged in 1893 to create the *Bureaux Internationaux reunis pour la protection de la propriété intellectuelle* (BIRPI), the immediate predecessor of WIPO. BIRPI, which was originally based in Berne before moving to Geneva in 1960, was responsible for administering both the Paris and Berne Conventions in addition to a number of special agreements under the Paris Convention¹⁰. At the time of the conclusion of the WIPO Convention in 1970, there were five such special agreements, namely, the two Madrid Agreements of 1891, The Hague Agreement of 1925, The

Nice Agreement of 1957 and the Lisbon Agreement of 1958 (See Annex 1).

The idea of transforming BIRPI into an international intellectual property organisation, however, only arose at the 1962 meeting of the Permanent Bureau of the Paris Union and the Berne Union. At that meeting, the Permanent Bureau recommended the setting up of a Committee of Governmental Experts to consider administrative and structural reforms to the Paris and Berne Union systems and prepare for a diplomatic conference. The proposal to establish such an organisation in place of the BIRPI structure was advocated, partly, to head off any attempt by outsiders, such as the United Nations Economic and Social Council (ECOSOC) to deal with the subject of intellectual property¹¹. Another motivation for changing the BIRPI structure seems to have been to transform it from a developed country club into an organisation with a multilateral character that could attract developing countries including the newly independent ones. The second meeting of the Governmental Experts Committee took place in 1966 and was attended by representatives from 39 member states of which nine were developing countries, the rest being developed or European communist countries. The draft Convention, prepared by BIRPI on the basis of the views expressed by the Committee, was presented to the 1967 Stockholm Conference and approved.

WIPO therefore came into being, with its headquarters in Geneva, in 1970 when the Stockholm Convention came into force, and subsequently became a specialised agency of the United Nations (UN) in 1974¹². Its membership is open to any state that is a member of the Paris Union or the Berne Union; a member of the UN or any of the specialised agencies; a member of the International Atomic Energy Agency (IAEA); or a State party to the Statute of the International Court of Justice (ICJ). If a state does not fall in any of the above categories, it can become a member if it is invited to join the organisation by the WIPO General Assembly¹³. As of 15 July 2003 WIPO had 179 members¹⁴.

⁵The first proposal for an international patent convention, by Queen Victoria's consort Prince Albert, can be traced back to the 1851 Great Exhibition which took place in London. The government responded to concerns from domestic manufacturers about foreign visitors 'pirating' their inventions by passing a temporary law protecting all unpatented exhibits during the exhibition. But the main catalyst for the Paris Convention was the 1873 International Exhibition of Vienna. Responding to concerns expressed by several countries, the Austro-Hungarian government introduced temporary IP protection for foreign exhibits with effect to the end of that year, and agreed to sponsor an international patent congress during the exhibition. While both measures had first been

proposed by the US government, the lobbying efforts of a group of Austrian and German patent attorneys and engineers helped to ensure that the congress took place. See Beier, 1984; Coulter, 1991; Gaultier, 1997

⁶Braithwaite and Drahos, 2000, p 60

⁷Machlup and Penrose, 1959

⁸The Convention stated that patents could not be revoked solely on the grounds of importation from a member state to the country where the patent was granted. Members were otherwise free to require patents to be worked. This provision was a compromise that allowed countries to make importation permissible as long as there was also local working. Dutfield, 2003

⁹Braithwaite and Drahos, 2000, p 60

¹⁰Bogsch, 1992, p 22

¹¹See, for example, Ladas, 1975

¹²The Convention was signed in Stockholm on 14 July 1967 and has since been amended twice; on 28 September 1979 and in 2003. The latter amendments are not yet in force. For details see WIPO document A/39/2, 24 February 2003. Available at http://www.wipo.int/documents/govbody/wo_gb_ab/doc/a_39_2.doc

¹³See article 5 of the WIPO Convention

¹⁴For a complete listing of the WIPO Members States see, <http://www.wipo.int/about-wipo/en/members/index.html>

While the WIPO Convention provides the umbrella framework for the organisation, it is an administrative treaty only¹⁵. The substantive and procedural standards for various categories of intellectual property are established by separate treaties, each of which has different aims and objectives and different contracting parties. WIPO currently administers 23 treaties including the WIPO Convention¹⁶. The various treaties can be divided into three main categories (Annex 1):

- intellectual property protection treaties - treaties that define international substantive standards on intellectual property (Annex 1A);
- global protection system treaties - treaties establishing procedural rules mainly aimed at ensuring that one

international registration or filing of an industrial property will have effect in all the countries signatory to the relevant treaties (Annex 1B); and,

- classification treaties - treaties which create classification systems aimed at organising information concerning inventions, trademarks and industrial designs through an indexed system (Annex 1C).

It is also noteworthy that although the International Union for the Protection of New Varieties of Plants (UPOV)¹⁷, established by the International Convention for the Protection of New Varieties of Plants, is an independent intergovernmental organisation, the Director General of WIPO is its Secretary-General and WIPO provides administrative and financial services to the organisation.

3. The mandate, decision making and structure of WIPO

The WIPO Convention, in addition to establishing the organisation and its secretariat, sets out its objectives, mandate and its decision-making framework.

3.1 *The mandate and functions of WIPO*

Article 3 of the WIPO Convention sets out the objectives of WIPO. These are:

- to promote the protection of intellectual property throughout the world through cooperation among States, and, where appropriate, in collaboration with any other international organisation; and,
- to ensure administrative cooperation among the Unions¹⁸.

The Convention also spells out the functions of WIPO. In addition to a variety of administrative functions, the substantive functions of WIPO, set out in article 4 of the Convention, include:

- to promote the development of measures designed to facilitate the efficient protection of intellectual property throughout the world and to harmonise national legislations in this field;

- to encourage the conclusion of international agreements designed to promote the protection of intellectual property; and,
- to assemble and disseminate information concerning the protection of intellectual property, carry out and promote studies in this field and to publish the results of such studies.

The mandate and functions of WIPO as set out in the Convention are fairly narrow. This has led to questions as to whether WIPO can take into account the development concerns that have been expressed by developing countries¹⁹.

3.2 *Decision making organs and processes*

In terms of decision-making, the main WIPO bodies are the General Assembly, the Conference²⁰ and the Coordination Committee. The General Assembly is established under article 6 of the Convention which also sets out its functions. Its membership consists of States party to the Convention which are members of any of the Unions. Among others, its functions include: the appointment of the Director General; reviewing and approving reports of the Director General and giving the Director General all necessary instructions;

¹⁵Abbott, Gurry and Cottier, 1999, p 303

¹⁶For details of the various treaties and the contracting parties to each see, www.wipo.int/treaties/index.html

¹⁷For more information on UPOV see <http://www.wipo.int/treaties/upov/index.html>

¹⁸Unions are defined under article 2 of the Convention as meaning "the Paris Union, the Special Unions and Agreements established in

relation to the Union, the Berne Union, and any other international agreement designed to promote the protection of intellectual property whose administration is assumed by the organisation according to Article 4 (iii). According to Bogisch the word 'Union', which traces its origin to the Paris Convention, is meant to convey the idea that the States party to a treaty, together form an entity which has legal personality and its own finances. See Bogisch, 1992, p 23

¹⁹See, for example, IPRs Commission, 2002

²⁰The Conference is set to be abolished when the Amendments to the WIPO Convention approved at the Thirty-Ninth Series of Meetings of WIPO Assemblies comes into force. See WIPO Document A/39/2, 24 February 2003. This amendment is not yet in force. Under article 17(3) of the WIPO Convention amendments come into force once three-fourths of WIPO members ratify the amendment

reviewing and approving the reports and activities of the Coordination Committee and giving instructions to the Committee; adopting the biennial budget expenses common to the Unions; and determining which States not members of the organisation and which intergovernmental and international non-governmental organisations (NGOs) shall be admitted to its meetings as observers. Each State has one vote at the General Assembly.

The Conference is established by article 7 of the Convention and its members consist of all the States party to the WIPO Convention irrespective of their membership in any of the Unions. The main functions of the Conference are: to discuss matters of general interest in the field of intellectual property including the adoption of recommendations relating to such matters; to adopt its biennial budget; establish the biennial programme of legal-technical assistance; adopt amendments to the Convention as provided for under article 17 of the Convention; and to determine observers at its meetings. As in the case of the General Assembly, each State has one vote in the Conference.

The Coordination Committee is established by article 8 of the Convention. Subject to the rule that only a number equal to one-quarter of the member countries of the Assembly which elected the respective Executive Committees of the Unions can be part of the Coordination Committee, the Committee consists of the States party to the Convention which are members of the Executive Committee of the Paris Union or the Berne Union or both²¹. The main functions of the Coordination Committee are: to give advice to the organs of the Unions, the General Assembly, the Conference, and the Director General on all administrative, financial and other matters of common interest either to two or more Unions or to one or more of the Unions and the organisation, in particular on budget expenses common to the Unions; prepare the draft agenda of the General Assembly; prepare the draft agenda and the draft programme and budget of the conference; and to nominate a candidate for appointment to the post of Director General by the General Assembly. Each State that is a member of the Coordination Committee shall have one vote.

The day to day activities at WIPO take place in standing committees, working groups, and advisory committees. It is these bodies that prepare studies and proposals, and consider the most appropriate approach to the adoption and implementation of recommendations and new agreements. It is also in these bodies that most of the negotiations and related activities take place. Currently, there are two standing committees, one advisory committee and one working group in

the field of industrial property which have been established to monitor all activities in the area, prepare studies and proposals for improvement, and consider the most appropriate approach to their adoption and implementation. These are:

- the Standing Committee on the Law of Patents (SCP);
- the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT);
- the Advisory Committee on Enforcement of Industrial Property Rights (ACE); and,
- The Working Group on the Reform of the Patent Cooperation Treaty (PCT).

There is one standing committee in the area of copyrights and related rights– the Standing Committee on Copyright and Related Rights (SCCR). Finally, another important deliberative committee is the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, commonly known as the IGC²².

An important WIPO process concerns the actual rule making. There are two basic rule making processes: one is treaty making and the other is the development of soft law norms²³. The typical WIPO treaty making process is as follows: once there is some form of agreement among the membership that there is a need to develop a treaty on a particular subject, the WIPO Secretariat or a committee of experts will prepare draft articles as well as draft rules and/or regulations, where applicable, as the basis for negotiations and discussions. Sometimes Member States also present draft articles for discussion. These drafts are then submitted to the relevant committee or working group where they are discussed on an ongoing basis until there is some consensus on most of the articles. At this stage, mostly when the Secretariat feels comfortable that a final treaty can be agreed upon, the Member States are asked to authorise the preparation of a diplomatic conference to finalise the treaty and adopt it. Thereafter the treaty is opened for signature and ratification and/or accession.

The development of soft law norms occurs outside the normal treaty route. While WIPO has traditionally used the treaty making processes to develop intellectual property rules and norms, in the recent past there has been an increasing emphasis on the soft law approach. This new approach has been taken in order to overcome the drawbacks of treaty making²⁴. Treaty making is considered slow and time consuming making it ill-suited to deal with fast changing circumstances. A further problem identified with treaty making is that treaty law would only bind those states that ratify it while soft law norms could be made more generally applica-

²¹ See article 8(1) (a). The computation of the one-quarter of the members of the Assembly electing the Executive Committee excludes the country on whose territory the organisation is headquartered, in this case Switzerland

²²The IGC was set up for a two year period in

October 2000. Its mandate was renewed for another two years at the 2003 WIPO Assemblies. For details see <http://www.wipo.int/globalissues/igc/index.html>

²³ The term soft law is generally used to refer to certain categories of technically non-binding

norms, but which states nonetheless follow in practice or to which at least they subscribe. See, Kwakwa, 2002, p 187

²⁴Kwakwa, 2002, p 181

ble without requiring ratifications²⁵. Examples of soft law norms that have been adopted by WIPO include the 1999 Resolution Concerning Provisions on the Protection of Well-Known Marks²⁶ and the 2001 Recommendation Concerning the Provisions on the Protection of Marks, and Other Industrial Property Rights in Signs, on the Internet²⁷. These soft law norms are not made through any defined process and can take many forms including recommendations, resolutions, declarations and guidelines, among other possibilities.

There are General Rules of Procedure which have been established that govern the conduct of the various proceedings in WIPO bodies²⁸. Each of the individual bodies may also make its own special rules that may override the General Rules of Procedure²⁹. Among others, some of the notable rules in the context of this paper include those which provide that: the date, duration and place of each session of WIPO bodies shall be fixed by the Director General³⁰; the Director General shall prepare the draft agenda for all ordinary sessions subject to the provision that any State member of a body may, at least one month before the session, request the inclusion of supplementary items in the draft agenda³¹; each State shall be represented by one or more delegates, who may be assisted by alternates, advisors, and experts whose appointments shall be notified to the Director General in a letter, note or telegram preferably from the Ministry of Foreign Affairs³²; and, the Director General shall invite to the various sessions such States and intergovernmental organisations to be represented by observers as are entitled to observer status under a treaty or agreement³³.

Further, there are provisions to the effect that: the chairman of a session shall declare the opening and closing of meetings, direct the discussions, accord the right to speak, put questions to the vote, announce decisions, may propose limiting the time allowed to speakers and the number of times each delegation may speak on any question, close the list of speakers, and the debate, as well as suspend or adjourn debate or the meeting³⁴; the Director General or staff member of the International Bureau designated by him/her can speak, with the approval of the chairman, at any time during a session and make statements on any subject under discussion³⁵; and, proposals for the adoption of amendments to the drafts submitted to the session and all other proposals may be submitted orally or in writing by any delegation although the session can only decide to debate and vote on the proposal if it is in writing.

There are also general guidelines for the admission of observers to WIPO³⁶. There are three categories of observers: intergovernmental organisations, international NGOs and

national NGOs. A full list of the organisations with observer status at the WIPO Assemblies is given in Annex 2. For an intergovernmental organisation to be considered for observer status, it is required to furnish the secretariat with: information on its structure and objectives; a copy of its constituent instruments; a list of its officers; a list of its members; the composition of the governing body of the organisation; and, information on its activities and interests, particularly those related to the protection of intellectual property. For an international NGO, it is required to provide: the text of its constituent instrument (articles of incorporation, bylaws, etc); an indication of the date and place where it was established; a list of its officers (showing their nationality); a complete list of its national groups or members (showing their country of origin); a description of the composition of the members of its governing body or bodies (including their geographical distribution); a statement of its objectives; and, an indication of the field or fields of intellectual property (e.g. copyright and related rights) of interest to it.

The requirements for national NGOs are the same as those for international NGOs except that in addition to these requirements, there are a number of principles that are observed in extending invitation to national NGOs. These include: the organisation shall be essentially concerned with intellectual property matters falling within the competence of WIPO and shall, in the view of the Director General, be able to offer constructive, substantive contributions to the deliberations of the Assemblies of WIPO; the aims and purposes of the organisation shall be in conformity with the spirit, purposes and principles of WIPO and the UN; and the organisation shall have an established headquarters. It shall also have democratically adopted statutes, adopted in conformity with the legislation of the Member State from which the NGO originates and a copy of the statutes shall be submitted to WIPO. The organisation shall have authority to speak for its members through its authorised representatives and in accordance with the rules governing observer status and the admission of national NGOs to observer status shall be the subject of prior consultations between Member States and the secretariat.

3.3 The structure and functioning of the International Bureau

The WIPO Convention establishes the International Bureau as the Secretariat of the organisation under the direction of the Director General as the chief executive assisted by two or more Deputy Directors General³⁷. The Director General is appointed for a fixed term of not less than six years and is

²⁵Kwakwa, 2002, p 182

²⁶See WIPO document A/34/13, 4 August 1999

²⁷See WIPO document A/36/8, 18 June 2001

²⁸See WIPO, 1998

²⁹See Rule 1 on the application of the General Rules of Procedure. Note, however, that these rules do not apply to diplomatic conferences

³⁰Rule 3(1)

³¹Rule 5

³²Rule 7

³³Rule 8

³⁴Rule 13

³⁵Rule 15

³⁶These guidelines are available on the WIPO website at <http://www.wipo.int/members/admission/>

³⁷ See article 9 of the Convention. Currently there are four Deputy Directors General

eligible for reappointment³⁸. The Convention establishes that the periods of the initial appointment of the Director General as well as for subsequent reappointments and other conditions for the appointment to the position shall be fixed by the General Assembly. While the Convention does not specifically set out the tasks of the International Bureau itself, it states that the Director General's main functions shall be to prepare the draft programmes and budgets and periodical reports on activities and serve as ex-officio secretary to the General Assembly, the Conference, the Coordination Committee and any other committee or working group. Figure 1 shows the organisational structure of the International Bureau.

In addition to the staff, the Director General has created two advisory commissions to advise him. These are the Policy Advisory Commission (PAC) and the Industry Advisory Commission (IAC). The establishment of the PAC was proposed in March 1998³⁹. The PAC is made up of eminent persons drawn from a broad range of fields, including politics, diplomacy and administration, which have bearing on intellectual property. Its mandate is to "enhance the Secretariat's capacity to monitor and respond in a timely, informed and effective manner to international and regional developments in intellectual property, in information technology, and in other fields bearing on WIPO's operations and its policy environment"⁴⁰. The work of the Commission is purely advisory. (See Annex 3 for the names of the members of the Commission).

The IAC was also established in 1998 and had its first meeting in February 1999. It was established to ensure that the "voice of the market sector is heard and that the organisation is responsive to its [market sector] needs"⁴¹. Although the role of the IAC is purely advisory, the Director General stated at its creation that it was designed to ensure that there is "a direct input of industry into the policy-making process in WIPO"⁴². This statement reflects the view in WIPO that the organisation has only two constituencies – the Member States, on the one hand, and the market sector, on the other hand. The general public, consumers and others are not considered as a constituency of the organisation. (See Annex 4 for a list of IAC members).

The activities of WIPO and the International Bureau are funded from four main sources, namely, contributions by Member States, fees paid by private sector users of WIPO's global protection systems, the sale of WIPO's publications

and from interest earnings⁴³. In 2002, approximately 86 percent of WIPO's total funding came from fees, seven percent from contributions by Member States and another seven percent from sales of publications and interest earnings. Contributions by Member States are made on the basis of a system of contribution classes and each Member State freely chooses which class to belong to⁴⁴. There are a total of 14 classes each with a set amount of contribution. The rights of each Member State, however, remain the same irrespective of its class of contribution. In 2002, the smallest contribution from a Member State was 1,400 Swiss francs while the highest contribution was 1.1 million Swiss Francs⁴⁵.

The International Bureau is very active. It plays a significant role in determining the vision of the organisation, shaping the nature and final outcome of treaty and other negotiations and discussions, drafting the recommendations by various bodies on various matters, admitting observers to various WIPO bodies and in preparing the draft agenda for the General Assembly. In at least one body, the Working Group on the Reform of the PCT, a member of the International Bureau has chaired some of the sessions. This raises concerns regarding the member-driven nature of WIPO processes. While the influence of the International Bureau can be significantly reduced in treaty negotiations, it is much more difficult to curtail its influence in soft law processes especially where such soft law can emanate from non-member bodies such as the advisory commissions. For example, in 2000, the PAC adopted the World Intellectual Property Declaration, which made far reaching recommendations, and ordained that the declaration should "be made readily available to all the peoples of the earth"⁴⁶.

Similar problems arise in other informal processes such as that in the Working Group on the Reform of the PCT. The meetings of the Working Group are deemed informal and there is no formal record although the Working Group is addressing some issues which may have far reaching consequences on the international patent system⁴⁷. The role of the International Bureau in providing legal and technical assistance to developing countries is another area of concern. In particular, the compatibility between the Bureau's norm setting functions and technical assistance activities. While developing countries have to negotiate with the industrialised countries to achieve development friendly standards, the way the International Bureau operates raises questions about whether it is an impartial arbiter or whether it is a partisan player.

³⁸The current Director General is Dr Kamil Idris, a national of Sudan who has been serving as Director General since 1997. At the 38th series of meetings of the Assemblies of the Member States of WIPO held on 26 and 27 May 2003 the General Assembly reappointed him as Director General for another six years from 1 December 2003 to 30 November 2009. See WIPO documents A/38/3 and WO/GA/29/2, 27 May 2003

³⁹The first session of the Commission took place in April 1999

⁴⁰See, <http://www.wipo.int/about-wipo/en/pac/index.htm>

⁴¹See Report of the first meeting. WIPO Document WO/GA/24/6 Annex 1. Available at http://www.wipo.int/eng/document/govbody/wo_gb_ga/doc/ga24_6a1.doc

⁴²See press release on the first meeting of the IAC http://www.wipo.int/edocs/prdocs/en/1999/wipo_pr_1999_154.html

⁴³See WIPO, 2003, p 39

⁴⁴For details of the various classes and the Member States that belong to each class see the WIPO website at <http://www.wipo.int/treaties/documents/english/pdf/t-contr.pdf>. Three classes are specifically reserved for some developing countries

⁴⁵See WIPO, 2003, p 39

⁴⁶PAC, 2002

⁴⁷For details of the Working Groups work, see, <http://www.wipo.int/pct/reform/en/index.html>

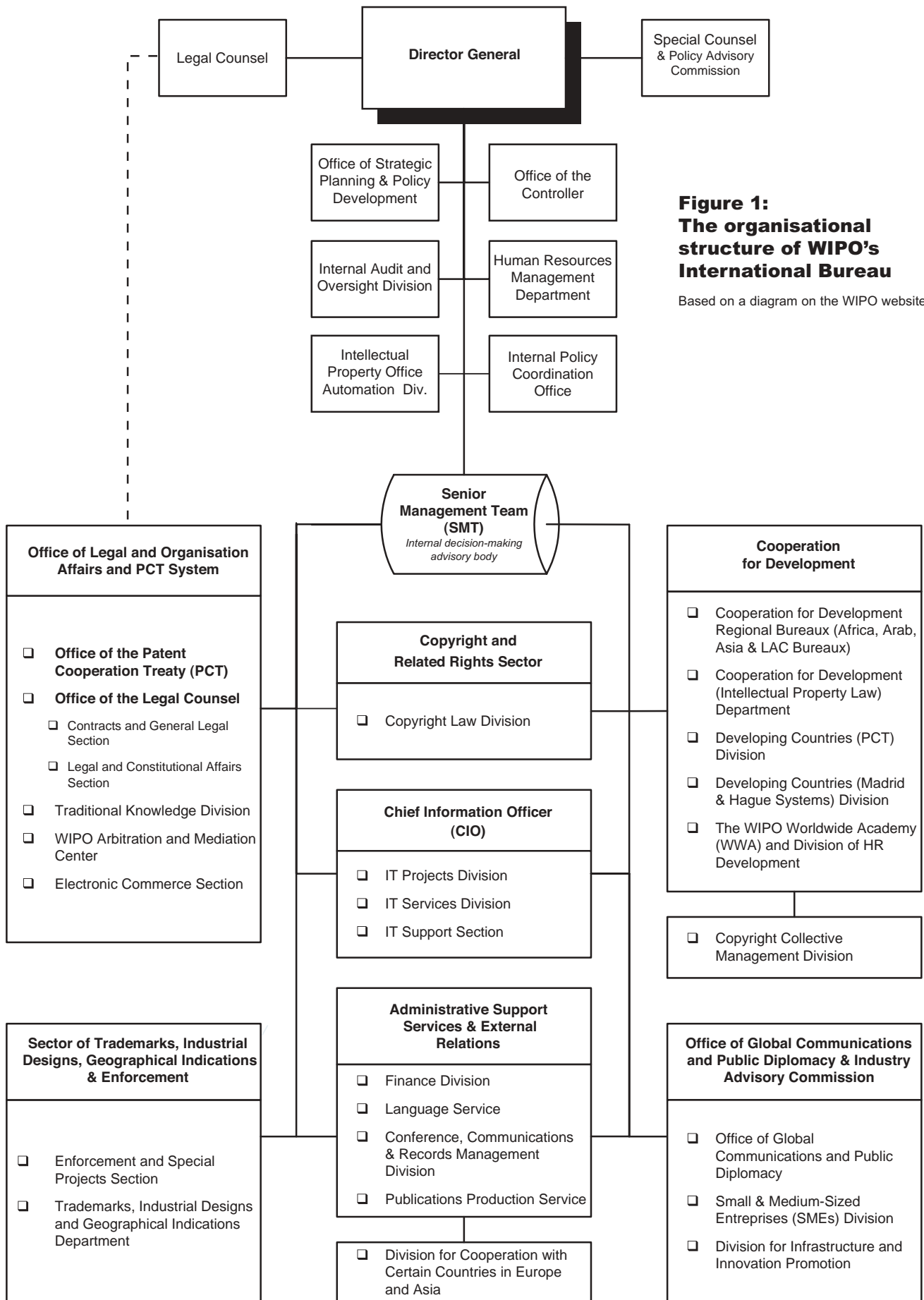


Figure 1:
The organisational structure of WIPO's International Bureau

Based on a diagram on the WIPO website

3.4 *The vision and strategic direction of WIPO*

The Director General presents a medium term plan for WIPO activities every four years. This plan sets out the vision of the organisation and the strategic direction of its activities. The current plan was presented to the Member States in 1999⁴⁸. A new plan for 2006-09 was presented at the Thirty Ninth Series of Meetings of the WIPO Assemblies in September/October 2003⁴⁹. The constant premise underlying the vision of WIPO as set out by the Director General in the 1999 plan and in the subsequent plan has been,

“maintenance and further development of the respect of

intellectual property throughout the world. It means that any erosion of the existing protection should be prevented and that both the acquisition of protection and, once acquired, enforcement, should be simpler, cheaper and more secure.”

This vision of intellectual property is fairly narrow and raises questions about the ideological leaning of WIPO. Although the 2006-09 vision has been expanded a little to reflect some of the development concerns that developing countries have expressed in WIPO, its basic premise remains the same and raises the question of whether WIPO believes in the absolute benefits of intellectual property at all times and in all places.

4. TRIPS-plus at WIPO

Before the Uruguay Round of trade negotiations that led to the establishment of the WTO, international intellectual property negotiations and standard setting had been taking place in WIPO and its predecessor institutions for over a century. Many of the rules and/or concepts embodied in the TRIPS Agreement existed in some form or another in a diverse number of treaties administered by WIPO. Consequently, although the TRIPS Agreement introduced significant changes in the overall framework of the international intellectual property system, it did not in fact alter the standard setting structure. While the WTO trade rounds framework and the concept of single undertaking proved important in pushing TRIPS through, WIPO remains the main international institution that is involved in the continuous development of intellectual property standards and rules. A proper understanding of the status and current role of WIPO in the ratcheting up of intellectual property standards must, however, be based on a clear view of the dynamics in the field of intellectual property following the adoption of the TRIPS Agreement.

4.1 *WIPO and the TRIPS dilemma*

WIPO as an organisation presides over an intellectual property regime of enormous rule diversity⁵⁰. The permissive nature of the rules under the WIPO regime and the lack of an enforcement mechanism is what led key industry players in the USA, in particular, to conclude that the organisation had failed to secure for them the appropriate levels of intellectual property protection around the world and to argue for a

shift to the General Agreement on Tariffs and Trade (GATT). In the 1980s, the strategy of the USA and its major industries was therefore aimed at shifting the intellectual property regulatory focus from WIPO to the GATT which would permit the use of trade remedies to enforce intellectual property standards⁵¹.

Equally important for the USA, was the consideration that the GATT framework provided an opportunity to obtain higher standards of intellectual property protection in exchange for concessions in other trade areas such as agriculture and textiles⁵². Behind the US moves, aside from the issues of enforcement and concessions, also lay the knowledge that developing countries were not part of the consensus that set the Agenda in GATT⁵³. A fourth factor that influenced the strategic shift to the GATT framework was the increasing strength of developing countries at WIPO which had resulted in developed countries proposals being defeated and/or their agenda being frustrated.

It is therefore not surprising that, when the USA began to push for the inclusion of intellectual property in the Uruguay Round, developing countries resisted the proposal on the basis that these issues fell within the brief of WIPO⁵⁴. For these countries, WIPO unlike the WTO provided a menu of treaties from which they could pick and choose and in some cases make reservations to. The diversity of rules and the permissive nature of WIPO treaties meant that developing countries could tailor their intellectual property regimes to meet their development objectives. The arrival of TRIPS

⁴⁸See WIPO document A/34/3, 4 August 1999

⁴⁹See WIPO document A/39/5, 21 July 2003

⁵⁰Braithwaite and Drahos, 2000, p 60

⁵¹Abbott et al, 1999, p 302

⁵²Correa and Musungu, 2002, p 2

⁵³Drahos, 2002, p 12

⁵⁴Correa and Musungu, 2002, p 3

therefore ushered in a period of peace for WIPO concerning the development-related demands by developing countries. Suddenly, these countries had become defenders of WIPO.

For WIPO itself, the advent of TRIPS created a significant strategic dilemma. The organisation had to share its hitherto 'exclusive competence' on intellectual property matters with the WTO. As a beneficiary of the strategy to weaken UNCTAD in the early 1980s, WIPO was particularly aware of the dangers of forum shifting⁵⁵. In a move aimed at preserving its relevance in the new scenario, WIPO quickly adopted a resolution in 1994 mandating the International Bureau to provide technical assistance to WIPO members on TRIPS-related issues. This was followed by a second resolution in 1995 to enter into a cooperation Agreement with the WTO for WIPO to provide technical assistance to developing country members of the WTO irrespective of their membership in WIPO. In many ways, these resolutions meant that WIPO had found a niche in the TRIPS world. The organisation also benefited from the fact that, although it was seen as lacking in enforcement, the standards established under its treaties and the technical expertise that had developed in the organisation over the years were indispensable in ensuring the success of the TRIPS project. Ultimately, the circumstances leading to the adoption of the TRIPS Agreement in the WTO demonstrate that for WIPO to remain the main forum on intellectual property matters, it must show to the USA and its industry that it can deliver new standards faster and more efficiently. This reasoning underlies WIPO's TRIPS-plus agenda.

4.2 The WIPO Patent Agenda

The Patent Agenda was announced in August 2001 by the Director General of WIPO as a new initiative which he envisaged as a process of worldwide discussions with the aim of preparing a strategic blueprint that would underlie the future development of the international patent system⁵⁶. The initiative was presented to the WIPO Assemblies in September 2001. The Patent Agenda has placed the issue of further development and harmonisation of patent law as a top priority in WIPO's activities for several years to come. The Patent Agenda activities are taking place under three main pillars:

1. activities related to the ratification of the PLT which was adopted in 2000;
2. efforts to reform the PCT; and,
3. the ongoing negotiations on the draft Substantive Patent Law Treaty (SPLT).

In general, these processes are ultimately oriented to create an international legal framework for something akin to a universal patent.

The USA, the main proponent of TRIPS-plus standards, sees the WIPO processes as complimentary to the achievements in the GATT Uruguay Round when the minimum intellectual property standards principle was established. In a presentation to the 'WIPO Conference on the International Patent System' in March 2002, the US Under Secretary of Commerce for Intellectual Property and the Director of the United States Patents and Trade Marks Office (USPTO) summed up the US perspective as follows:

"Although many might question whether there is a single international patent system, there can be no question that the foundation for an international system exists in the Patent Cooperation Treaty (PCT) and the Patent Law Treaty (PLT), (...), and in the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS Agreement)"⁵⁷.

The WIPO patent system is currently based on two main treaties, namely, the Paris Convention and the PCT. The Paris Convention establishes substantive standards in various areas of intellectual property including patents while the PCT establishes procedural standards. In addition to these two treaties, it is envisaged that when the PLT comes into force, it will compliment the PCT system while the SPLT, currently under negotiation in the Standing Committee on the Law of Patents, is intended to compliment the Paris Convention. In essence, the current activities in WIPO under the Patent Agenda seek, while maintaining the different treaties, to unify the legal framework through harmonisation. The origin of the Patent Agenda is linked to what the main users of the current system claim are burdensome, complex and costly procedures for obtaining patents in a number of countries due to the territorial nature of the patent system⁵⁸. The challenges facing the current patent system to which the Patent Agenda is supposed to respond have therefore been identified as the failure of the system to adequately respond to the international nature of business activities, the high costs of obtaining patents, the workload crisis in patent offices and time consuming procedures⁵⁹. An examination of the role of businesses and their associations in pushing forward the harmonisation agenda (see next section) is therefore instructive.

The PLT is not yet in force and as of 15 October 2003 only seven countries had ratified or acceded to it while 53 others and the European Patent Organisation (EPO) had signed it⁶⁰. The PLT requires 10 ratifications and/or accessions to come into force. Its main aim is to harmonise the formal require-

⁵⁵For a discussion on how the USA worked to weaken UNCTAD, which had gained prominence as the champion for developing countries on matters of trade and development including technology transfer and intellectual property, by shifting the discussions WIPO, see Drahos, 2002, p 22

⁵⁶Memorandum of the Director General, WIPO

document A/36/14, 6 August 2001, "Agenda for Development of the International Patent System"

⁵⁷Rogan, 2002

⁵⁸See the Memorandum of the Director General, para 3

⁵⁹See the Memorandum of the Director General,

para 17 - 28. Although the original Patent Agenda document was subsequently revised to take into account concerns that were expressed by developing countries, the basic underlying premises for the process have not changed

⁶⁰Details available at www.wipo.int

ments relating to the procedures for applying for, obtaining and maintaining patents. The treaty contains a set of standardised formal requirements for national and regional patent offices to apply when dealing with patent applications. It covers: filing date, standardised forms, procedures for examination, compliance with time limits, means for avoiding unintentional loss of rights and electronic filing. The PLT, in effect, will enhance the position of patent owners by combining deregulatory measures with safeguards for them. For example, article 10 provides that non-compliance by a patent holder with one or more of the formal requirements under the treaty may not be a ground for revocation or invalidation of a patent except where fraudulent intention is proven. The burden of proof for fraudulent intention is usually very high.

The process of reforming the PCT started in 2000 with the formation of the Committee on the Reform of the PCT. In September 2001 at the PCT Assembly, the Committee recommended the establishment of a working group (the Working Group on the Reform of PCT). The reform is geared towards introducing amendments to the treaty to simplify and streamline procedures while at the same time aligning it to the new PLT standards. The changes anticipated relate to coordination of international searches and international preliminary examination and time limits for entering the national phase. In addition, the Working Group is discussing options for the future development of the international search and examination aimed at giving more importance to the international search and examination reports⁶¹. Other players, the USA, in particular, want to see a more fundamental overhaul of the PCT system in order to facilitate global patenting by its corporations⁶².

The negotiations on the SPLT, on the other hand, are aimed at initially creating uniform substantive patent law standards on prior art, novelty, utility and inventiveness, requirements relating to sufficient disclosure and the drafting of claims and, possibly, to facilitate the mutual recognition of patent search and examination results⁶³. After this first phase of work, further harmonisation is envisaged in areas where the main players, the USA and the Europeans, do not agree such as the first to file versus first to invent principles and post grant opposition proceedings⁶⁴.

Harmonisation as proposed in the SPLT drafts is likely to result in TRIPS-plus standards for developing countries. While most of the proposed standards will benefit international industries, they will make it more difficult for developing countries to adapt their patent laws to local conditions and needs including adapting their laws to take into account their critical public health and other needs. Such a result will

undermine the achievements in Doha on public health and elsewhere on the other issues of intellectual property and development. One can conclude that the process of patent law harmonisation, coupled with various bilateral agreements that contain TRIPS-plus standards, will seriously compromise the ability of developing countries to use the various TRIPS flexibilities for development objectives. Harmonised patent law standards will also make it more difficult for these countries to seek amendments to the TRIPS Agreement, for example, to introduce disclosure requirements with respect to genetic resources and traditional knowledge.

Some of the proposals in the SPLT negotiations that have implications for TRIPS flexibilities include those aimed at:

- reducing the flexibility of countries to define patentability requirements by, for example, eliminating the requirements for a technical character in inventions;
- introducing matters of equivalence in international patent rules; and,
- prohibiting countries from imposing any further conditions, other than those specifically provided for in the treaty, on patent applicants.

The draft SPLT under article 12 seeks to harmonise the conditions for patentability⁶⁵. An important aspect of the draft deals with industrial applicability or utility. One proposed approach is to define industrially applicable inventions as those which “can be made or used for exploitation in any field of [commercial] [economic] activity”⁶⁶. Considering that after the adoption of the SPLT contracting parties would not be allowed to impose any further conditions on applicants other than those specifically spelt out in the SPLT, if accepted, this proposal would mean that anything used in commercial and/or economic activity except mere discoveries, abstract ideas as such, scientific and mathematical theories and laws of nature as such and purely aesthetic creations⁶⁷, would be patentable. This would pave the way for the mandatory patenting of such things as business methods and software and eliminate the current flexibility under TRIPS which allows each country to define what an invention is including requiring that inventions have a technical character⁶⁸. The possibility of introducing matters of equivalence under this treaty also poses TRIPS-plus risks⁶⁹. If, for example, equivalence for purposes of infringement proceedings, was harmonised based on the approach that a process or product would be considered as equivalent if it performs substantially the same function as the protected process or product, then the freedom under TRIPS to define equivalence so as to allow inventing around patented inventions would be eliminated.

⁶¹See WIPO document PCT/R/WG/5, 19 September 2003

⁶²Correa and Musungu, 2002, p 10

⁶³See WIPO document SCP/4/6, para 47

⁶⁴See the Memorandum of the Director General, para 31

⁶⁵See WIPO document SCP/10/4, 30 September 2003

⁶⁶Draft article 12(4) Alternative A

⁶⁷Draft article 12(1) (b)

⁶⁸For further discussions of the dangers of this approach see Correa and Musungu, 2002, pp 18-20

⁶⁹See, Correa and Musungu, 2002, pp 20-21

4.3 Role of the International Bureau in the Patent Agenda processes

The Patent Agenda was the initiative of the Director General of WIPO – the head of the International Bureau. The role of the International Bureau in the SPLT process is particularly problematic. There are perceptions that the Bureau is acting not as the servant of the whole international community but as an institution with its own agenda. That agenda seems more closely attuned to the interests and demands of some Member States than to others, and more to pro-strong intellectual property protection interest groups and practitioner associations, which are ostensibly observers but sometimes behave and are treated like Member States, than to the interest of developing countries. The latter are interested in creating space for technological development and maintaining the TRIPS flexibilities as well as in the protection of genetic resources and traditional knowledge. For example, when the delegations of Brazil and the Dominican Republic on its own behalf and on behalf of Chile, Colombia, Cuba, Ecuador, Honduras, Nicaragua, Peru and Venezuela presented proposals seeking to ensure that nothing in the SPLT would prevent countries from taking measures to comply with their international obligations, including those relating to the protection of genetic resources, biological diversity, traditional knowledge and the environment, the International Bureau responded by issuing a seven page document that in essence suggested that the proposals were misplaced⁷⁰.

The justification for not including the proposals in the draft SPLT and for the International Bureau getting involved on one side of the debate is highly questionable. At the Seventh Session where the proposals were first discussed the conclusions of the debate by the Chair were as follows:

“A proposal to amend paragraph (2) [of article2] was made jointly by nine delegations, and was supported by some other delegations. One delegation, supported by several other delegations, proposed the inclusion of a new paragraph (3). One delegation suggested that these proposals be included in the draft Treaty, within square brackets, for further discussion. Several delegations, however, did not support these proposals, and questioned their relevance for the SPLT”⁷¹.

According to the report of the Session only the delegations of Germany, Ireland, Japan and the USA opposed the proposals by the Dominican Republic and Brazil⁷² while in addition to the 10 countries that had made the proposal at least two other countries, Egypt and Morocco, supported the proposals. It is difficult to see why a proposal supported by, at least, 12 countries could be excluded from the draft texts, albeit in square brackets, because four countries raised opposition to the proposal.

The International Bureau’s justification of the SPLT process in general is also instructive. According to the Bureau, ‘a

number of delegations and representatives had expressed the position, at the first session, first part, of the SCP (June 15 to 19, 1998), that discussions concerning further harmonisation, in particular harmonisation of substantive issues of patent law, should be resumed as soon as possible after the conclusion of the Diplomatic Conference (for the adoption of the Patent Law Treaty)⁷³. These ‘delegations and representatives’ consisted of Japan, South Korea, Australia, Canada, France, Austria, Greece, China, Malta and four NGOs, the Pacific Intellectual Property Association (PIPA), the Union of European Practitioners in Industrial Property (UEPIP), the Japan Intellectual Property Association and Japan Patent Attorneys Association (JPAA). It does seem odd that these NGO observers are mentioned while no developing countries except China were reported as supporting substantive patent law harmonisation.

To add legitimacy to its activism, the International Bureau points out that two commissions set up by Director General, the IAC and the PAC, the former which had no consumer, development or public interest NGO representation whatsoever, came out in support of substantive patent law harmonisation in 2000. The IAC adopted a resolution calling for “work, in the medium term, on a treaty on the harmonisation of substantive patent law, with a view to facilitating greater mutual recognition of search and examination results by patent offices”. The PAC, on the other hand, had recommended, among other things, that “the harmonisation of national policies on the establishment of intellectual property rights should be sought, with the aim of protection at the global level”. There is no doubt therefore that the SPLT negotiations were launched in major part to respond to pressures, mainly from industry. A review of the earlier processes and negotiations to revise the Paris Convention in the next section illustrates the role of industry in ratcheting up intellectual property standards in WIPO over the years.

The role of the International Bureau in the Patent Agenda processes is not entirely that straightforward. There are challenges that flow from the positioning of the International Bureau in the overall structure and operations of WIPO. Because of the services it offers, the International Bureau has developed a high degree of expertise on many of the technical aspects of intellectual property issues which the Bureau deals with day to day. If one looks at the International Bureau as a service provider then the Bureau is clearly an interested party in many of the negotiations being undertaken. For example, when one is discussing the reform of the PCT, whatever changes are undertaken will affect the International Bureau as it is at the centre of implementing the PCT and has obligations under the treaty. The perception by the International Bureau of where the problems are, is therefore likely to be similar to that of the major patent offices which

⁷⁰See WIPO document SCP/8/5, 5 November 2002. The proposals were subsequently included after a fierce half day debate at the Eighth Session at which the delegation of Brazil questioned whether the International Bureau had the right to refuse to include a proposal by Member

States in a draft treaty simply because the International Bureau did not think that the proposal belonged in that treaty

⁷¹See WIPO document SCP/7/7, para 8

⁷²See WIPO document SCP/7/8, 25 November 2002, paras 27-29

⁷³WIPO Standing Committee on the Law of Patents. Fourth Session. Geneva, November 6 to 10, 2000. ‘Suggestions for the further development of international patent law’. WIPO document SCP/4/2. See also WIPO document SCP/1/7 ‘Revised Draft Report’

are the main players in the PCT. Changes in the rules will also have a bearing on the International Bureau's ability to deliver the services it offers and on its revenues which means that there is a likelihood that the Bureau would be inclined to push for measures that support its revenue stream and not otherwise. The other challenge relating to the International Bureau's expertise is that in WIPO negotiations, the Bureau is often asked to offer opinions or to propose drafting for articles. When the Bureau is asked to provide its expertise in drafting or on other technical matters it is an open question whether the responsibility for the ultimate outcome should go to the Bureau or to the very countries that asked the Bureau to undertake the task in the first place.

4.4 An historical overview of the role of industry in patent law standard setting at WIPO

Since 1883, the Paris Convention has been revised six times and its membership has expanded tremendously and includes many developing countries which joined in large numbers during the 1960s and 70s. These revisions (though not necessarily all provisions within them) have tended progressively to strengthen the rights of intellectual property owners. This is hardly surprising given that groups like *Association Internationale pour la Protection de la Propriété Industrielle* (AIPPI), which was founded in 1897, and the International Chamber of Commerce (ICC), which was founded in 1921 and immediately established a Permanent Commission for the International Protection of Industrial Property, attended as observers most of the intergovernmental conferences at which the Paris and other industrial property conventions were revised. Few, if any, consumer, development or other civil society groups ever participated in those conferences.

The involvement of ICC and AIPPI and subsequently other business and lawyers associations went well beyond the presence of their representatives as observers at meetings. Ladas (at one time a chairman of the ICC's Commission on International Protection of Industrial Property and also an official delegate of the USA at the 1958 revision conference) noted that at the fourth revision conference in London in 1934 "as usual the International Bureau, in cooperation with the British government, prepared the work of the Conference on the basis of resolutions adopted by non-governmental organisations, such as particularly the International Association for the Protection of Industrial Property and the International Chamber of Commerce"⁷⁴.

The main substantive differences between the 1883 version of the Paris Convention and subsequent ones have to do with

local working requirements and compulsory licensing. While the 1883 version stated that 'the patentee shall remain bound to work his patent in conformity with the laws of the country into which he introduces the patented objects', subsequent revisions have strengthened the rights of patent holders, principally by providing for compulsory licensing as the main sanction for non-working as opposed to revocation. From 1934, the Convention forbade the revocation of a patent for non-working until after a compulsory license had been granted and subsequently deemed insufficient to prevent the failure to work the patent. Variations of this measure had been formulated previously by the ICC and AIPPI and these were provided to the official delegates to the 1934 Conference in London at which the Paris Convention was revised.

The patenting of pharmaceutical and chemical substances is another controversial issue that demonstrates the influence of business associations in treaty making at WIPO. The Paris Convention has never explicitly required that pharmaceuticals and chemical substances be patentable. This is not surprising given that the Convention has always avoided the controversial and potentially divisive question of stating what is or is not patentable subject matter. Moreover, even the developed countries tended, until the 1960s and 70s, to keep chemicals and drugs outside their patent systems. Nonetheless, the fifth revision conference, which took place in Lisbon in 1958, discussed the issue and adopted a resolution recommending that member countries study the possibility of requiring them to be patentable⁷⁵. Considering how influential it was, AIPPI almost certainly was behind this resolution. According to the head of the US branch of AIPPI who attended the Conference,

"No amendment of the Convention was adopted on any point which was not the subject of a resolution by the AIPPI, though in some cases the text adopted differs in some respects from the AIPPI text. A number of proposed amendments of the Convention voted for by the AIPPI failed at Lisbon by the opposition of countries represented particularly by officials of the Patent Office only"⁷⁶.

The periodic changes to the text dealing with these issues reflected a continuing conflict between two groups of countries. The first group consisted mainly of the most advanced industrialised countries. They considered it unreasonable to require patent holders to set up manufacturing facilities in every domestic market. In taking such a stance, they were supported by AIPPI which opposed compulsory licensing for many decades. The second group was made up mostly of much less industrially advanced countries seeking to protect their emerging industries and enhance their industrial base. The latter group increased in number during the 1960s and

⁷⁴Ladas, 1975, p 83. See also Reichman and Hasenzahl, 2003. Available at http://www.ictsd.org/pubs/ictsd_series/iprs/CS_reichman_hasenzahl.pdf

⁷⁵The resolution ('patentability of chemical products') stated that:

the Conference, Considering that in order to promote technical progress, inventions must be protected to the greatest possible extent, Recommends that the member countries of the Union study the possibility of providing, in their national legislations, for the protection by patents

of new chemical products, independently of their manufacturing process, with such limitations and conditions as may seem advisable' (quoted in BIRPI, 1958, p 313)

⁷⁶Kemman, 1961, p 741

70s. However, attempts by developing countries in the late twentieth century to reverse the trend at the international level towards strengthening the rights for patent holders were almost completely unsuccessful⁷⁷. In fact, it was when these countries decided to use their numerical strength in WIPO to revise the Paris Convention to further their developmental interests that lawyers and businesses associations in the USA came up with the idea that a comprehensive agreement on intellectual property should be negotiated in the GATT framework rather than under WIPO's auspices.

4.5 *The Digital Agenda and related activities*

In September 1999, the Director General of WIPO announced the WIPO Digital Agenda at the WIPO International Conference on Electronic Commerce and Intellectual Property. The Agenda was aimed at, among other things, broadening the participation of developing countries in accessing intellectual property information and participating in global policy formulation, and to promote the adjustment of the international intellectual property regulatory framework to facilitate e-commerce⁷⁸. One of the main activities under the Digital Agenda involves encouraging member states to sign up to the 1996 'Internet treaties', the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT), and to negotiate the further development of international intellectual property law in the digital environment.

The initial discussions leading to the 1996 treaties were not only concerned with a new treaty for the on-line environment. They also considered negotiations to update the protection of audiovisual performances and of performers and producers of phonograms and broadcasting organisations. However, the idea of revising the Berne Convention was felt not to be feasible because this required all state parties to vote unanimously for the amendments. Given the diversity of views among countries this would have been very difficult to achieve. There would also have been difficulties with revising the 1961 Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations. Here, the complexities were twofold. First, it might have required that the International Labour Organisation (ILO), UNESCO and WIPO, which together were responsible for the latter Convention, collaborate again. Secondly, it would require the balancing of "the interests of the three parties (performers, phonogram producers and broadcasters) in the light of the new technologies, a task which, even in 1961 when new technologies were not in question, proved of great difficulty. It was felt that it would

be more practical to deal with the problems of performers and phonogram producers and to deal with the protection of broadcasters in a separate instrument."⁷⁹

The 1996 Internet treaties resulted from a Diplomatic Conference on Certain Copyright and Neighbouring Rights Questions in December 1996. The task of drafting the treaties was a lengthy process which drew upon a number of studies submitted by national governments and regional integration bodies, the most influential ones being those of the USA, the European Community (EC) and Japan⁸⁰. The Conference was initially proposed by the USA a year earlier. Its purpose was to discuss three draft treaties with a view to adopting agreed versions of them. Two of these treaties, the WCT and the WPPT, were finally adopted. Both of these treaties came into force in 2002. A third one, the Treaty on Intellectual Property in Respect of Databases, which had initially been proposed by the EC and was based on text provided by the EC and the USA, encountered such a degree of opposition that it was neither negotiated nor adopted.

Of the two treaties adopted, the WCT is perhaps the most controversial. It goes beyond the standards required by TRIPS and the Berne Convention, and provides especially strong rights for copyright owners operating in the on-line environment. Some critics have claimed that the initiative to produce such a treaty, which came from the USA, was motivated by a desire of certain individuals in that country to circumvent domestic opposition to the strengthening of copyright protection by negotiating a treaty that would then have to be implemented through national legislation as an obligation under international law. According to Litman, Bruce Lehman (then Commissioner of Patents and Trademarks and previously a lobbyist for the software industry) played a key role in convening the Diplomatic Conference, and was seeking to ensure that the US copyright standards that he was striving for would become the international norm with which all countries including his own would have to comply⁸¹. His opponents, who included academics, librarians, consumer electronics manufacturers and public interest NGOs, responded by following Lehman on his forum shifting journey to Geneva.

As many as 76 NGOs were represented at the Conference. Arrayed against those promoting the interests of the copyright owners were organisations representing the education and research communities concerned about maintaining access to copyrighted works, and telecommunications businesses and online service providers that sought to limit the strengthening of copyright protection in ways that would make them liable for infringing acts by users of their services⁸².

⁷⁷However, they had one major success in the field of copyright law, securing the adoption of the 1967 Stockholm Protocol to the Berne Convention (Braithwaite and Drahos, 2000, p 61)

⁷⁸See http://www.wipo.int/about-ip/en/studies/publications/ip_ecommerce.htm

⁷⁹Sterling, 2003, p 706

⁸⁰Ficsor, 2002, p 26

⁸¹Litman, 2001, pp 128-129. See also, Ryan, 1998

⁸²Reinbothe and von Lewinski, 1996, p 9

This organised opposition had an effect on the negotiations among the WIPO Member States, adding to the concern many of them already felt that the draft treaties in their original forms were overprotective. Because many of the delegates accepted the need to address this matter, the agreed text of the WCT, and also the WPPT, problematic as they are, are generally considered to reflect a more reasonable balance between the different interests involved than might otherwise have been the case. The UK Commission on Intellectual Property Rights (IPRs Commission) has warned developing countries to “think very carefully before joining the WIPO Copyright treaty”. However, this is moot in many cases, since the vast majority of parties to both treaties are developing countries.

Neither treaty dealt with audiovisual works and broadcasts. This is because film production companies and broadcasting organisations found it expedient to negotiate separate conventions. In December 2000, WIPO held a Diplomatic Conference on the Protection of Audiovisual Performances, at which it was expected that a WIPO Audiovisual Performances Treaty would be adopted. In fact, the delegates were unable to agree on a text. The stumbling block was a disagreement between the USA supported by India on one side (both of which have major film industries), and the EC and several other countries on the other (all more supportive of the moral rights of performers), about the law governing the transfer of economic rights from performers to producers. There have been recent efforts to revise these discussions at WIPO and an informal, two day meeting on the protection of audiovisual performances was held in Geneva in November 2003⁸³.

More importantly, there are on-going negotiations concerning a possible convention to protect the rights of broadcasters outside the Rome Convention framework. At the Tenth Session of the Standing Committee on Copyright and Related Rights in November 2003, the USA and some other countries, for example, proposed that the beneficiaries of any treaty on the rights of broadcasting organisations should include cablecasters and webcasters⁸⁵. One of the real dangers here is of creating a treaty that vests in broadcasting organisations, cable and webcasters rights over ownership of materials that they had no hand in creating and which may actually be in the public domain anyway, and for an unprecedented long term of protection. A number of countries have proposed that the period for protection be 50 years.

4.6 Technical assistance

Although article 67 of the TRIPS Agreement obliges developed WTO Members to provide technical and financial assistance to developing countries for the implementation of TRIPS, WIPO remains the largest provider of intellectual property related technical assistance. There are three basic reasons for this. First, as already noted, WIPO administers over 20 intellectual property treaties each of which requires different measures to implement. This raises capacity and technical challenges for developing countries. Secondly, as also already noted, in 1995 WIPO entered into a cooperation agreement with the WTO to provide technical assistance for TRIPS implementation. Finally, WIPO, as one of the richest international organisations, obviously has much more resources to devote to intellectual property technical assistance than many multilateral and bilateral donors. The technical assistance activities of the organisation are coordinated under the Cooperation for Development Division. Its aim is to enable developing countries all over the world to establish or modernise intellectual property systems⁸⁶. The WIPO World Wide Academy (WWA), which was established in 1998, also plays a role in WIPO’s capacity building and technical assistance activities. The aim of the WWA is to serve as a centre for teaching, training, advice and research on intellectual property⁸⁷.

In the recent past, WIPO’s technical and legal assistance activities have been criticised for a variety of reasons. There are two main concerns. The first is that the International Bureau’s work, especially its legal technical assistance, has tended to over-emphasise the benefits of intellectual property while giving very little attention to its costs⁸⁸. Other critics have accused the International Bureau of being partisan and not giving developing countries the best advice⁸⁹. Indeed, despite the adoption of the Doha Declaration on TRIPS and Public Health in November 2001, there continues to be a publication on WIPO’s website which essentially labels all the concerns that developing countries have raised with regard to TRIPS and public health as ‘myths’ two years later⁹⁰. It is highly questionable how an organisation that has such a view can provide technical assistance to developing countries to implement the Doha Declaration which is now part and parcel of the TRIPS framework.

The second concern is that because of the nature of activities under the technical assistance programmes – legal technical assistance, automation of offices and provision of software, training – the International Bureau may exercise undue influence on developing countries which may affect the stances of

⁸³For more information about this meeting see http://www.wipo.int/documents/en/meetings/2003/avp_im/index.htm

⁸⁴See WIPO document SCCR/10/3, 15 September 2003 which is a compilation and comparison of the various proposals that have been submitted by Member States. For more information see <http://www.wipo.int/documents/en/meetings/2003/s>

[ccr/index_10.htm](http://www.wipo.int/ccr/index_10.htm)

⁸⁵For comments and critique of some of the proposals see <http://www.cptech.org/ip/wipo/wipo-casting.html>

⁸⁶For details see <http://www.wipo.int/cfd/en/index.html>

⁸⁷For more information see <http://www.wipo.int/academy/en/intro.htm>

⁸⁸See, e.g., IPRs Commission, 2002

⁸⁹See *Medicines Sans Frontieres*, 2003

⁹⁰See publication titled, “Striking a Balance: Patents and Access to Drugs and Health Care” at http://www.wipo.int/about-ip/en/studies/publications/health_care.htm

these countries in WIPO negotiations. Consequently, the organisation's activities which include courses, seminars and legislative services,⁹¹ have been criticised, in particular, because they are unlikely to help developing countries tailor their intellectual property laws to meet their development objectives. But to what degree can WIPO possibly do better? Is the problem, perhaps, that WIPO is ill-suited to deliver the type of technical assistance that emphasises the development dimension?

A considerable amount of literature exists on how to evaluate technical assistance in various trade-related areas, which would apply to intellectual property technical assistance. However, developing credible criteria to evaluate the impact of technical assistance activities especially in the long-term is not easy. For example, WIPO measured the relevance and impact of its technical assistance in 2002 through a "Participants Evaluation Survey"⁹². The results were that some of the meetings under the Cooperation for Development Programme were highly effective and earned very high marks. The report concludes that: "Although only a pilot project, the results were extremely encouraging: 78 percent of the participants were "totally" or "highly" satisfied." This contrasts sharply with the assessments of most independent observers of WIPO's technical assistance meetings. The point, however, is that WIPO's evaluation is not necessarily wrong. Many other organisations use participant evaluation to get feedback on technical assistance. The lesson here is that there is not necessarily a right or wrong way of assessing the impact of technical assistance because, as some commentators argue, evaluation is not a straightforward exercise because technical assistance has multiple publics, objectives and constraints⁹³.

It is beyond the scope of this paper to attempt to detail each of the specific limitations attached to WIPO's technical assistance activities. However, the IPR Commission's conclusion that the results of the technical assistance provided

on intellectual property by WIPO so far is not commensurate with the effort and money spent, is a valid assessment of the situation. There are attendant risks in any technical assistance set up because of the institutional orientations of the providers as well as other factors such as political considerations. If these risks are not managed well, they can be especially dangerous. Lecomte, identifies the risks of bias such as negative discrimination, positive discrimination, tied aid and buy offs⁹⁴. To these one can add the risk related to the concept of neutrality when applied to the provision of technical assistance.

The provision of so-called 'neutral' technical assistance is an attempt by international organisations, in particular, to be objective. However, objectivity which is interchangeable with neutrality in this case is rarely workable especially in an area of strong economic, political and ideological conflicts such as currently exist with intellectual property. In fact, the concept of neutrality can be problematic and may impede the effectiveness of the technical assistance. Neutral can mean not taking sides but it can also mean indifference or avoiding issues⁹⁵. Neutral technical assistance may well fall far short of the assistance needed to help a country develop intellectual property policy let alone helping it situate such a policy in its overall development framework. These shortcomings have long been recognised. The results from such assistance, especially legislative assistance, can be devastating. As Drahos, quoting WIPO sources, points out,

"The inclination on the part of the International Bureau was to provide laws and advice to a developing country that would avoid any danger of that country becoming involved in dispute resolution ('we don't want them to get into trouble with WTO' ...). Obviously the way in which to guarantee this is to provide TRIPS plus models"⁹⁶.

⁹¹WIPO, 2002

⁹²see, WIPO, 2003, p 10

⁹³Kostecki, 2001, p 23

⁹⁴See, Lecomte, 2001, pp 21-22

⁹⁵Kirkpatrick, 1998, p 1088

⁹⁶See, Drahos, 2002, p 22

5. A development-oriented international intellectual property system

The WIPO treaties that existed at the time of the creation of the WTO continue to exist alongside the TRIPS Agreement, and some, like the Paris Convention, remain the basis of the substantive international standards on patents. In addition, a number of multilateral treaties, which embody higher intellectual property standards or create new ‘rights’ have been negotiated subsequent to the adoption of TRIPS or are currently being negotiated at WIPO. WIPO’s activities such as those envisaged under its Patent Agenda initiative as well as its technical assistance activities require critical scrutiny to ensure that they do not exacerbate the problems that developing countries have been facing in accessing essential goods and technologies following the adoption of the TRIPS Agreement and in addressing other development concerns.

This calls for the consideration of a number of issues. The major issue relates to the narrow focus of the objectives and functions of the organisation. The main objective of the organisation – the promotion of the protection of intellectual property – is quite narrow and, as already pointed out, has raised concerns about the ability of the organisation to incorporate development objectives in its activities. Other issues to consider include: the effectiveness of developing countries in setting the agenda in WIPO; the role of civil society and consumer organisations in shaping the direction of WIPO activities; and, how to improve the design and delivery of technical assistance. This section discusses each of these four issues in turn.

5.1 Reading WIPO’s mandate as a specialised agency of the United Nations

Clearly, there is inherent tension between the activities and processes in an international organisation that sees itself as mandated to exclusively promote intellectual property and the development interests of developing countries which require flexibilities, safeguards and technology transfer obligations. A restrictive reading of the objectives set out in the WIPO Convention may suggest that the organisation should not be concerned with development-related issues connected with intellectual property nor should it be concerned with preserving TRIPS flexibilities, since the proponents of the intellectual property system see these flexibilities as impeding the promotion of the protection of intellectual property.

Such a reading would, however, be erroneous. The ultimate purposes which should be served by WIPO’s activities should include broad development objectives and measures to ensure that developing countries benefit from modern scientific and technological advances in health, environment, communication, information technology and food and nutrition among others. This broad reading of WIPO’s mandate and its ultimate purpose is based on a review of its Agreement with the UN and by seeing the organisation as a member of the latter’s family, bound by the broader development objectives of the UN including the Millennium Development Goals.

The best formulation of recent calls on WIPO to integrate development objectives into its approach to the promotion of intellectual property is contained in the recommendations of the UK Commission on Intellectual Property. The Commission proposes that WIPO “should give explicit recognition to both the benefits and costs of IP protection and the corresponding need to adjust domestic regimes in developing countries to ensure that the costs do not outweigh the benefits”⁹⁷. On how to achieve this, the Commission says that, “unless they are clearly able to integrate the required balance into their operations by means of appropriate reinterpretation of their articles, WIPO member states should revise the WIPO articles to allow them to do so”. In our view, the WIPO Convention as currently formulated provides a clear and solid basis for the organisation to take into account development objectives. WIPO can do this directly, based on an interpretation of its mandate, or indirectly, based on the recommendations and conclusions of other processes of the UN and its other agencies. Here, WIPO’s place as part of the UN system is a critical consideration.

The idea of WIPO becoming a specialised agency of the UN is traceable to the 1967 Stockholm Conference. The structural and administrative reforms made to the then BIRPI, were designed in part to enable the new organisation to become a specialised agency of the UN⁹⁸. However, while the actual administrative and structural preparations for WIPO to become a specialised agency took place at the Stockholm Conference, that objective could not be realised immediately since WIPO was not capable of concluding an agreement with the UN until the entry into force of its Convention. The Agreement between the UN and WIPO, making the latter a

⁹⁷ IPRs Commission, 2002, p 159

⁹⁸ Bogsch, 1992, p 26

specialised agency of the former, eventually came into effect on 17 December 1974⁹⁹.

Under article 1 of that Agreement, the UN recognised WIPO as its specialised agency with the responsibility for taking appropriate action in accordance with its basic instrument, treaties and agreements administered by it, to promote creative intellectual activity¹⁰⁰ and for facilitating transfer of technology related to industrial property to developing countries in order to accelerate economic, social and cultural development. The Agreement clearly states that WIPO's role is subject to the competence and responsibilities of the UN and its organs particularly UNCTAD, the UN Development Programme (UNDP) and the UN Industrial Development Organisation (UNIDO) as well as the UN Educational, Scientific and Cultural Organisation (UNESCO). Therefore, while WIPO has a specialised competence on matters of intellectual property, the intention was clearly that its mandate should be construed in the context of the development objectives of the specified UN agencies as well as the broader objectives of achieving international cooperation in solving problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and fundamental freedoms¹⁰¹.

Even if one disagrees with the broad construction of WIPO's mandate as suggested above, WIPO would still be obliged to carry out its mandate taking into account development objectives on the basis of recommendations, studies, outcomes and conclusions of UNCTAD, UNDP, UNIDO and UNESCO as well as ECOSOC, the UN General Assembly and the Security Council. This is because a specialised agency is "one which conducts a programme of importance to the United Nations, in a specific field of competence, under the general review of the General Assembly and of the ECOSOC, but with important scope of autonomy in matters of membership, programme, personnel and finances"¹⁰². Consequently, an important prerequisite for an organisation to attain the status of a specialised agency of the UN is that its purposes must be compatible with those of the UN and its agencies. For WIPO, this position is reinforced since its responsibilities are specifically made subject to the competences of UNCTAD, UNDP, UNIDO and UNESCO all of which are organisations concerned with development. Indeed, WIPO itself seems to endorse this approach¹⁰³.

Under article 5 of the Agreement between the UN and WIPO, the latter agreed to arrange for the submission, as soon as possible, to its appropriate organs all formal recom-

mendations which the UN may make to it in the context of its mandate. These include, among others, recommendations to promote higher standards of living and conditions of economic and social progress and development and solutions of international economic, social, health and related international problems¹⁰⁴. WIPO also agreed to enter into consultations with the UN, upon request, with respect to such recommendations, and in due course to report to the UN on the action taken by it or by its members to give effect to such recommendations. Further, under article 2 of the Agreement, WIPO agreed to cooperate in whatever measures may be necessary to make coordination of the policies and activities of the UN, its organs and agencies fully effective.

While the above interpretation raises interesting possibilities for shaping the objectives, vision and ultimately the activities of WIPO, the current standing of the other UN agencies on intellectual property matters raises challenges. For example, Braithwaite and Drahos point out that the international organisation that has been most marginalised by the shift of intellectual property matters to the WTO is UNCTAD¹⁰⁵. Since its inception and up to the period leading to the creation of the WTO, UNCTAD had served as an important forum for developing countries to develop strategies to gain access to developed country markets and to develop analytical work which demonstrated the serious negative consequences for technology development and related objectives that arose from the existing intellectual property regimes. More than any other organisation in the UN system, UNCTAD had a legitimate claim to jurisdiction over the development of a trade-related agreement covering intellectual property¹⁰⁶. Indeed, it is because of these competences that the Agreement between the UN and WIPO specifically mentions the responsibilities and competence of UNCTAD. Moreover, at the time when the agreement between WIPO and the UN was being prepared, WIPO was undertaking a joint study with UNCTAD on the role of the patent system in the transfer of technology to developing countries¹⁰⁷.

However, due to UNCTAD's focus on promoting the needs of developing countries the USA, in particular, did not wish UNCTAD to play a significant role in shaping TRIPS. Today, apart from individual scattered activities and its joint project with the International Center for Trade and Sustainable Development (ICTSD)¹⁰⁸, UNCTAD has lost its pre-eminence on matters of trade, intellectual property and development and rarely participates in WIPO negotiations such as the SPLT negotiations as an observer. UNESCO also started off as a potentially important forum for defending and pro-

⁹⁹ See WIPO, 1975

¹⁰⁰Note that the Agreement refers to promotion of intellectual activity and not intellectual property as expressed in the WIPO Convention

¹⁰¹See article 1(3) of the UN Charter

¹⁰²Beigbender quoted in Minelli, 2003

¹⁰³See WIPO document WO/GA/30/4, 15 August 2003. 'Report by the Director General of WIPO on

the Resolutions and Decisions of the United Nations'. In this document, the Director General while noting that no specific recommendations had been made to WIPO during the period that he was reporting on, he says that some of the general recommendations by the General Assembly had implications for WIPO's mandate and that WIPO had taken measures to implement those recommendations

¹⁰⁴This mandate is contained in article 55 of the UN Charter

¹⁰⁵See Braithwaite and Drahos, 2000, p 68

¹⁰⁶Braithwaite and Drahos, 2000, p 68

¹⁰⁷United Nations, 1975

¹⁰⁸For more information on this project see, <http://www.ictsd.org/unctad-ictsd/>

moting developing countries' interests in the copyright area – ensuring that copyright standards were consistent with the needs of educational and scientific users of information – but suffered a similar fate as UNCTAD and today it has become a marginal player in the copyright field¹⁰⁹. At the same time, although UNDP and UNIDO continue to carry out important work on human and industrial development and intellectual property, they do not generally participate in WIPO meetings nor are their recommendations directly communicated to WIPO for action.

Finally, several challenges arise concerning the extent to which ECOSOC and/or the UN General Assembly can play a serious role in shaping the activities of WIPO. ECOSOC's inter-agency review mechanism is very weak and is incapable, in particular, of ensuring that the activities of the specialised agencies are compatible with the aims of the UN. In sum, while there is potential for some of the necessary changes for WIPO to integrate development into its intellectual property thinking to be directly or indirectly instigated from within the UN system there are challenges, both internal and external, which need to be overcome. Nonetheless, given that the International Bureau seems to endorse the view that the organisation has an obligation to respond to direct or indirect recommendations, outcomes, studies and conclusions of the UN General Assembly and other agencies, it is possible that developing countries can use the WIPO Assemblies as a forum for introducing some of these concerns based on UN recommendations, decisions, studies and other activities. This calls for developing countries to take action through the bodies of the related UN agencies to ensure that all relevant work carried out by those agencies as well as their recommendations are formally communicated to WIPO directly and/or through ECOSOC and the General Assembly.

5.2 *Developing countries at WIPO: turning participation into influence*

Throughout WIPO's history, the extent and effectiveness of developing countries' participation has varied. After the Second World War an increasing number of developing countries joined the Paris and Berne Conventions and under the principle of one-state-one-vote, a coalition of developing countries could easily outvote developed countries¹¹⁰. In the 1970s and 80s developing countries, working together, started demanding an intellectual property regime that catered to their stages of development and pushed for treaty provisions that would give them more access to technology which was increasingly being locked up by intellectual property rights. Consequently, the Paris Convention became a subject of

Diplomatic Conferences for its revision in 1980, 1981, 1982 and 1984 with developing countries particularly pushing for more liberal provisions on compulsory licensing¹¹¹. In copyright, this pressure had led to the adoption of the 1967 Stockholm Protocol to the Berne Convention aimed at giving developing countries greater access to copyright materials.

Multilateral treaty making in intellectual property was much easier for developing countries prior to the introduction of the single undertaking concept in the WTO and the principle of minimum intellectual property standards under TRIPS. Before TRIPS, these countries fought to defend their interests but if they failed, they could strategically opt out or make reservations to clauses in treaties which they considered detrimental to their development needs. With the single undertaking concept and the minimum standards principle, however, the strategic dilemma for these countries in the multilateral intellectual property system has changed significantly from deciding whether to engage in the system to choosing an appropriate strategy for participation and defending their interests.

Over the last couple of decades developing countries have argued consistently, albeit not successfully, that international rules on intellectual property can only promote development if they facilitate the transfer and diffusion of technology. The minimum standards embodied in the TRIPS Agreement reflect very limited concessions in this direction and on other development concerns. Given this situation, it will not be easy to ensure that the WIPO processes take into account their development needs. To ensure that this happens requires dedicated, coordinated and sustained efforts by developing countries. In the WTO, they have employed a reactive strategy to deal with what is considered the negative elements in the TRIPS Agreement. But as the experience at the WTO has shown, the reactive strategy has had limited effect in changing the intellectual property regime¹¹².

The Patent Agenda and other processes at WIPO, especially the SPLT negotiations, raise a recurring question about the extent to which developing countries can decisively influence the outcomes of international intellectual property standard setting processes. In his study for the IPRs Commission, Drahos concludes that due to the continued use of webs of coercion by the USA and the EC, developing countries still have comparatively little influence in international intellectual property standard setting¹¹³. In fact, throughout most of their history, developing countries have never meaningfully exercised sovereignty over the setting of intellectual property standards because of their colonial heritage. In this context, Drahos sums up the situation thus:

¹⁰⁹Braithwaite and Drahos, 2000, p 68

¹¹⁰Braithwaite and Drahos, 2000, p 61

¹¹¹Braithwaite and Drahos, 2000, p 61. See also Sell, 1998

¹¹²While there have been successes such as on

TRIPS and public health, a lot more concerns such as those relating to article 27(3) (b) and transfer of technology have not been addressed

¹¹³See Drahos, 2002, p 2. It is important to note, however, that over the last year several develop-

ing countries have become quite active and are more and more coordinating their positions in WIPO with the result that they are starting to influence the Agenda. How sustained these efforts will be is something to watch

“The reality of standard setting for developing countries is that they operate with an intellectual property paradigm dominated by the US and the EC and international business interests. (...). TRIPS sets minimum standards. Bilaterally the bar on IP standards continues to be raised. When developing countries turn to WIPO for legislative assistance that steers them down the TRIPS plus path. They are not in a position to mobilise webs of coercion and have to rely on webs of dialogue”¹¹⁴.

Given these realities developing countries should expect very few development-related concessions in the Patent Agenda process. As one commentator, now WIPO’s legal Counsel, noted “international intellectual property norm making in an age in which intellectual capital has assumed increasing importance promises to be far more complex than it has been in the past”¹¹⁵. Developing countries will therefore have to pay greater attention to the Patent Agenda process and seek to influence it on the understanding that no effort will be spared to steer the process to suit the economic interests of the USA, Japan and the EC and international businesses. In addition, the International Bureau is likely to continue to be wary of an influential developing country coalition which could trigger a forum shift to other multilateral fora or to regional and bilateral agreements¹¹⁶. That said, the Patent Agenda process provides a crucially important opportunity for developing countries to begin reconsidering the role of WIPO in development.

The challenge for developing countries at WIPO today is to fully recover from the effects of the strategic shift of intellectual property matters to the WTO. The USA and other major powers, such as Japan and the EC, see the bi-polar structure of international intellectual property system embodied in WIPO and WTO treaties as forming a single system, each of the organisations providing them with an opportunity to achieve higher standards. Developing countries, however, while they have been strongly engaged at the WTO, which they consider ‘alien’ to intellectual property matters, have not been similarly active at WIPO.

The process of reconsidering the role of WIPO must be underlined by an appreciation by the representatives of developing countries, both at WIPO and in WTO, of intellectual property as a tool for development policy. It is not simply a contentious area to be designed and redesigned according to developed countries’ demands and political pressures¹¹⁷. While it may take some time for developing countries to significantly influence the course of such complex processes as the Patent Agenda, this should not deter them from beginning a debate within WIPO about the effects of intellectual property standard raising and harmonisation on their development prospects. The key to their influencing

WIPO processes clearly lies in higher levels of engagement, coordination and articulation of their positions than currently exists.

For developing countries to address these challenges and turn their participation in WIPO into influence they should consider:

- the formation of a cross regional veto coalition among major developing countries; and,
- streamlining national policy formulation as well as their representation at WIPO negotiations.

Each of these approaches offers opportunities but also presents challenges.

The first approach is what Drahos has called a developing country Quad¹¹⁸ or in the post-Cancun scenario one can envisage a G20+ type of constellation at WIPO. Such a grouping would form a counterweight to the Quad (Canada, the EU, Japan and the USA) in WIPO and help push the development agenda of developing countries. If the major countries from all the developing regions of the world organised themselves, they could possibly form a formidable force in WIPO. The emergence of such a group, however, is likely to face considerable challenges. First, the International Bureau, as already noted, is likely to be wary of such a group and would possibly make efforts to scuttle it. The International Bureau might, for example, seek to reinforce the regional groupings in WIPO by emphasising the differences between them (African Group, Group of Latin American and Caribbean Countries and Asia). This would make it difficult for a separate cross-regional group to emerge. Although theoretically this problem is not difficult to overcome, there will be questions as to whether the countries in this new group would adopt positions that may be contrary to the regional groups’ positions or whether they would seek to block unfavourable positions in the various regional groups. Similar tactics to those already being employed to neutralise G20+ at the WTO might also be employed in WIPO if such a coalition was to emerge and start influencing the agenda in ways that are considered negative for the USA and other industry-driven developed countries and business interests¹¹⁹.

There will also be challenges in reconciling the various interests in the group. A major difficulty in coalition building at the WTO is said to be the wide variety of subjects covered and the single undertaking concept. While WIPO is different, there are significant similarities which make coalition building at WIPO also difficult. WIPO negotiations cover a variety of intellectual property subjects including patents, copyright, trademarks, genetic resources and traditional knowledge. Developing countries may have different interests in

¹¹⁴Drahos, 2002, p 28.

¹¹⁵Gurry, Francis, “The Evolution of Technology and Markets and the Management of Intellectual Property Rights”, in Abbott et al. 1999, p 311.

¹¹⁶For further discussion see Vivas-Eugui, 2003.

¹¹⁷Correa and Musungu, 2002, p 27

¹¹⁸Drahos, 2002, p 31

¹¹⁹After the WTO Cancun Ministerial Conference, some Latin American countries withdrew from G20+ in the face of highly publicised threats from the US Trade Representative

each of these areas and it is not inconceivable that concessions will be demanded and offered in one area for gains in another just like at the WTO.

At the same time the emergence of such a group in WIPO would depend on each of the major countries identifying WIPO as an important strategic organisation, giving enough attention to its negotiations and developing their appropriate national strategies. A strong coalition can only emerge among countries that have a clear and coherent approach to intellectual property policy making at the national and/or regional level. One clear challenge developing countries face at WIPO, as well as in other international organisations, relates to the processes through which they formulate policy and representation in negotiations. Reichman has recently made an interesting proposal on policy formulation which calls for serious consideration¹²⁰.

Reichman suggests that intellectual property policy making could be improved significantly if each developing country considered establishing a high level Permanent Advisory Council on Trade-Related Innovation Policies (ACTRIPS) or a functional equivalent¹²¹. The ACTRIPS would become the focal point for inter-agency policy making about the integration into domestic law of existing and evolving international legal standards affecting innovation. The ACTRIPS would not duplicate the activities of national or regional intellectual property offices. Ideally, the ACTRIPS would play a supervisory and policy making role that requires inputs from intellectual property offices but that locates such inputs within a broader policy making process for the country as a whole. Accompanying this national ACTRIPS would be regional or interstate ACTRIPS to coordinate regional positions on matters of common concern and enabling consensus building for future intellectual property negotiations. In the short to the medium term, the regional ACTRIPS would become institutionalised focal points for bilateral, plurilateral and multilateral negotiations bearing on national and regional innovation policies in order to ensure that governments and regional bodies coordinated their positions on relevant issues. Such a regional structure would, for example, also play an oversight and supervisory role for regional organisations such as the African Regional Intellectual Property Organisation (OAPI) and the African Regional Intellectual Property Organisation (ARIPO).

Establishing ACTRIPS at the national and regional levels could, if appropriately implemented, empower developing countries to maximise the benefits of intellectual property while reducing the social and economic costs of existing international legal obligations. This would also help these countries position themselves to contribute to the future development of suitable international legal norms affecting national innovation systems and policies. Furthermore, the

regional and interstate ACTRIPS would serve to institutionalise a broad-based coalition that could focus on both existing and new issues, monitor developments in different fora, including WIPO and the WTO, and serve as a vehicle for rapidly responding to TRIPS-plus pressures in an ongoing and systematic fashion. Finally, the ACTRIPS would make it possible for governments to continue to receive technical assistance from varied sources and process inputs from such assistance in a more systematic fashion that ensured continuity of policy making and decision making. The existence of such a permanent mechanism would also help alleviate the challenges caused by the rotation of the members of the permanent delegations of developing countries in Geneva as well as the alternating representation from the capitals.

Another challenge to be overcome is that of the actual representation in the negotiations at WIPO. This varies among developing countries. In some countries intellectual property matters nationally fall under the Ministry of Trade and/or Commerce. In others, these matters come under the Ministry of Justice. In yet other countries some aspects fall under Trade and/or Commerce while other aspects fall under Justice. As WIPO is a UN organisation, the permanent representation in Geneva is usually in the hands of the Ministry of Foreign Affairs whose representatives attend WIPO meetings at times together with capital-based officials from patent offices. This poses a challenge for coordination. Only those countries with well established systems of coordination nationally and in Geneva will operate with any degree of success. As discussed above, this challenge could be overcome by the ACTRIPS or an equivalent mechanism. In the meantime, it is imperative, if developing countries are going to influence negotiations at WIPO towards a development orientation, that the issue of representation in WIPO negotiations and coordination both nationally and in Geneva (WTO and WIPO) be discussed and resolved.

5.3 Tackling the influence of industry at WIPO and the role of civil society and other development organisations

Business and lawyer associations exercise a disproportionate influence on the processes and outcomes at WIPO. An important counter weight to this influence lies in increasing the participation of civil society groups and development organisations in WIPO activities as observers. Civil society groups have been the single most important factor in raising the issue of the impact of the international intellectual property standards, especially TRIPS standards, on development issues such as health, food and agriculture¹²². Yet currently, apart from the UN agencies and a few other organisations, there are very few public interest civil society groups that

¹²⁰See Reichman, 2003

¹²¹Note that the ACTRIPS would be about innovation policies and not just intellectual property

which is only one part of innovation issues

¹²²Drahos, 2002, p 35. See also IPRs Commission, 2002

have observer status and participate in WIPO discussions with the exception of the IGC¹²³. In addition, many of the civil society and development organisations which have observer status rarely attend WIPO negotiations. To remain effective in the long run these groups will have to engage in a better way in WIPO processes by increasing, for example, their participation, as observers, at various deliberative bodies in WIPO. Their presence at WIPO will provide an important opportunity for creating alliances between them and developing countries. As Drahos observes, “United minority factions can under certain conditions secure global regulatory change”¹²⁴.

Apart from the participation of civil society groups in WIPO as a counterweight to the influence of business and lawyers associations, another strategy to counter the influence of industry at WIPO would be to work towards a change of attitude by the International Bureau. Business associations have had the ability to determine the agenda at WIPO partly because the International Bureau feels dependent on industry – around 86 percent of WIPO’s revenues come from services provided to industry. The question is whether it should be WIPO that is beholden to industry or vice versa since it is WIPO which provides the services. Normal business practice would dictate that the service provider be beholden to the customer. But is WIPO a business enterprise?

While the International Bureau might want to think of itself as akin to a business enterprise, WIPO remains an international organisation that is answerable to its members, the majority of which are developing countries. WIPO is not in the realm of business and as much as it should strive to provide efficient services as mandated by its members, the provision of those services is not an end in itself but a means to an end. While one can expect industry threats of abandoning WIPO if it retreats from a pro-industry stance, the likelihood of this transpiring is questionable. It is one thing to move substantive standards to WTO in the form of TRIPS and quite another to take the PCT or Madrid systems to the WTO or to San Francisco, for example. There is no other viable alternative (at least in the near future) to the income generating services that WIPO provides for industry. In reality, it should be the industry that is beholden to the International Bureau and not vice versa. Another important step that is needed is to increase the participation of consumer and other public interest groups and development organisations in the IAC and PAC. The Director General should be urged and, if necessary, pressured to increase the representation of consumer and public interest groups in the two Commissions. Alternatively, the two Commissions, in particular, the IAC should be disbanded altogether as the interests of the indus-

try are represented by governments and through their participation (through industry and lawyer associations) in WIPO negotiations as observers.

*5.4 Improving the design and delivery of technical assistance*¹²⁵

The first step in improving the design and delivery of technical assistance is to carry out a sector-wide review of intellectual property related technical assistance from 1995, as proposed by the IPRs Commission, with a view to assessing its impact, limitations and means for improvement. In this process, particular emphasis should be placed on evaluating the legal technical assistance activities of WIPO. A necessary corollary of such an evaluation would be the development of a framework for continuous evaluation and review in future both outside and within WIPO.

Technical assistance in many ways is a service to promote and enhance policy formulation and review¹²⁶. Various inherent limitations apply to different providers and different technical assistance activities. Clearly, what WIPO can do is limited by its institutional orientations, political considerations and other limitations. This in itself should not be a problem. Problems arise when WIPO fails to acknowledge its limitations and when, in particular, it fails to establish clear professional standards by which its technical assistance provision is measured.

One way of improving the quality of WIPO’s technical assistance is by applying the principles of professional responsibility. The provision of technical assistance is akin to provision of professional services and generates a similar relationship as that between doctor and patient or lawyer and client. It requires a high level of responsibility and certain standards of professionalism from WIPO. Recipient countries should be clearly put in the picture about the institutional orientation and limitations of WIPO. More importantly, the International Bureau should recognise and acknowledge its limitations and delimit areas where its assistance poses the risks of bias, negative or positive discrimination or buy offs. For example, while the provision of assistance for the automation of offices may not pose direct problems, the provision of such services concurrently with legal technical assistance may be problematic however. The assistance must be geared, as it is in other fields, for the client to achieve what is in their best interest. This may well mean looking for many ways to exploit TRIPS flexibilities and loopholes in use of the existing rules, and ways to change them, rather than simply implementing them in ways that the proponents of such rules wish.

¹²³See Annex 2

¹²⁴Drahos, 2002, p 28

¹²⁵This section is partly based on ideas presented at the Second Bellagio Series of Dialogues 18-21

September 2003 Bellagio, Italy on the theme “Towards a Development-Oriented IPR Agenda: TRIPS-Plus, Technical Assistance and Technology Transfer” organised by UNCTAD and ICTSD. See, Musungu, 2003. For further discussion on WIPO’s

technical assistance also see the IPRs Commission, 2002

¹²⁶For discussion of some basic concepts of technical assistance in trade policy see Kostecki, 2001

The problems and challenges relating to the technical assistance provided by WIPO, however, call for stronger action beyond the application of professional responsibility principles. It calls for a change in the structure of the International Bureau. One approach is to consider the possibility of separating the norm setting functions of the International Bureau from its technical assistance activities especially those related to legal assistance. This could be done in either of two ways. WIPO could set up an independent arm for research and technical assistance. While it is beyond the scope of this paper to discuss the exact configuration of such an independent arm, one possibility would be to consider setting up a structure that would merge most of the functions of the Cooperation for Development Division of WIPO with those of the WWA to create a separate and independent entity from the International Bureau. While such a structure could still remain part of WIPO, it would be independent from the International Bureau and would answer to the WIPO General Assembly directly and not to the Director General. The head of such a new structure could be appointed directly by the

Member States based on his/her expertise in intellectual property and development issues.

Alternatively, a wholly independent entity, not part of WIPO, but funded by WIPO, could be established along the model of the Advisory Centre on WTO Law (ACWL). The managing board of such an independent entity could be drawn from UNCTAD, UNDP, UNESCO, UNIDO, the Food and Agriculture Organisation (FAO) as well as other international organisations with expertise in development and intellectual property. The board could also have representation from industry and from consumer and public interest groups. The idea of WIPO funding a wholly independent entity to provide technical assistance services should not be alien to WIPO. In the early days, its technical assistance activities were substantially funded by UNDP. While it is beyond the scope of this paper to elaborate the specifics of the suggested models, we consider that, with proper thinking, structures along the proposed models would go along way in addressing the limitations that affect the effectiveness of the current technical assistance provided by WIPO.

6. Final Remarks

Multilateral treaty making processes currently taking place at WIPO are likely to result in TRIPS-plus standards. These will eliminate or narrow the flexibilities that developing countries have been using to design and implement their intellectual property regimes in manner that supports their development objectives. For WIPO processes to fully take into account the development perspective and for the negotiation of new multilateral treaties to result in a development-oriented international intellectual property system, there is a need to:

- properly construe the mandate of WIPO in the context of its agreement with the UN;
- increase the participation and influence of developing countries, civil society and other development organisations in WIPO processes as a counterweight to devel-

oped countries, in particular the USA, Japan and the EC, and business interests that currently dominate WIPO's processes;

- ensure that the International Bureau serves the interests of all its members and does not cave in to threats of withdrawal by industry players; and,
- separate the norm setting functions of the International Bureau from its technical assistance activities.

While various possibilities, examined in this paper, can help make this happen, there are still various challenges that need to be overcome. More attention, expertise and resources will therefore have to be devoted to WIPO issues by the UN and its agencies as well as by developing countries themselves, civil society groups, donors and other development organisations.

Acronyms

ACE	Advisory Committee on Enforcement of Industrial Property Rights	PAC	Policy Advisory Commission
ACTRIPS	Advisory Council on Trade-Related Innovation Policies	PCT	Patent Cooperation Treaty
ACWL	Advisory Centre on WTO Law	PIPA	Pacific Intellectual Property Association
AIPPI	<i>Association Internationale pour la Protection de la Propriété Industrielle</i> (International Association for the Protection of Intellectual Property)	PLT	Patent Law Treaty
ARIPO	African Regional Intellectual Property Organisation	SCCR	Standing Committee on Copyright and Related Rights
BIRPI	<i>Bureaux Internationaux reunis pour la protection de la propriete intellectuelle</i> (United International Bureaux for the Protection of Intellectual Property)	SCP	Standing Committee on the Law of Patents
EC	European Community	SCT	Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications
ECOSOC	United Nations Economic and Social Council	SPLT	Substantive Patent Law Treaty
EPO	European Patent Organisation	TLT	Trade Mark Law Treaty
FAO	Food and Agriculture Organisation	TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
FTAA	Free Trade Area of the Americas	UEPIP	Union of European Practitioners in Industrial Property
GATT	General Agreement on Tariffs and Trade	UN	United Nations
IAC	Industry Advisory Commission	UNCTAD	United Nations Conference on Trade and Development
IAEA	International Atomic Energy Agency	UNDP	United Nations Development Programme
ICC	International Chamber of Commerce	UNESCO	United Nations Educational, Scientific and Cultural Organisation
ICJ	International Court of Justice	UNIDO	United Nations Industrial Development Organisation
ICTSD	International Centre for Trade and Sustainable Development	UPOV	International Union for the Protection of New Varieties of Plants
IGC	Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore	USA	United States of America
ILO	International Labour Organisation	USPTO	United States Patents and Trademarks Office
JPAA	Japan Intellectual Property Association and Japan Patent Attorneys Association	WCT	WIPO Copyright Treaty
NGO	Non-governmental organisation	WIPO	World Intellectual Property Organisation
OAPI	African Intellectual Property Organisation	WPPT	WIPO Performances and Phonograms Treaty
		WTO	World Trade Organisation
		WWA	WIPO Worldwide Academy

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Annex 1: Treaties administered by WIPO^a

A. Intellectual property protection treaties

Berne Convention for the Protection of Literary and Artistic Works (1886):

Establishes a Union for the protection of artistic and literary works. Artistic and literary works are defined to include every production in the literary, scientific and artistic domain, whatever may be the mode or form of its expression, such as books, pamphlets and other writings; lectures, addresses, sermons and other works of the same nature; dramatic or dramatico-musical works; choreographic works and entertainments in dumb show; musical compositions with or without words; cinematographic works to which are assimilated works expressed by a process analogous to cinematography; works of drawing, painting, architecture, sculpture, engraving and lithography; photographic works to which are assimilated works expressed by a process analogous to photography; works of applied art; illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science. There are currently 151 Contracting Parties to this treaty.

Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974):

Creates a world-wide system to prevent distributors from distributing programme-carrying signals transmitted by satellite which were not intended for those distributors by requiring each Contracting State to take adequate measures to prevent the distribution on or from its territory of any programme-carrying signal by any distributor for whom the signal emitted to or passing through the satellite is not

intended. There are currently 24 Contracting Parties to this treaty.

Convention for the Protection of Producers of Phonograms Against Unauthorised Duplication of Their Phonograms (1971):

Aims at protecting producers of phonograms against unauthorised duplication that is, making of duplicates without the consent of the producer and the importation of such duplicates, of phonograms. The Treaty defines phonograms to mean any exclusively aural fixation of sounds of a performance or of other sounds. There are currently 72 Contracting Parties to this treaty.

Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods (1891):

Creates a system for seizure, on importation, of all goods bearing a false or deceptive indication by which one of the countries to which the Agreement applies, or a place situated therein, is directly or indirectly indicated as being the country or place of origin. There are currently 33 Contracting Parties to this treaty.

Nairobi Treaty on the Protection of the Olympic Symbol (1981):

Aims to protect the use of the Olympic symbol by creating an obligation on all State parties to the Treaty to refuse or to invalidate the registration as a mark and to prohibit by appropriate measures the use, as a mark or other sign, for commercial purposes, of any sign consisting of or containing the Olympic symbol, as defined in the Charter of the International Olympic Committee, except with the authorisation of the

International Olympic Committee. There are currently 41 Contracting Parties to this treaty.

Paris Convention for the Protection of Industrial Property (1883):

Establishes a Union for the protection of industrial property. Industrial property under the Convention includes patents, utility models, industrial designs, trademarks, service marks, trade names, indications of source or appellations of origin, and the repression of unfair competition. There are currently 164 Contracting Parties to this treaty.

Patent Law Treaty (PLT) (2000 – not yet in force):

Aims at harmonising the formal requirements relating to the procedures for applying for, obtaining and maintaining patents. The treaty contains a set of standardised formal requirements for national and regional patent offices to apply when dealing with patent applications and covers issues relating to filing date, standardised forms, procedures for examination, compliance with time limits, means for avoiding unintentional loss of rights and electronic filing. There are currently 7 Contracting Parties to this treaty. Another 53 countries and the European Patent Organisation have signed the treaty but are yet to ratify it.

Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (1961):

Intended to protect the rights of performers, producers of phonograms, and broadcasting organisations. There are currently 76 Contracting Parties to this treaty.

^aThis is the status as at 15 October 2003

Trademark Law Treaty (TLT) (1994): Aims at regulating matters relating to registration of trade marks. The Treaty applies to marks consisting of visible signs relating to goods (trademarks) or services (service marks) or both goods and services. It excludes from its application hologram marks and marks not consisting of visible signs, in particular, sound marks and olfactory marks and collective marks, certification marks and guarantee marks. There are currently 31 Contracting Parties to this treaty.

WIPO Copyright Treaty (WCT) (1996): One of the two so-called internet treaties, it is a Special Agreement under article 20 of the Berne Convention, aimed at introducing new international rules and clarifying the interpretation of certain existing rules in order to provide adequate solutions to the questions in the copyright area raised by new economic, social, cultural and technological developments. Copyright protection under the Treaty is defined to extend to expressions and not to ideas, procedures, methods of operation or mathematical concepts

as such. There are currently 42 Contracting Parties to this treaty.

WIPO Performances and Phonograms Treaty (WPPT) (1996): The second of the internet treaties, it is aimed at introducing new international rules and clarifying the interpretation of certain existing rules in order to provide adequate solutions to the questions related to performances and phonograms raised by new economic, social, cultural and technological developments. There are currently 42 Contracting Parties to this treaty.

B. Global protection system treaties

Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (1977): Establishes a Union for the international recognition of the deposit of microorganisms for the purposes of patent procedures. Deposit of microorganisms under the Treaty refers to the transmittal of a microorganism to an international depository authority, which receives and accepts it, or the storage of such a microorganism by the international depository authority, or both the said transmittal and the said storage. There are currently 58 Contracting Parties to this treaty.

Hague Agreement Concerning the International Deposit of Industrial Designs (1925): The Hague system which consists of various Acts – The Hague Act of 28 November 1960, the London Act of 2 June 1934, the Additional Act of Monaco of 18 November 1961 and the

Complimentary Act of Stockholm of 14 July 1967 – establishes a Union concerning the International Deposit of Industrial Designs. There are currently 36 Contracting Parties to this treaty.

Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (1958): Establishes a Special Union under the Paris Convention for the protection of appellations of origin of products. Appellation of origin is defined under the Treaty to mean the geographical name of a country, region, or locality, which serves to designate a product originating therein, the quality and characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors. There are currently 20 Contracting Parties to this treaty.

Madrid Agreement Concerning the International Registration of Marks (1891): Establishes a Special Union for

the international registration of marks. The Treaty is aimed at securing protection for nationals of any of the contracting countries for their marks applicable to goods or services, registered in the country of origin, by filing the said marks at the International Bureau through the intermediary of the Office of the said country of origin. There are currently 74 Contracting Parties to this treaty.

Patent Cooperation Treaty (PCT) (1970): The Treaty establishes a Union, known as the International Patent Cooperation Union, for cooperation in the filing, searching, and examination, of applications for the protection of inventions, and for rendering special technical services. The aim is to provide a single system through which patent applicants file one international application that is valid in all Contracting States. There are currently 123 Contracting Parties to this treaty.

C. Classification treaties

Locarno Agreement Establishing an International Classification for Industrial Designs (1968): The Treaty establishes a Special Union for a single international classification system for the purposes of the protection of industrial designs. The system is of an administrative character only. There are currently 43 Contracting Parties to this treaty.

Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the

Registration of Marks (1957): The treaty establishes a Special Union for a common classification of goods and services for the purposes of the registration of marks. There are currently 72 Contracting Parties to this treaty.

Strasbourg Agreement Concerning the International Patent Classification (1971): The Treaty establishes a Special Union for a common classification, known as the "International Patent Classification", for patents for invention, inventors' certifi-

cates, utility models and utility certificates. There are currently 54 Contracting Parties to this treaty.

Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks (1973): The Treaty establishes a Special Union for a common classification for the figurative elements of marks known as "the Classification of Figurative Elements". There are currently 19 Contracting Parties to this treaty.

Annex 2: Observers to the WIPO Assemblies (as at 20 January 2003)^a

I. INTERGOVERNMENTAL ORGANISATIONS

CATEGORY A: United Nations System of Organisations

- | | | |
|--|--|--|
| 1. United Nations (UN) | 7. International Finance Corporation (IFC) | 13. World Meteorological Organisation (WMO) |
| 2. International Labour Organisation (ILO) | 8. International Development Association (IDA) | 14. International Maritime Organisation (IMO) |
| 3. Food and Agriculture Organisation of the United Nations (FAO) | 9. International Monetary Fund (IMF) | 15. International Fund for Agricultural Development (IFAD) |
| 4. United Nations Educational, Scientific and Cultural Organisation (UNESCO) | 10. International Civil Aviation Organisation (ICAO) | 16. United Nations Industrial Development Organisation (UNIDO) |
| 5. World Health Organisation (WHO) | 11. Universal Postal Union (UPU) | 17. International Atomic Energy Agency (IAEA) |
| 6. International Bank for Reconstruction and Development (IBRD) | 12. International Telecommunication Union (ITU) | |

CATEGORY B: (Industrial Property)

- | | | |
|--|--|---|
| 1. African Intellectual Property Organisation (OAPI) | 4. Benelux Designs Office (BBDM) | 8. Interstate Council on the Protection of Industrial Property (ICPIP) |
| 2. African Regional Industrial Property Organisation (ARIPO) | 5. Benelux Trademark Office (BBM) | 9. Patent Office of the Cooperation Council for the Arab States of the Gulf (GCC Patent Office) |
| 3. Arab States Broadcasting Union (ASBU) | 6. European Patent Organisation (EPO) | |
| | 7. Eurasian Patent Organisation (EAPO) | |

CATEGORY C: (Other Intergovernmental Organisations)

Worldwide

- | | | |
|--|---|--|
| 1. Commonwealth of Learning (COL) | 3. Arab Industrial Development and Mining Organisation (AIDMO) | 16. Federation of Arab Scientific Research Councils (FASRC) |
| 2. Community of Portuguese-speaking Countries (CPLP) 1 | 4. Asian-African Legal Consultative Committee (AALCC) | 17. General Secretariat of the Andean Community |
| 3. Environmental Crime Prevention Programme (ECPP) | 5. Association of South East Asian Nations (ASEAN) | 18. Islamic Educational, Scientific and Cultural Organisation (ISESCO) |
| 4. International Criminal Police Organisation (INTERPOL) | 6. (Board of the) Cartagena Agreement (JUNAC) | 19. Latin American Economic System (SELA) |
| 5. International Institute for the Unification of Private Law (UNIDROIT) | 7. Caribbean Community (CARICOM) | 20. Latin American Integration Association (LAIA) |
| 6. International Olive Oil Council (IOOC) | 8. Commission of the European Communities (CEC) | 21. League of Arab States (LAS) |
| 7. International Vine and Wine Office (IWO) | 9. Commonwealth Fund for Technical Cooperation (CFTC) | 22. Organisation of African Unity (OAU) |
| 8. Organisation internationale de la Francophonie (OIF) | 10. Commonwealth of Independent States (CIS) | 23. Organisation of American States (OAS) |
| 9. South Centre | 11. Conference of Latin American Authorities on Informatics (CALAI) | 24. Organisation of the Islamic Conference (OIC) |
| 10. World Trade Organisation (WTO) | 12. Council of Europe (CE) | 25. Central American Economic Integration Secretariat |
| | 13. Economic Community of the Great Lakes Countries (CEPGL) | 26. Secretaría de Cooperación Iberoamericana (SECIB) |
| | 14. European Free Trade Association (EFTA) | 27. Southern African Development Community (SADC) |
| | 15. European Audiovisual Observatory | 28. Union douanière et économique de l'Afrique centrale (UDEAC) |

Regional

1. African Regional Centre for Technology (ARCT)
2. Arab League Educational, Cultural and Scientific Organisation (ALECSO)

^aThis listing is based on the list on the WIPO website as at 27 November 2003. It does not include the new observers who were admitted at the 2003 WIPO Assemblies or any other observers who not listed on the website. The following organisations were admitted as observers at the 2003 Assemblies in September/October (see WIPO doc-

ument A/39/11, 7 August 2003). Intergovernmental organisations – African, Caribbean and Pacific Group of States (ACP Group) and Rede de Informacao Technologica Latino-Americana (RITLA); International NGOS – Computer Law Association (CLA), Co-ordinating Council of Audiovisual Archives Associations (CCAAA) and

International Music Managers Forum (IMMF); national NGOs – American Association for the Advancement of Science (AAAS), British Copyright Council, Copyright Research and Information Center (CRIC), Creators' Rights Alliance (CRA), Sociedade Portuguesa dos Autores (SPA) and South African Institute of Intellectual Property Law.

II. INTERNATIONAL NON-GOVERNMENTAL ORGANISATIONS

1. Action Aid
2. Actors, Interpreting Artists Committee (CSAI)
3. Afro-Asian Book Council (AABC)
4. American Film Marketing Association (AFMA)
5. AmSong
6. Arab Society for the Protection of Industrial Property (ASPIP)
7. ARTIS GEIE, Groupement européen des sociétés de gestion des droits des artistes interprètes
8. ASEAN Intellectual Property Association (ASEAN IPA)
9. Asia & Pacific Internet Association (APIA)
10. Asian Patent Attorneys Association (APAA)
11. Asia-Pacific Broadcasting Union (ABU)
12. Association européenne des éditeurs de journaux (ENPA)
13. Association européenne pour la protection des œuvres et services cryptés (AEPOC)
14. Association for the International Collective Management of Audiovisual Works (AGICOA)
15. Association for the Protection of Industrial Property in the Arab World (APPIMAF)
16. Association of Commercial Television in Europe (ACT)
17. Association of European Performers' Organisations (AEPO)
18. Association of European Radios (AER)
19. Association of European Trademark Proprietors (MARQUES)
20. Benelux Association of Trademark and Design Agents (BMM)
21. Biotechnology Industry Organisation (BIO)
22. Caribbean Broadcasting Union (CBU)
23. Central and Eastern European Copyright Alliance (CEECA)
24. Centre for International Industrial Property Studies (CEIPI)
25. Coalition for Intellectual Property Rights (CIPR)
26. Committee of National Institutes of Patent Agents (CNIPA)
27. Committee of Nordic Industrial Property Agents (CONOPA)
28. Confédération européenne des producteurs de spiriteux (CEPS)
29. Conseil francophone de la chanson (CFC)
30. Coordination of European Independent Producers (CEPI)
31. Coordination of European Picture Agencies-News and Stock (CEPIC)
32. Council of European Industrial Federations (CEIF)
33. CropLife International
34. Digital Media Association (DiMA)
35. Digital Video Broadcasting (DVB)
36. Entidad de Gestión de Derechos de los Productores Audiovisuales (EGEDA)
37. European Alliance of Press Agencies (EAPA)
38. European Association of Communications Agencies (EACA)
39. European Brands Association (AIM)
40. European Broadcasting Union (EBU)
41. European Bureau of Library, Information and Documentation Associations (EBLIDA)
42. European Cable Communications Association (ECCA)
43. European Chemical Industry Council (CEFIC)
44. European Committee for Interoperable Systems (ECIS)
45. European Communities Trade Mark Association (ECTA)
46. European Computer Manufacturers Association (ECMA)
47. European Council of American Chambers of Commerce (ECACC)
48. European Crop Protection Association (ECPA)
49. European Federation of Agents of Industry in Industrial Property (FEMIP)
50. European Federation of Pharmaceutical Industries' Associations (EFPIA)
51. European Film Companies Alliance (EFCA)
52. European Industrial Research Management Association (EIRMA)
53. European Information and Communications Technology Industry Association (EICTA)
54. European Publishers Council (EPC)
55. European Sound Directors Association (ESDA)
56. European Tape Industry Council (ETIC)
57. European Visual Artists (EVA)
58. European Writers' Congress (EWC)
59. Exchange and Cooperation Centre for Latin America (ECCLA)
60. Federation of European Audiovisual Directors (FERA)
61. Friends World Committee for Consultation (FWCC)
62. Global Anti-Counterfeiting Group (GACG)
63. Ibero-American Television Organisation (OTI)
64. Ibero-Latin-American Federation of Performers (FILAIE)
65. Independent Film Producers International Association (IFPIA)
66. Ingénieurs du Monde Ingénieurs du Monde
67. Institute for African Development (INADEV)
68. Institute of Professional Representatives before the European Patent Office (EPI)
69. Interactive Software Federation of Europe (ISFE)
70. Inter-American Association of Industrial Property (ASIP)
71. Inter-American Copyright Institute (IIDA)
72. International Advertising Association (IAA)
73. International Affiliation of Writers' Guilds (IAWG)
74. International Air Transport Association (IATA)
75. International Alliance of Orchestra Associations (IAOA)
76. International Anti counterfeiting Coalition, Inc. (IACC)
77. International Association for Mass Communication Research (IAMCR)
78. International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP)
79. International Association for the Protection of Industrial Property (AIPPI)
80. International Association of Art (IAA) Association Internationale des arts plastiques (AIAP)
81. International Association of Audio-Visual Writers and Directors (AIDAA)
82. International Association of Authors of Comics and Cartoons (AIAC)
83. International Association of Broadcasting (IAB)
84. International Association of Conference Interpreters (AIIC)
85. International Association of Entertainment Lawyers (IAEL)
86. International Bar Association (IBA)
87. International Bureau of Societies Administering the Rights of Mechanical Recording and Reproduction (BIEM)
88. International Centre for Humanitarian Reporting (ICHR)
89. International Chamber of Commerce (ICC)
90. International Commission of Jurists (ICJ)
91. International Communications Round Table (ICRT)
92. International Confederation of Free Trade Unions (ICFTU)
93. International Confederation of Music Publishers (ICMP)
94. International Confederation of Professional and Intellectual Workers (CITI)
95. International Confederation of Societies of Authors and Composers (CISAC)

96. International Cooperation for Development and Solidarity (CIDSE)
97. International Copyright Society (INTERGU)
98. International Council of Graphic Design Associations (ICOGRADA)
99. International Council of Scientific Unions (ICSU)
100. International Council of Societies of Industrial Design (ICSID)
101. International Council on Archives (ICA)
102. International Dance Council (IDC)
103. International DOI Foundation (IDF)
104. International Federation of Actors (FIA)
105. International Federation of Associations of Film Distributors (FIAD)
106. International Federation of Commercial Arbitration Institutions (IFCAI)
107. International Federation of Computer Law Associations (IFCLA)
108. International Federation of Film Producers Associations (FIAPF)
109. International Federation of Industrial Property Attorneys (FICPI)
110. International Federation of Interior Architects/Interior Designers (IFI)
111. International Federation of Inventors' Associations (IFIA)
112. International Federation of Journalists (IFJ)
113. International Federation of Library Associations and Institutions (IFLA)
114. International Federation of Musicians (FIM)
115. International Federation of Pharmaceutical Manufacturers Associations (IFPMA)
116. International Federation of Press Clipping and Media Monitor Bureaus (FIBEP)
117. International Federation of the Periodical Press (FIPP)
118. International Federation of Reproduction Rights Organisations (IFRRO)
119. International Federation of the Phonographic Industry (IFPI)
120. International Federation of Translators (FIT)
121. International Federation of Wines and Spirits (FIVS)
123. International Group of Scientific, Technical and Medical Publishers (STM)
124. International Hotel Association (IHA)
125. International Institute of Communications (IIC)
126. International Law Association (ILA)
127. International League of Competition Law (LIDC)
128. International Literary and Artistic Association (ALAI)
129. International Organisation for Standardisation (ISO)
130. International Organisation of Hotel and Restaurant Associations (HoReCa)
131. International Organisation of Journalists (IOJ)
132. International P.E.N.
133. International Poetry for Peace Association (IPPA)
134. International Publishers Association (IPA)
135. International Trademark Association (INTA)
136. International Union of Architects (UIA)
137. International Union of Cinemas (UNIC)
138. International Video Federation (IVF)
139. International Wine Law Association (AIDV)
140. International Writers Guild (IWG)
141. Latin American Association of Pharmaceutical Industries (ALIFAR)
142. Latin American Federation of Music Publishers (FLADEM)
143. Latin American Institute for Advanced Technology, Computer Science and Law (ILATID)
144. Law Association for Asia and the Pacific (LAWASIA)
145. Licensing Executives Society (International) (LES)
146. Max-Planck Institute for Foreign and International Patent, Copyright and Competition Law
147. Médecins Sans Frontières (MSF)
148. North American National Broadcasters Association (NANBA)
149. Organización Iberoamericana de Derechos de Autor-Latinautor Inc.
150. Pacific Industrial Property Association (PIPA)
151. Patent Documentation Group (PDG)
152. Pearle Performing Arts Employers Associations League Europe
153. Rights & Democracy Droits & Démocratie
154. Scandinavian Patent Attorney Society (PS)
155. Software & Information Industry Association (SIIA)
156. The Chartered Institute of Arbitrators (CIArb)
157. The World Conservation Union (IUCN) Union mondiale pour la nature (UICN)
158. Union Network International - Media and Entertainment (UNI-MEI)
159. Union of African Journalists (UAJ)
160. Union of European Practitioners in Industrial Property (UEPIP)
161. Union of Industrial and Employers' Confederations of Europe (UNICE)
162. Union of National Radio and Television Organisations of Africa (URTNA)
163. World Association for Small & Medium Enterprises (WASME)
164. World Association of Newspapers (WAN)
165. World Blind Union (WBU)
166. World Federation for Culture Collections (WFCC)
167. World Federation of Advertisers (WFA)
168. World Federation of Engineering Organisations (WFEO)
169. World Self Medication Industry (WSMI)
170. World Union of Professions (WUP)

III. NATIONAL NON-GOVERNMENTAL ORGANISATIONS

1. American Intellectual Property Law Association (AIPLA)
2. Asociación Nacional de Intérpretes (ANDI)
3. Associação Brasileira de Emissoras de Rádio e Televisão (ABERT)
4. Association Bouregreg (BOUREGREG)

Annex 3: Policy Advisory Commission Members (November 2003)^a

1. ABOULNAGA Fayza, Minister of State for Foreign Affairs, Arab Republic of Egypt

2. AMIGO CASTAÑEDA Jorge, Director General, Mexican Industrial Property Institute, Mexico

3. ARAI Hisamitsu, Secretary-General, Secretariat of the Intellectual Property Strategy Headquarters, Cabinet Secretariat, Japan

4. BRIMELOW Alison, Chief Executive of Patents, Designs and Trade Marks, The Patent Office, United Kingdom of Great Britain and Northern Ireland

5. DE MARCO Guido, President of the Republic of Malta

6. GABAY Mayer, President, United Nations Administrative Tribunal, and Chairman, Patent and Copyright Laws Revision Committees, Ministry of Justice, Israel

7. HERMASSI Abdelbaki, Minister for Culture, Tunisia

8. ILIESCU Ion, President of Romania

9. KADIRGAMAR Lakshman, President's Counsel, Member of Parliament and former

Minister for Foreign Affairs, Democratic Socialist Republic of Sri Lanka

10. KESSEDJIAN Bernard, Ambassador and Permanent Representative of France, Permanent Mission of France in Geneva

11. KORCHAGIN Alexander, Director General, Russian Agency for Patents and Trademarks (Rospatent)

12. LEHMAN Bruce, President, International Intellectual Property Institute, and former Assistant Secretary for Commerce and Commissioner of Patents and Trademarks, United States of America

13. LUCINSCHI Petru, former President of the Republic of Moldova

14. MARCHI Sergio, Ambassador and Permanent Representative of Canada, Permanent Mission of Canada in Geneva, and former Trade Minister for Canada

15. MAYOR Federico, President of the Science Council, Ramon Areces Foundation, and former Director General of UNESCO

16. NARAYAN S, Economic Adviser to the Prime Minister, India

17. OLSSON Henry, Special Government Advisor, Ministry of Justice, Sweden, and former Director of Copyright Department, WIPO

18. PORZIO Marino, attorney, Adviser to the Ministry of Foreign Affairs, Chile

19. RAMOS Fidel, former President of the Republic of the Philippines

20. SALIM Ahmed Salim, former Prime Minister of the United Republic of Tanzania, and former Secretary General of the Organisation of African Unity

21. SAMPAIO Jorge, President of the Portuguese Republic

22. SELEBI Jacob S, National Commissioner, South African Police Service, South Africa

23. SONG Jian, Vice-Chairman of the People's Political Consultative Conference of China, and former State Councilor in charge of science and technology development, People's Republic of China

24. STOYANOV Petar, former President of the Republic of Bulgaria

Annex 4: WIPO Industry Advisory Commission Members (November 2003)^b

1. Mr Talal Abu-Ghazaleh, President, Arab Society for the Protection of Intellectual Property, Jordan

2. Mr Heinz Bardehle, Dipl.-Ing., European Patent Attorney, Bardehle Pagenberg Dost, Altenburg Geissler Isenbruck. Germany

3. Ms Sheila Batchelor, Commissioner of Patents, Registrar of Trade-marks and Chief Executive Officer of the Canadian Intellectual Property Office, Canada

4. Mr Jason Berman, Chief Executive Officer and Chairman of the Board International Federation of the Phonographic Industry United Kingdom

5. Mr Robert Bishop, Chairman, Silicon Graphics World Trade Corporation Australia

6. Ms Marilyn S Cade, AT&T United States of America

7. Mr James Cochrane, Executive Director for Europe, Africa and the Middle East Glaxo Wellcome United Kingdom

8. Mr Michael K Kirk, Executive Director, American Intellectual Property Law Association, United States of America

9. Mr François Lagrange, Conseiller d'Etat, France

10. Mr Ma Lianyuan, Deputy Commissioner, State Intellectual Property Office of the People's Republic of China, People's Republic of China

11. Mr Carlos Roberto Liboni, First Vice-President, Federation of Industries of the State of São Paulo / Center of Industries of the State of São Paulo, Brazil

12. Mr Frederick Mostert, Intellectual Property Counsel, Richemont, South Africa

13. Mr Katsuo Ogawa, General Manager, Intellectual Property Office, Hitachi, Ltd, Japan

14. Tan Sri Dato' Dr Othman Yeop Abdullah, Executive Chairman, Multimedia Development Corp, Malaysia

15. Mr Art Sackler, Vice President – Law and Public Policy, Time Warner Inc, United States of America

16. Mr Ashok Soota, Group President, Wipro Infotech Group India

17. Mr Herman P Spruijt, Member of the Executive Board, Elsevier NV, The Netherlands

^aThe list is based on the list that was provided to the authors by the WIPO Secretariat

^bThe list is based on the listing on the WIPO website

QUNO / QIAP publications 1999-2003

Issues Papers:

**1. Regional and bilateral agreements and a TRIPS-plus world:
The Free Trade Area of the Americas (FTAA)**

David Vivas-Eugui, July 2003

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Constantine Michalopoulos, October 2003

Discussion Papers:

Food Security, Biotechnology and Intellectual Property:

Unpacking some issues around TRIPS

Geoff Tansey, July 2002

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options surrounding the protection of traditional knowledge**

Carlos Correa, November 2001

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and options for the 1999 review of Article 27.3(b) of the TRIPS
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**13. Trade Diplomacy, the Rule of Law and the Problem of
Asymmetric Risks in TRIPS**

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under the TRIPS Agreement and the Fifth Ministerial
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Seminar Reports and Other Papers:

**The WTO TRIPS Agreement and the Protection of Public
Health: Implementing paragraph 6 of the Doha Declaration**

Report on workshop held at Utstein Kloster, Norway, July 2002

Norwegian Ministry of Foreign Affairs / QUNO

Jonathan Hepburn

**Legal Options for Implementing Paragraph 6 Of the Ministerial
Declaration on the TRIPS Agreement and Public Health**

Presentation made at workshop at Utstein Kloster, Norway, July 2002

Frederick Abbott

**Legal Options for Implementing Paragraph 6 Of the Ministerial
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Marco Bronckers

**Promoting participation for negotiating food and biodiversity in
the post-Doha TRIPS work programme**

Report on fifth residential seminar at Jongny-sur-Vevey, May 2002.

Jonathan Hepburn

Review of TRIPS Article 27.3(b): Proposals submitted in the WTO

Jonathan Hepburn, April 2002

What did developing countries get in Doha? Some QUNO

assessments of the WTO Ministerial Conference

Brewster Grace and Jonathan Hepburn, December 2001

**A TRIPS Agenda for development: Meeting food, health and bio-
diversity needs**

Report on conference held in The Hague, Netherlands, October

2001. Netherlands Ministry of Foreign Affairs / QUNO

Jonathan Hepburn

**A Development Agenda for Implementing TRIPS: Addressing
biodiversity, food and health needs**

Report on fourth residential seminar at Jongny-sur-Vevey,

September 2001

Jonathan Hepburn

**Development Co-operation, TRIPS, Indigenous Knowledge and
Genetic Resources**

Report on third residential seminar at Jongny-sur-Vevey, April 2001

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