



The World Intellectual Property Organisation - An Institutional Model for UN Environmental Reform?

Report to the Federal Ministry for the Environment, Nature Conservation
and Nuclear Safety (BMU)

August 2009

Christiane Gerstetter

Nils Meyer-Ohlendorf

Susanah Stoessel

Ecologic Institute

Pfalzburger Str. 43-44, D-10717 Berlin, Tel. +49 30 86 88 00, Fax +49 30 86 88 0100

E-Mail: nils.meyer-ohlendorf@ecologic.eu, christiane.gerstetter@ecologic.eu

1	EXECUTIVE SUMMARY AND CONCLUSIONS	3
2	INTRODUCTION	6
3	REFORMING INTERNATIONAL ENVIRONMENTAL GOVERNANCE: RECENT DEVELOPMENTS.....	9
4	LESSONS FOR IEG FROM THE WIPO MODEL?	11
5	OVERVIEW OF THE WIPO STRUCTURE	12
5.1	OVERALL STRUCTURE: WIPO AS AN UMBRELLA ORGANIZATION	12
5.2	MANDATE AND OVERVIEW OF WIPO'S WORK	15
5.2.1	<i>Administering existing IP agreements and providing IP Services</i>	<i>15</i>
5.2.2	<i>Encouraging the Adoption of New IP Treaties (and Amending Existing Ones)</i>	<i>16</i>
5.2.3	<i>Encouraging the Use of Intellectual Property and Technical Assistance.....</i>	<i>16</i>
5.3	INSTITUTIONS.....	17
5.3.1	<i>WIPO General Assembly.....</i>	<i>17</i>
5.3.2	<i>Conference</i>	<i>18</i>
5.3.3	<i>Coordination Committee.....</i>	<i>18</i>
5.3.4	<i>International Bureau (Secretariat) and Director General.....</i>	<i>19</i>
5.3.5	<i>Committees, Working Groups and Commissions.....</i>	<i>20</i>
5.4	DECISION-MAKING.....	21
5.4.1	<i>WIPO Rules of Procedure and Decision-Making in Practice.....</i>	<i>21</i>
5.4.2	<i>Adoption of new Treaties and Amendment of Existing Treaties</i>	<i>22</i>
5.5	COOPERATION WITH OTHER INTERNATIONAL ORGANIZATIONS	22
5.5.1	<i>United Nations</i>	<i>23</i>
5.5.2	<i>WTO/TRIPs</i>	<i>23</i>
5.5.3	<i>Cooperation with other Intellectual Property Organizations</i>	<i>24</i>
5.5.4	<i>Cooperation with the EU.....</i>	<i>25</i>
5.6	MEMBERSHIP AND OBSERVERS.....	25
5.7	BUDGET	26
6	WHICH ELEMENTS OF THE WIPO MODEL COULD ADDRESS IEG'S SHORTCOMINGS? ..	27
6.1	THE WIPO MODEL: ADDRESSING THE FRAGMENTATION OF IEG?	28
6.2	THE WIPO MODEL: ADDRESSING THE LACK OF POLICY GUIDANCE?	30
6.3	THE WIPO MODEL: INJECTING MORE POLITICAL CLOUT INTO INTERNATIONAL ENVIRONMENTAL POLICIES?	32
6.4	THE WIPO MODEL: PROVIDING IEG WITH ADEQUATE FUNDING?	33
6.5	TRANSFERABILITY: CONCLUSIONS	34
7	REFERENCES	35
8	INTERVIEW PARTNER	37
9	ANNEX I: OVERVIEW OF RECENT IEG REFORM INITIATIVES.....	38
10	ANNEX II: FINANCING OF THE IEG SYSTEM	40

1 Executive Summary and Conclusions

Against the backdrop of a long debate on reforming International Environmental Governance (IEG), **Brazil has proposed the creation of a UN Umbrella Organization** integrating the existing international structure (UNEP, GEF and the secretariats of the conventions) and stated that the role of the CSD must be reflected upon.¹ Although this proposal has not been spelled out in detail, Brazil has indicated that the World Intellectual Property Organization (WIPO), an overarching framework for a number of international treaties, is proof that such an umbrella organization is a viable option.

WIPO, an international organization founded in 1967 and awarded the status of a UN Specialized Agency in 1974, has a complex structure. It does not only comprise WIPO itself, but also the Berne Union for the Protection of Literary and Artistic Works and the Paris Union for the Protection of Industrial Property (“the Unions”), as well as various Special Unions. In addition, several other international treaties in the field of intellectual property are part of the WIPO framework. In total, there are 24 international treaties under the WIPO umbrella. While the Unions and treaties are legally independent from WIPO, there are strong links between WIPO and the different treaties. For example, WIPO and the Unions have the same Director General and the same secretariat, as well as one joint budget.

In principle, **WIPO’s umbrella structure has been successful** in providing guidance, coherence and consistency – the fundamental features of a successful governance system. The international system for governing the protection of intellectual property (IP) is illustrative for the debate on reforming international environmental governance because the elaborate structure of international IP protection incorporates a variety of independent international treaties, resembling the environmental system’s complex web of multilateral environmental agreements. What serves to be learned from the WIPO example is how it maintains a complex structure, which is at the same time effective in accomplishing its objectives. It is a structure that strives to reap the benefits of collaboration while avoiding the drawbacks of legal confusion and loss of focus.²

In more detail, the WIPO model provides the following **insights for the IEG reform debate**:

- An **umbrella structure** can provide coherence and consistency, while retaining the autonomy of the international treaties under it. In the case of the international IP regime, WIPO’s structure as an **umbrella organization** has ensured flexibility – by maintaining the autonomy of the small, legally independent intellectual property Unions under its framework – while guaranteeing overall coherence and consistency. Like multilateral environmental agreements (MEAs), the agreements in the WIPO framework are in principle legally independent from each other. Their institutions are responsible for administering and developing a specific international intellectual

¹ Co-chairs’ summary of the Ministerial Conference on Environment and Sustainable Development: Challenges for International Governance, held in Rio de Janeiro on 4 and 5 September 2007.

² Jerry Velasquez, Issues Related to MEA Institutional Clustering, 6 March 2007. Accessed through: <http://www.iisd.ca/mea-1/guestarticle22.htm>

property treaty. The treaties and Unions also have their own decision-making bodies. Nevertheless, WIPO, the Unions and the various agreements are closely linked through a series of procedural and legal mechanisms. These mechanisms ensure that no decision is taken against the will of the members of any of the Unions, in matters of concern to them.

- An **institutional setup** that incorporates a strong Directorate General and Secretariat, Standing Committees, joint sessions of Assemblies, and a Coordination Committee can provide strong system coordination. This has been demonstrated by the case of WIPO:
 - WIPO has benefitted from a strong **Director General (DG) and Secretariat**. WIPO's DG and Secretariat have a particularly strong role in the technical aspects of norm-setting and in developing harmonized procedures and classification schemes for IP protection. Provision of services of a technical and administrative nature (to those who apply for or wish to register patents, marks, and other forms of intellectual property) is the area to which WIPO dedicates several hundred staff persons and from which it generates most of its revenue.
 - **Standing committees** are at the core of WIPO's norm-setting efforts and have provided continuity in the organization's dealings with specific issues. Open to all WIPO Member States, the standing committees serve as fora for the negotiation of new treaties, providing a permanent and regular frame for discussions on evolving agendas.
 - Most decision-making happens in **joint sessions** of the bodies of WIPO and the various Unions under its roof. The annual session of the Assemblies of the Member States of WIPO has one common agenda and issues a "general report" containing references to the special reports of the individual Unions whose parties meet to discuss the agenda items of specific concern to them.
 - While the main political function of WIPO's **Coordination Committee** is to take decisions on high-level personnel, it also has a role in WIPO coordination. The WIPO Coordination Committee consists of WIPO Member States which are also members of the Executive Committee of the Paris Union and/or the Executive Committee of the Berne Union,³ as well as Member States that are not members of one of the Unions, but who are granted *ad hoc* membership in the Coordination Committee on questions that concern them.⁴ The Coordination Committee is the executive organ of WIPO and it is an advisory organ on administrative, financial, staff and other matters of common interest either to two or more of the Unions, or to one or more of the Unions and WIPO. Key to its coordination role, the Coordination Committee prepares the draft agenda of the WIPO General Assembly.

³ The actual rules of composition of the Committee are slightly more detailed and contained in Art. 8 WIPO Convention.
⁴ Article 8.1 (c) WIPO Convention.

- In the case of WIPO, **openness to non-state actors** ensures that its work and services are accepted by many actors – particularly intellectual property users. WIPO has been criticized, however, for being open mainly to its business constituencies and not taking full account of development and environment concerns.

However, **important disparities** in the substance and policies of the IP and environment fields exist. The WIPO system is a system protecting something very different – and decidedly narrower – in character than the environment. While the instrument for protecting intellectual property is essentially registering intellectual property, instruments for environmental protection are manifold. Reflecting these differences, there are some elements of the WIPO model that would need to be recast – to a further extent than the more directly applicable elements of WIPO – for the IEG system:

- In light of the long standing and difficult negotiations on IEG reform, coordination of international environmental policies by **one single joint Assembly, one secretariat and one Director General would appear to be a distant prospect**. Such a proposal would require fundamental changes in prevailing positions on IEG reform, not only in developing countries but also among those developed countries that have been in favour of far-reaching reforms. It remains to be seen whether the political space for such changes can be created.
- Like the creation of a joint secretariat or assembly, **WIPO's budget regime does not seem** – in political terms – **compatible with IEG**, which is very conscious of the budget autonomy of the various MEAs and largely based on voluntary contributions. Although the levels of WIPO's funding are sufficient – in fact grounds for envy –, this regime will not serve as a model for IEG. The transfer of WIPO's fee-based system to the environment is difficult. WIPO offers a tangible service with specific economic value when facilitating, for example, the registration of a patent. In contrast, environmental policies produce general benefits in the long run for society as a whole, making the transfer of a fee based system to the environment an unlikely and impractical option.

In sum, the WIPO model shows that its **practical modes of coordination** are effective in the WIPO system – with the promises and caveats mentioned above – and could possibly be made use of in the IEG system. Joint sessions of the bodies of the various Unions under the WIPO roof, for example, are akin to modes of coordination that have been suggested for MEAs with similar problem structures or shared functions⁵. Joint Assemblies of selected MEAs and the facilitation of direct negotiation and cooperation among Member States – in standing committees, expert committees, and country groups – may also prove effective in environmental governance. Efforts to cluster the chemicals-related MEAs have already successfully resulted in co-location, all secretariats being serviced by UNEP, and progress toward holding a joint Conference of the Parties. All these reforms have helped to provide greater focus and clarity, thus assisting Member States to implement their legal commitments under international law. But of course, the eventual effectiveness of applying any of the

⁵ Konrad von Moltke, Whither MEAs?: The Role of International Environmental Management in the Trade and Environment Agenda, 2001.

WIPO lessons will ultimately depend on the genuine political will to reform and improve IEG. Considering that past discussions on the creation of universal membership in UNEP's Governing Council or the up-grading of UNEP to a specialized agency have been much contested and remain unresolved issues, the transferring of some elements of WIPO to IEG may be met with similar controversy. In addition, it is important to recognize that WIPO's success cannot be attributed exclusively to its structure, its status as a UN specialized agency, or its (adequate) levels of funding. The support of influential coalitions of non-state actors playing an active role in IP protection has been key to the system's effectiveness. Lacking such a degree of (political) support has been a major drawback for the IEG system. This is becoming widely recognized in the international community and as a result there is a growing political space for making the changes necessary. In the wake of the global financial and economic crisis, governments are positioning themselves to transform the prevailing economic models and to institute a new global regulation. The process preparing the Rio plus 20 Conference in 2012 might be an opportunity to garner the required political will to overcome the controversies of the last decades; it will be an occasion to show that today's international governance system has a number of functioning options to improve international environmental governance. An umbrella organization for environment could be one such option, based loosely on the institutional setup of WIPO, which is generally recognized for its successful international governance of intellectual property protection.

2 Introduction

For many years, the United Nations Environment Programme (UNEP) has been the focal point of an international debate on the need for improved international environmental governance (IEG). There has been **much initiative** taken to catalyze the process of change in the international environmental governance system, including repeated urgent and emphatic calls and resolutions, issued even from the highest level of the United Nations. The following is an incomplete but representative **sampling of IEG reform initiatives**:

- In 2000, ministers of the Environment adopted the **Malmö-Declaration**, calling for “a more coherent and coordinated approach among international environmental instruments”.
- The **Cartagena Process** (2000–2002) was initiated to assess options for reforming GEG. The 21st Session of the UNEP Governing Council/Global Ministerial Environment Forum (GC/GMEF) convened the Open-Ended Intergovernmental Group of Ministers or Their Representatives on International Environmental Governance (IGC/IEG) to assess the options for strengthening UNEP, improving the effectiveness of MEAs and improving international policymaking coherence. The report from the process was transmitted to the CSD and to the WSSD.

- The **Johannesburg Plan of Implementation** (2002), adopted by the WSSD, called for the full implementation of the Cartagena decision.
- France – with the support of a number of EU Member States, notably Germany – called for creation of a **United Nations Environmental Organization** (UNEO) at the UN General Assembly (2003). In response, an informal working group was set up to facilitate dialogue among governments on UNEP reform.
- The **EU Spring Council in 2005** proposed that the UN summit in September 2005 initiate a process, to be part of UN reforms, and leading to negotiations on the establishment of a UN environmental agency, “based on UNEP, with a revised and strengthened mandate, supported by stable, adequate and predictable financial contributions and operating on an equal footing with other UN specialised agencies.”⁶
- The **UN Summit (2005)** called for tighter management of the entities of the IEG system in order to achieve strengthened coordination of the United Nations operational activities on internationally agreed goals. The Summit agreed to consider achieving this through a more integrated setup of the existing institutional framework. “Inviting the Secretary-General to launch work to further strengthen the management and coordination of United Nations operational activities so that they can make an even more effective contribution to the achievement of the internationally agreed development goals, including the Millennium Development Goals, including proposals for consideration by Member States for **more tightly managed entities** in the fields of development, humanitarian assistance and the **environment**. (...) we agree to explore the possibility of a more coherent institutional framework to address this need, including **a more integrated structure**, building on existing institutions and internationally agreed instruments, as well as the treaty bodies and the specialized agencies.” A **High Level Panel on UN-wide Coherence in the Areas of Humanitarian Assistance, the Environment, and Development** (2006) was created after the World Summit in New York (2005). It recommended in its 2006 report that an independent assessment of international environmental governance within the UN system and related reform needs should be carried out. Moreover it recommended the upgrading of UNEP and that UNEP should have “real authority as the environmental policy pillar of the UN system”.⁷
- Most recently, in Summer 2009, French President Sarkozy called for the creation of a “a real World Environmental Organization, an anchor for all the tools that are currently dispersed.”⁸

Although opinions continue to differ on options for a reformed IEG system, these initiatives have **produced agreement on a number of reform issues**.⁹ Ministerial consultations within

⁶ Brussels European Council, 16 and 17 June 2005, Presidency Conclusions, Doc. 10255/1/05 REV 1, para. 39.

⁷ The Secretary-General’s High-Level Panel, *Delivering as One – Report*, November 2006, New York

⁸ Speech of French President Sarkozy of 26 August 2009, <http://www.franceonu.org/spip.php?article4127>

⁹ Ministerial Conference on Environment and Sustainable Development: *Challenges for International Governance*, held in Rio de Janeiro on 4 and 5 September 2007; Twenty-fourth session of the GC/GMEF, 5-9 February 2007; Tenth special session of the GC/GMEF, 20-22 February 2008 ; Draft Resolution on IEG.

the context of the UNEP GC/GMEF have yielded wide agreement that “any new or improved entity should be based in Nairobi and should build on the current strengths of UNEP” and that IEG and United Nations reform are “evolutionary in nature”.¹⁰ Consultations at the broader level of the UN General Assembly, within the context of the Informal Consultative Process on the Institutional Framework for the United Nations’ Environmental Activities, have similarly yielded “a clear preference for building on existing mandates, norms and structures instead of creating new ones”.¹¹ In their summary document, the **co-chairs cited the following options for institutional structure** that were identified by the Ministerial Conference on Environment and Sustainable Development - Challenges for International Governance.¹²

- The transformation of UNEP into a new institution (organization or agency) whose role would be to coordinate all actors in the environment field, with an emphasis on resource mobilization, the strengthening of institutional capacities, technology transfer and the dissemination of scientific knowledge.
- Maintaining UNEP in its present format, while strengthening the programme. There is a need to decentralize its structure, as well as to increase the decision-making and implementing power of its regional offices.
- The possibility of improving the system through strengthening/improving the UN Economic and Social Council, by means of enhanced coordination between the Council and its thematic commissions and other agencies was also mentioned.

In addition, the co-chairs have considered the **Brazilian proposal for an umbrella organization** as another option. Although not spelled out in detail, such an umbrella institution (organization or agency) would articulate environmental and sustainable development, in the normative, cooperation and financing dimensions, in implementation aspects, such as technology transfer and the dissemination of scientific knowledge, as well as in capacity-building for complying with multilaterally agreed objectives. The institution would integrate the existing international structure (UNEP, GEF and the secretariats of conventions). In this context, the role of the Commission on Sustainable Development must be reflected upon.

These various reform initiatives have also produced and formally adopted **various recommendations**. Recommendations have generally addressed issues such as enhanced coordination; improved policy guidance; strengthened scientific knowledge; and better treaty compliance. They have underlined the legal autonomy of multilateral environmental

¹⁰ President’s summary of the discussions by ministers and heads of delegation at the twenty-fourth session of the Governing Council/Global Ministerial Environment Forum of the United Nations Environment Programme, 5-9 February 2007, p. 8.

¹¹ “Co-chairs talking points at the presentation of the draft resolution on IEG in May 2008” in Issues Paper for Ministerial Dialogue for the 12th Session of the African Ministerial Conference on the Environment, p. 6.

¹² Held in Rio de Janeiro in September 2007.

agreements (MEAs) treaties; and called for better integration of environmental activities in the broader sustainable development framework at all levels.¹³

It has become evident that agreement on general issues is often possible but very difficult when details and concrete action is the matter of negotiations. Quite rightly, it has been contended that “adding new elements and organizations has tended to be easy; changing existing ones next to impossible.”¹⁴ In spite of this lengthy history of IEG reform initiatives, real change, of the order demanded by these calls, still sits on the horizon. Recent moves in the IEG debate, however – namely the Belgrade process bringing together a consultative group of ministers on IEG – aim to develop a concrete set of options that could lead soon to long-awaited changes.

In light of Brazil’s proposal at the Rio Conference in September 2007, this paper analyses the pertinence of using elements of the WIPO model in shaping international environmental governance reform. To this end, the paper first puts the proposal in the context of the most recent IEG discussions and discusses the reasons for examining elements of the WIPO model for use in IEG reform. In the next chapter, the paper explores WIPO’s structure, in particular WIPO’s mandate, budget, decision-making procedure, membership and organs. In the following chapter, the paper analyses the elements of WIPO with relevance to the reform of the IEG system. The final chapter presents the broader lessons for IEG that can be drawn from the WIPO model.

3 Reforming International Environmental Governance: Recent Developments

In December 2008, the **Joint Inspection Unit (JIU) of the UN**¹⁵ adopted a comprehensive Management Review of Environmental Governance and concluded that:

“An overarching authority for global environmental governance is lacking within the United Nations system. UNEP has fallen short in exercising effectively its original mandate to coordinate all environmental initiatives in the United Nations system. Responses to environmental challenges have become sector-specific, specialized and fragmented, despite some improvement through the formation of clusters. Institutionally, the convening power of UNEP is dwarfed compared to other institutions dealing with major environmental concerns such as climate change.”¹⁶

¹³ Needs identified in paragraph 169 of the 2005 World Summit Outcome document which mandated the Informal Consultative Process on the Institutional Framework for the UN’s Environmental Activities.

¹⁴ Adil Najam, Mihaela Papa, Nadaa Taiyab, *Global Environmental Governance: A Reform Agenda* (Winnipeg: International Institute for Sustainable Development, 2006), 21.

¹⁵ The UN’s only independent external oversight body mandated to conduct evaluations, inspections and investigations system-wide.

¹⁶ Tadanori Inomata, *Management Review of Environmental Governance within the United Nations System* (Geneva: United Nations, 2008), 30.

The JIU review¹⁷ qualified this diagnosis, however, with substantial guidance on further action:

“It is essential that organizations with environmental responsibilities have an effective mechanism to discuss and agree on a holistic approach to ensure more productive and cost-effective responses to emerging major challenges. Any future institutional overhaul of global environmental governance needs to build on the reform of UNEP and good practices and lessons gleaned from successful international environmental regimes such as the Montreal Protocol. Such reforms should aim at promoting and enforcing:

- Common legally binding principles such as the law of treaties to reconcile substantive differences and contradictions among MEAs;
- A system-wide strategic planning framework for the management and coordination of environmental activities; and
- A set of common guidelines for the provision and use of administrative, financial and technical support services to enhance synergies between United Nations system agencies and MEAs, as well as among MEAs.”

Despite its grim assessment, the **JIU report also presents an opportunity**. The review not only has great authority because it presents an outside view of the current system, but also because it comprises a detailed and comprehensive analysis of the state of play. In addition, the review puts forward a number of unprecedented, targeted recommendations. Consequently, the review forms a solid basis for further debate on IEG, which will now be able to focus more on solutions rather than problem analysis. The review presents a window of opportunity for advancing the discussions to another stage. The EU has interpreted the report as a call for a radical overhaul of the current IEG and a fundamental up-grade of UNEP.¹⁸

In February 2009, the UNEP Governing Council decided to establish a **regionally representative, consultative group of ministers or high-level representatives**. This group is unique in its format – involving a limited number of countries from all regions, at the ministerial level – and is mandated to develop options for improving environmental governance by the 11th Global Ministerial Environment Forum. Each UN region is invited to propose between two and four governments to participate. Participation from additional countries is possible, but the intention is for the group to remain small. As an additional important innovation, this process will be capital driven.

¹⁷ Tadanori Inomata, Management Review of Environmental Governance within the United Nations System (Geneva: United Nations, 2008), 30-31.

¹⁸ Paragraph 137

4 Lessons for IEG from the WIPO Model?

Only at first sight, it seems awkward to compare the international protection of intellectual property (IP) rights and environmental protection as they are very **different in nature and scope**:

- Environmental policy making, for example, addresses a public good and works in - sometimes - extremely long time spans, while IP protection regulates the specific results of an individual's work within a short period of time.
- Although IP is a cross-cutting issue with a wide range of implications for business operation, its impacts differ considerably from the implications of environmental policies.
- Environmental policy is partly science driven, while IP has its base in human innovation.
- A multitude of policy instruments and legal techniques is required and used in environmental regulation. This is not the case for IP regulation where there is essential one key instrument of choice, i.e. the registration, and consequently protection, of intellectual property rights. In contrast, such different instruments as emission trading, the establishment of nature protection areas, or the prohibition of certain substances, are applied in environmental politics.

While these differences between intellectual property governance and international environmental governance must be kept in mind, **important similarities do exist between the two**, making a transfer of lessons possible¹⁹:

- Like international environmental policies, international protection of IP is governed by a complex *international* structure, consisting of a large number of different legal and policy instruments with a need for efficient coordination. Similar to environmental policies, international IP protection is largely governed by a system of legally independent treaties and Conventions.
- Like international environmental policies, the range of **international treaties protecting IP varies in** membership composition.
- Like international environmental policies, protection of IP requires an international response. Although IP protection remains largely within national jurisdiction, the globalized economy makes purely national IP protection obsolete, and so do environmental challenges, such as climate change, ozone depletion, and protection of the high seas.
- Like international environmental policies, international IP protection addresses distortion of competition through harmonization of standards.

¹⁹ For the details, refer to Chapter 6.

5 Overview of the WIPO Structure

The World Intellectual Property Organization (WIPO) is the most important, but – with the advent of the WTO and the spill-over of the IP debate to other fora, such as the CBD - no longer the only international organization that deals with intellectual property matters. Founded in 1967, the Geneva-based organization today has 184 member states, an annual budget of almost 300 million Swiss francs²⁰ and a regular staff of more than 900.²¹ This chapter gives a descriptive overview of WIPO's mandate, structures and functioning.

5.1 Overall Structure: WIPO as an Umbrella Organization

The WIPO system is complex. It does not only comprise WIPO itself, but also the Berne Union for the Protection of Literary and Artistic Works and the Paris Union for the Protection of Industrial Property (“the Unions”), as well as various Special Unions.²² In addition, several other international treaties, without unions of their own, are part of the WIPO framework. In total, there are 24 international treaties under the WIPO umbrella.²³

The WIPO Treaties

The treaties that are part of the WIPO framework can be divided into three main groups:

- **Intellectual Property Protection Treaties:** These treaties define agreed basic standards of intellectual property protection in each country. For example, the Berne Convention for the Protection of Literary and Artistic Works sets forth certain rights that authors of published work have in all countries that have ratified the Convention; the Paris Convention for the Protection of Industrial property sets out basic norms for the protection of industrial property (patents, trademarks, industrial designs, unfair competition) owned by nationals or residents of the Contracting States.
- **Global Protection System Treaties:** These treaties ensure that one international registration or filing has effect in all relevant Contracting Parties. They regulate the formalities of registering and filing of intellectual property rights and define the tasks of different institutions involved. Examples are the Patent Cooperation Treaty (PCT) or the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration.

²⁰ During the 2006/2007 biennium, see WIPO, Proposed budget for the 2008/2009 biennium, A/44/2. The sum corresponds to about 200 million Euro at the time of writing.

²¹ This is the 2006 figure, taken from WIPO, Proposed budget for the 2008/2009 biennium, A/44/2, para. 58.

²² Art. 2 WIPO Convention. The Special Unions are the Hague Union for the International Registration of Industrial Designs, the Lisbon Union for the Protection of Appellations of Origin and the Madrid Union for the International Registration of Trademarks and the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure and the Patent Cooperation Union.

²³ Two of them, the Singapore Treaty on the Law of Trademarks (of 2006) and the Washington Treaty on Intellectual Property in Respect of Integrated Circuits (1989), are not in force yet.

- **Classification Treaties:** These treaties create classification systems for inventions, trademarks and industrial designs and serve as search tools for patent, trademark and industrial design information databases.

The Unions that are part of the WIPO framework function **legally autonomously from WIPO**.²⁴ They are each responsible for administering and developing an international IP treaty. Legally, Unions have their own decision-making bodies. The election of the Director General is the only case in which the Unions are bound by a decision taken at WIPO level.²⁵ Reform and amendment processes within WIPO and the Unions are legally independent from each other.

However, WIPO and the Unions are not loosely associated entities, with full independence. Rather, the **WIPO Convention provides the umbrella framework** for the Unions. The WIPO system has been characterized as a “multi-level federal system”²⁶, under which WIPO represents the top-level or roof, with the Berne and Paris Unions as the second level, and the Special Unions as the third level.

Key features of WIPO’s umbrella structure are:

- Since 1974, WIPO has been a Specialized Agency of the UN.
- WIPO’s Director General also represents the Unions; he is their chief executive.
- Administrative tasks concerning WIPO *and* the individual Unions are performed by the International Bureau, i.e. the secretariat of the organization. The International Bureau is also assigned secretarial tasks in several other treaties, under which administrative services of some type are required.²⁷
- Since 1993, WIPO and the Unions have one joint budget and Member States pay their contributions to the budget as unitary payments to both WIPO and the Unions. The Director General and the secretariat play a major role in drafting the joint budget.
- WIPO membership and membership of the Paris and Berne Unions is nearly identical -- only a few WIPO members have not ratified the Berne Convention.²⁸ However, membership of the other agreements that are part of the WIPO framework varies widely, ranging from 25, in the case of the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks, to 141, in the case of the Patent Cooperation Treaty (PCT).

²⁴ Niemann 2008, p. 162.

²⁵ Niemann 2008, p. 162.

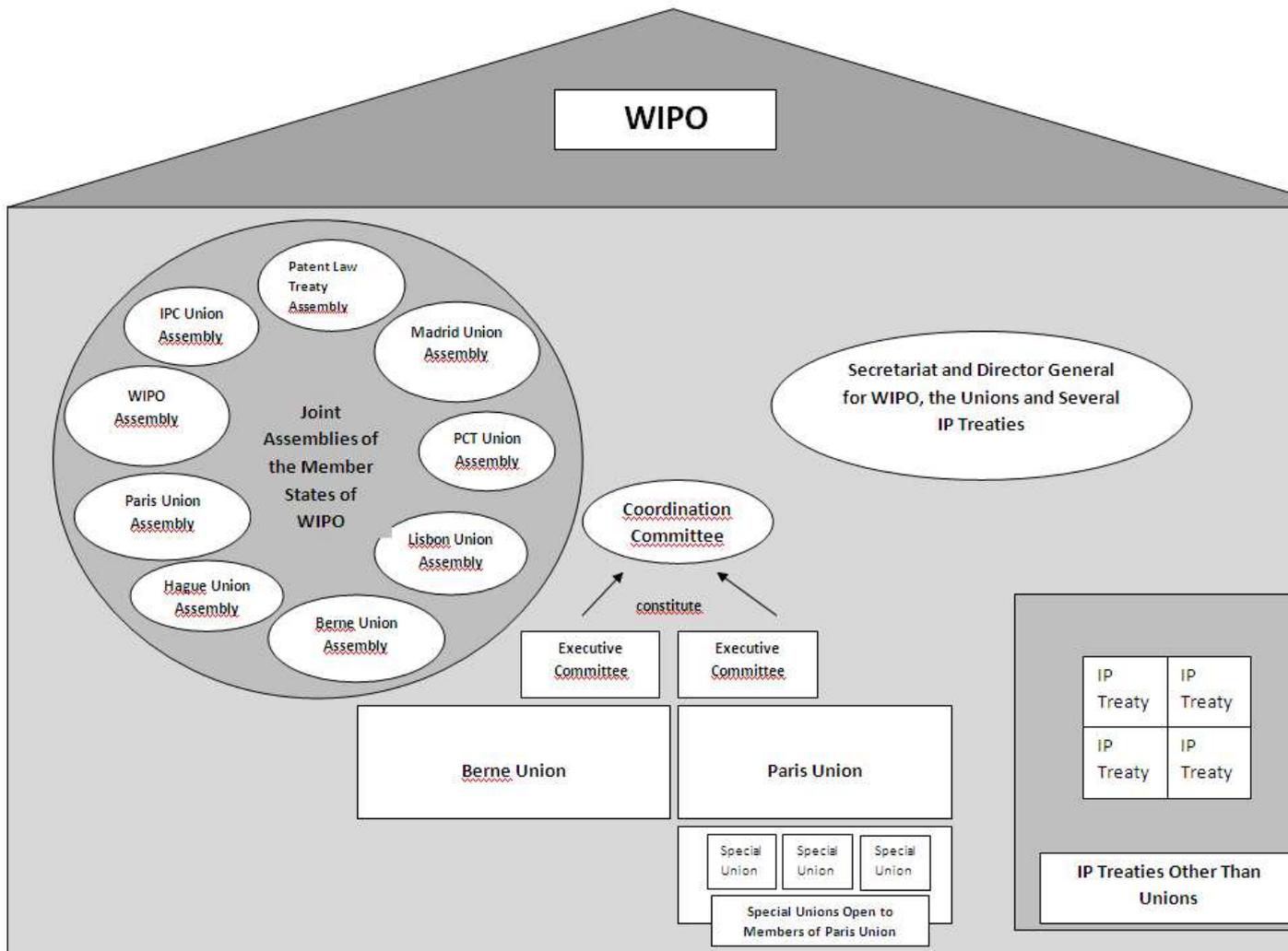
²⁶ Niemann 2008, p. 161. Niemann points out, however, that this characterization is not to imply any preponderance of the WIPO level.

²⁷ For example, the Patent Law Treaty.

²⁸ Membership lists are available through the search engine at http://www.wipo.int/treaties/en/SearchForm.jsp?search_what=B.

- Most of the actual decision-making happens in joint sessions of WIPO and the Union bodies. In practice, the governing bodies of WIPO and the Unions come together at least once a year for a series of joint meetings as the Assemblies of the Member States of WIPO in one session, a practice that dates back to 1979.²⁹ During these sessions, the parties of the respective treaties discuss agenda items. There is one agenda for the meeting of the Assemblies. The agenda lists the different items, specifying which assemblies and other bodies are concerned³⁰ and who is the competent chairperson. There is a “general report” of the meetings, containing references to the special reports of the individual Unions for specific matters in their competence.³¹

Figure 1: Structure of WIPO (source: Ecologic)



²⁹ Niemann 2008, p. 174.

³⁰ E.g. „Matters concerning the Madrid Union“ or „Matters concerning the PCT Union“

³¹ See for instance document A/45/5, http://www.wipo.int/edocs/mdocs/govbody/en/a_45/a_45_5.pdf

5.2 Mandate and Overview of WIPO's work

A specialized agency of the United Nations, WIPO has the **objective of promoting the protection of intellectual property (IP)** “throughout the world, through cooperation among states and in collaboration with other international organizations”. In addition, it is WIPO's objective to ensure administrative cooperation among the Unions and to develop a balanced and accessible international intellectual property system, which rewards creativity, stimulates innovation and contributes to economic development, while safeguarding the public interest.

In pursuit of these objectives, **WIPO is mandated to promote the development of IP protection measures and to perform administrative tasks** for the Unions or with regard to any other international IP protection agreement. WIPO also supports the conclusion of international IP agreements, offers legal–technical assistance in the field of intellectual property and – particularly important – provides services facilitating IP registration. In addition, WIPO is mandated to “take all other appropriate action” in the field of intellectual property.³² Nonetheless, observers have described WIPO's mandate as narrow, with a view to its exclusive focus on the promotion of intellectual property.³³

5.2.1 Administering existing IP agreements and providing IP Services

WIPO organizes and administers the **filing and publication of applications for and the registration** of various types of IP. For example, the Patent Cooperation Treaty grants any natural and legal persons the right to file international patent applications directly with offices – national or regional –and also, in exceptional cases, directly with the WIPO secretariat. The latter is responsible for the publication of such international patent applications. In general, an international application has effect in all member countries designated in the application and leads to the registration of the underlying mark, industrial design, etc, or the granting of a patent, in all countries or regional systems selected by the applicant. **WIPO charges fees for these services**, but in comparison to having to file applications with offices in different countries and languages and paying fees to each of them, WIPO's service reduces costs enormously. Providing this kind of IP services is WIPO's core activity and its main source of funding – a task relatively small compared to UNEP's portfolio.

WIPO's activities also involve the management of **collections of public databases**, for search and reference, the maintenance and updating of international classification systems, and the compilation of statistics, regional surveys of industrial property and copyright law administration. WIPO also compiles studies, statistics and background reports on the functioning of the treaties it administers.

Another fee-based service that WIPO offers is **dispute resolution**.³⁴ The WIPO Arbitration and Mediation Center - established in 1994 - offers mediation and arbitration mechanisms for

³² Art. 4 WIPO Convention.

³³ Musungu/Dutfield 2003, p. 3, 5.

³⁴ For more information see: WIPO: Intellectual Property Handbook, Chapter 4: Enforcement of Intellectual Property Rights, p.232-236.

the resolution of international commercial disputes between private parties. Any natural or legal person may use the mechanism. Proceedings are initiated by transmitting a request for mediation or arbitration to the centre and the respondent/the other party.³⁵ The subject matter of these proceedings includes both contractual disputes (e.g. patent and software licenses) and non-contractual disputes (e.g. patent infringement). Disputes concerning domain names are by far the largest number of disputes resolved by WIPO.³⁶ The costs of the procedure are borne in full by complainants. It also facilitates discussion by the parties on whether a specific dispute should be submitted to a WIPO dispute settlement.³⁷

5.2.2 Encouraging the Adoption of New IP Treaties (and Amending Existing Ones)

WIPO serves as a **forum for the negotiation of new and the amendment of existing treaties**. Many treaties (e.g., the Patent Cooperation Treaty, PCT) are regularly amended. Such amendments concern in particular the implementing regulations attached to the basic treaties. The pertinent negotiations are held in various WIPO committees foreseen in the relevant legal instrument or established ad hoc as a working group in order to keep the implementing regulations or administrative instructions up-to-date. These committees meet at WIPO headquarters in Geneva. The WIPO secretariat is heavily involved in the work of these committees, in particular when technical issues are discussed (see below).

WIPO Standing Committees are also fora for the negotiation of new treaties. Of the treaties on which negotiations were initiated by WIPO members, several were successfully concluded (such as the 1996 WIPO Copyright and WIPO Performances and Phonograms Treaties). Other projects, such as the Substantive Patent Law Treaty (SPLT) or the Treaty on the Protection of Audiovisual Performances have not met with the consent of all members and have consequently not been adopted.

5.2.3 Encouraging the Use of Intellectual Property and Technical Assistance

WIPO provides **technical assistance** to countries wishing to adapt their IP laws and the administrative structures of their IP offices. In this context, WIPO's development cooperation programs are particularly relevant. Developing countries are assisted in the establishment or reform of intellectual property systems. WIPO's activities include supporting Member States in technology transfer programs, especially by building capacity (p.ex. on technology licensing, patent drafting), supporting Member States in developing IP strategies and policies and technical cooperation with IP offices (p.ex. concerning automation of procedures and digitization of patent and trademark documentation), as well as assistance in drafting IP legislation, including the provision of entire draft law.³⁸ WIPO performs its technical assistance activities through four regional bureaus, covering the Arab world, Asia and the

³⁵ See Art. 6 of WIPO Arbitration Rules and Art. 3 of Mediation Rules respectively.

³⁶ See the number of disputes at <http://www.wipo.int/amc/en/center/caseload.html>

³⁷ See <http://www.wipo.int/amc/en/center/role.html>

³⁸ See [http://www.wipo.int/ip-development/en/legislative_assistance/modalities.html](http://www.wipo.int/ip-development/en/development/en/legislative_assistance/modalities.html) and <http://www.wipo.int/ip->

Pacific, Latin America and Africa, respectively. Furthermore, WIPO provides legal advice and technical assistance to members of the World Trade Organization (WTO) regarding the implementation of the TRIPs Agreement.³⁹

5.3 Institutions

The WIPO General Assembly and the Coordination Committee are WIPO's main decision-making bodies. They are assisted by the International Bureau as secretariat and a number of expert committees. While the General Assembly takes the fundamental decisions and provides policy guidance, the Coordination Committee fulfils advisory and administrative functions. The various committees, mandated to discuss certain sub-aspects of WIPO's work, are particularly important negotiation forums.

5.3.1 WIPO General Assembly

The General Assembly is the **supreme supervisory and decision-making organ** of WIPO.⁴⁰ The General Assembly consists of all WIPO members that are also members of one of the Unions.⁴¹ Each State is represented by one delegate, who may be assisted by alternate delegates, advisors and experts.⁴²

The **main functions of the General Assembly** are⁴³

- appointing the Director General upon nomination by the Coordination Committee
- giving instructions to and reviewing and approving the activities and reports of the Coordination Committee and the Director General
- approving the financial regulations of WIPO and its biennial budget
- approving the measures proposed by the Director General concerning the administration of any other international agreements designed to promote the protection of intellectual property and
- awarding observer status to national and international organizations.

In addition, the General Assembly may “exercise such **other functions** as are appropriate” under the WIPO Convention.⁴⁴

³⁹ Available online at http://www.wto.org/english/tratop_e/TRIPs_e/wtowip_e.htm

⁴⁰ Pfanner, 1979, p.7.

⁴¹ Art. 6.1 WIPO Convention.

⁴² Art. 6.1 WIPO Convention.

⁴³ Art. 6.2 WIPO Convention.

⁴⁴ Art. 6.2 (x) WIPO Convention.

In practice, the General Assembly meets at least once a year,⁴⁵ either in ordinary or extra-ordinary session.⁴⁶ An amendment to the WIPO Convention to have annual meetings of the General Assembly was adopted in 2003, but has not yet entered into force.

5.3.2 Conference

The WIPO Conference is another decision-making body provided for in the current version of the WIPO Convention. The important design contrast between the WIPO General Assembly and the Conference is that the **Conference consists of all states** that are members of WIPO, whether or not they are members of one of the Unions. The Conference is mandated, inter alia, to make recommendations on IP matters, to establish a biennial program of legal–technical assistance and to adopt the biennial budget of the Conference. The Conference is also responsible for adopting amendments to the WIPO Convention and for admitting observers to its meetings.⁴⁷ Voting procedures are similar to that of the WIPO General Assembly.

In practice, the roles of the Assembly and the Conference within WIPO were never very distinct. The Conference meets in the framework of the annual series of meetings of the WIPO member states; it is held together with the WIPO GA, in the same room. Moreover, as pointed out above,⁴⁸ there are no member states of WIPO that are not also members of one of the Unions; thus the memberships of the WIPO GA and the Conference are identical.

The competent bodies (i.e. the WIPO Conference and the assemblies of the Berne and Paris Unions) therefore **decided in 2003 to abolish the Conference.**⁴⁹ In the revised version of the WIPO Convention, the Conference's functions have been transferred to the WIPO General Assembly.⁵⁰ This serves the purpose of making the overall institutional structure of WIPO simpler and more efficient.⁵¹ The amendment was adopted with the specification that States party to the WIPO Convention but not members of one of the Unions administered by WIPO shall not have the right to vote on any matter for which the WIPO conference is responsible and which relates to a treaty to which the State was not party.⁵² This **amendment** to the WIPO Convention, however, **has not yet entered into force.**

5.3.3 Coordination Committee

The Coordination Committee is the **executive organ of WIPO.** It is also an **advisory organ** on administrative, financial, staff and other matters of common interest either to two or more of the Unions, or to one or more of the Unions and WIPO. The Coordination Committee prepares, inter alia, the draft agenda of the WIPO GA and nominates candidates for the post

⁴⁵ Reports of the WIPO meetings are online for all years since 1996, see http://www.wipo.int/meetings/en/topic.jsp?group_id=3&items=20

⁴⁶ See document A/37/5

⁴⁷ Art. 7 WIPO Convention.

⁴⁸ See above at page 13.

⁴⁹ See document A/39/15, paras. 166, 167.

⁵⁰ See the compilation of amendments in document A/39/2.

⁵¹ See WIPO General Assembly Working Group on Constitutional Reform, Third Session, Abolition of the WIPO Conference, Geneva, March 6 to 9, 2001 (WO/GA/WG-CR/3/3 Paragraph 1)

⁵² See the compilation of amendments in document A/39/2.

of the Director General⁵³ – the only major exception to the consensus decision-making approach of WIPO.⁵⁴ While the Coordination Committee has a role in WIPO coordination, its main political function is taking decisions on WIPO high-level personnel. Depending on the design of a similar organ in environmental policies, it is quite likely that such a coordination organ would have a broader portfolio.

The Committee consists primarily of the WIPO Member States which are also members of the Executive Committee of the Paris Union and/or the Executive Committee of the Berne Union.⁵⁵ The Coordination Committee currently has **83 members**,⁵⁶ which are elected as representatives of the different geographical regions.⁵⁷ The WIPO Convention, however, also provides for the ad-hoc membership in the Committee of states that are WIPO members, but not members of one the Unions, on questions that concern those states.⁵⁸ Although the number of states represented in the WIPO Coordination Committee is greater than the executive bodies of other international organizations,⁵⁹ proposals by a working group on constitutional reform to reduce the number of states represented in the Committee⁶⁰ were rejected. According to the WIPO Convention, the Coordination Committee meets once a year.⁶¹ In practice, however, it meets more frequently.

Decisions are taken, in practice, by consensus. For exceptional cases, in which the consensus approach is abandoned, each State has one vote.⁶² In these cases, pursuant to the WIPO Convention, the Coordination Committee takes decisions by a simple majority of the votes cast.⁶³ One specific feature is that even if a simple majority is obtained, any member state may request that an additional mechanism for counting votes be used, before the decisions are actually considered to have been adopted. The function of this additional mechanism is to ensure that only when a simple majority is reached among both the Members of the Paris Union and the Berne Union, is a proposal considered as adopted.⁶⁴ For this purpose, votes are counted on two separate lists, one containing the Members States of the Executive Committee of the Paris Union and the other the Member States of the Executive Committee of the Berne Union.

5.3.4 International Bureau (Secretariat) and Director General

The **International Bureau, i.e. the secretariat**, is WIPO's administrative organ and central to the organisation's daily work. Unique in international governance, the secretariat

⁵³ Article 8.3 WIPO Convention.

⁵⁴ There was one notable exception to the consensus approach related to corruption charges brought against WIPO's former Director General Kamil Idris and his early resignation in 2008. In this context, a vote was taken on the 2008/2009 Program and Budget, the adoption of which was blocked by the B- Group of industrialized countries and several other states not belonging to the B-Group.

⁵⁵ The actual rules of composition of the Committee are slightly more detailed and contained in Art. 8 WIPO Convention.

⁵⁶ The list of members may be compiled at http://www.wipo.int/treaties/en/SearchForm.jsp?search_what=B

⁵⁷ See document A/36/15, paras. 166 et seq.

⁵⁸ Article 8.1 (c) WIPO Convention.

⁵⁹ See the overview in document WO/GA/WG-CR/3/INF/2

⁶⁰ See WIPO General Assembly Working Group on Constitutional Reform, Third Session, WIPO Coordination Committee, March 6 to 9, 2001, (WO/GA/WG-CR/3/4, Paragraph 7).

⁶¹ Article 8.4 (a) WIPO Convention.

⁶² Article 8 Para.5 (a) WIPO Convention.

⁶³ Article 8 Para.6 (a) WIPO Convention.

⁶⁴ Article 8 Para.6 (b) WIPO Convention.

processes, in cooperation with national and regional patent offices, individual requests for registration of various types of IP or the granting of patents. It is practically a patent office of its own. Reflecting this mandate, the secretariat has about 1000 staff members, compared to about 800 working at UNEP. Moreover, it is also responsible for ensuring the proper operation of the bodies that govern the various international intellectual property agreements. For example, it is responsible for preparing sessions of the various committees and assemblies and plays a role in providing background information and compiling drafts and reports.

The **Director General** is the chief executive of WIPO and directs, with the assistance of two or more Deputy Directors General, WIPO's secretariat.⁶⁵ The Director General represents WIPO and reports to the General Assembly on the internal and external affairs of the organization. As a particularly important task, the Director General prepares the draft programs and budgets. The Director General and any staff member designated by her/him participate, without the right to vote, in all meetings of the General Assembly, the Conference, the Coordination Committee, and all other committees and working groups. The Director General concludes and signs headquarters agreements and bilateral and multilateral agreements.⁶⁶ The Director General is appointed for six years. A limitation to two terms was adopted in 1998,⁶⁷ but has not yet entered into force.⁶⁸

The secretariat performs the following **functions**:

- It runs the IP registration and filing systems as far as WIPO is assigned tasks under the various IP treaties.
- It implements all technical cooperation activities of WIPO.
- It prepares draft agendas, drafts and studies for the various WIPO bodies, and arranges all meetings.

5.3.5 Committees, Working Groups and Commissions

Apart from the operational services performed by the secretariat, the treaty-making and administrative activities at WIPO take place in standing committees, committees of experts, working groups, and other committees. Negotiations and discussions in these bodies shape the organization's work.⁶⁹ Providing a permanent and regular frame for discussions on evolving agendas, the committees and working groups play an important role in ensuring the continuity of WIPO's work.

⁶⁵ Article 9 Para. 2 WIPO Convention.

⁶⁶ Art. 12 WIPO Convention.

⁶⁷ See WO/GA/23/7, paragraph 22.

⁶⁸ According to http://www.wipo.int/treaties/en/wipo_article_9-3.html less than a half of the required 129 WIPO members have deposited their written approval of the amendment so far.

⁶⁹ Musungu/Dutfield, p.6.

The WIPO General Assembly currently has four **Standing Committees**, responsible for the discussion of intellectual property matters.⁷⁰ Although open to all WIPO Member States, normally only 70-80 Member States have sent representatives to meetings. The Standing Committees are supposed to meet on a regular basis, usually once or twice a year. Committees decide in practice by consensus.⁷¹ Committee chairs play an important role since they decide can propose compromise solutions in order to form a consensus and decide, whether a proposal has been adopted or not; they suggest which proposals should be deleted from draft treaty texts, how the proposals are framed and whether or not civil society representatives may speak at WIPO meetings. The work of Standing Committees has impacted WIPO's work significantly and has led to the adoption of treaties, as in the case of the Committee on Trademark and the revised Trademark Law Treaty. Standing Committees have regularly established working groups to informally examine specific issues in detail.⁷² The Standing Committees prepare the ground for diplomatic conferences by establishing the basic proposal and for decisions or resolutions to be adopted by the competent Assemblies (e.g. Paris or Berne Union) or the General Assembly.⁷³

The governing bodies of WIPO and the different Unions may establish other committees or working groups and assign them certain tasks, as needed. For example, several **Committees of Experts** are concerned with classification matters under classification treaties, i.e. the Locarno, Nice, Strasbourg and Vienna Agreements. A particularly important Committee is the Program and Budget Committee,⁷⁴ which is responsible for revising the budget and program proposals submitted by the Director General and monitoring its implementation. Currently, 53 members are represented in the Program and Budget Committee. They are elected by the WIPO General Assembly and represent different regions of the world. Committees can also be composed of external experts. For example, former Director General Kamil Idris initiated two such committees: the Policy Advisory Commission (PAC) and the Industry Advisory Commission (IAC); their members were directly appointed by the Director General and acted as his personal advisors on major political issues.

5.4 Decision-making

5.4.1 WIPO Rules of Procedure and Decision-Making in Practice

The **WIPO Rules of Procedure** apply to the proceedings of every WIPO body, apart from diplomatic conferences.⁷⁵ According to the Rules, proposals and amendments submitted by delegations shall only be voted on if supported by at least one additional delegation.⁷⁶ Decisions are taken in most bodies by simple majority.⁷⁷ On the basis of the one-country-

⁷⁰ The Standing Committee on the Law of Patents (SCP), the Standing Committee on the Law of trademarks, Industrial Designs and Geographical Indications (SCT), the Standing Committee on Copyright and Related Rights (SCCR) and the Standing Committee on Information Technologies (SCIT).

⁷¹ Gross 2007, p.65.

⁷² Musungu/Dutfield 2003, p. 6.

⁷³ Yu 2007, p. 1447.

⁷⁴ In its present form, it was created in 1998, see documents WO/GA/27, paras. 23-26. and WO/GA/23/4.

⁷⁵ Rule 1.

⁷⁶ Rule 25.

⁷⁷ Rule 23.

one-vote principle,⁷⁸ the General Assembly takes decisions by a two-thirds majority.⁷⁹ The decisions concerning the administration of international agreements not part of the WIPO framework require a three-fourths majority of the votes cast.⁸⁰ Decisions on an agreement with the United Nations require the support of 90 % of the votes cast.⁸¹ In practice, however, WIPO decides by **consensus**, which is hardly ever abandoned. A prominent exception to the consensus principle is the vote on candidates for the post of DG in Coordination Committee meetings and votes on the program and budget.

5.4.2 Adoption of new Treaties and Amendment of Existing Treaties

Negotiations on new international treaties or amendments to existing treaties are mostly initiated by the member states or other interested circles,⁸² i.e. business associations and patent law associations. The extent to which the WIPO staff is a crucial player to successfully initiating and concluding such negotiations varies widely, depending on the nature of the underlying subject matter (see below).

Proposals for new treaties or other legal instruments are, in the current structure of WIPO, negotiated in the relevant **Standing Committees**, and adopted by a diplomatic conference. Generally, the process of adopting new treaties has been described as slow, in line with what is generally the case in international law.⁸³ Similarly, proposals for treaty amendments are negotiated in the relevant Standing Committees. Most of the treaties under the WIPO roof grant the right to initiate such amendments not only to Member States, but also – to some extent – to the Director General.⁸⁴

With regard to the adoption of amendments, the treaties set forth different **quora**. Amendments to the WIPO Convention require approval of three-fourths of the members, plus the approval of the members of the Unions for amendments to the Convention that affect the Unions.⁸⁵ Depending on the subject of the amendment, the Berne and Paris Unions require a majority of three-fourths, four-fifths or all of the votes cast.⁸⁶

5.5 Cooperation with other International Organizations

Under the cooperation agreement with the UN, WIPO's work is closely coordinated with the bodies and other specialized agencies of the UN. In addition, WIPO networks with other

⁷⁸ Art.6.3 (a) WIPO Convention.

⁷⁹ Art.6.3 (d) WIPO Convention.

⁸⁰ Art.6.3 (e) WIPO Convention.

⁸¹ Art. 6.3 (f) WIPO Convention.

⁸² Schäfers 1996, p. 765.

⁸³ Kwakwa 2002, p. 182

⁸⁴ See for example Art. 17.1 Paris Convention; Art. 18.2 of the Patent Law Treaty.

⁸⁵ Art. 17.3 WIPO Convention.

⁸⁶ See Art. 17, 18 Paris Convention and Art. 26, 27 of the Berne Union.

intergovernmental and non-governmental organizations acting in the field of intellectual property.⁸⁷

5.5.1 United Nations

In 1974, WIPO became a **specialized agency of the UN**, with a mandate to administer IP matters. The Agreement concluded between WIPO and the UN⁸⁸ contains rules, inter alia, on information exchange,⁸⁹ mutual attendance of meetings⁹⁰ and establishing a close budgetary and financial relationship with the United Nations.⁹¹ Importantly, the Agreement also stipulates that WIPO takes into account the development objectives of developing countries, fosters technology transfer to developing countries and cooperates with the UN in the field of technical assistance.⁹² WIPO officials take part in the sessions of the UN Chief Executives Board for Coordination. In practice, however, the cooperation between WIPO and the UN appears loose, driven by the autonomy of WIPO as a specialized agency. While there are certain areas of joint interest between ILO, WHO, UNESCO and UNCTAD, on the one hand, and WIPO, on the other, cooperation does not seem to extend beyond the presence of WIPO staff at certain meetings of the other organizations.⁹³

While the day-to-day cooperation between WIPO and the UN is rather weak, the status of a UN Specialized Agency impacts WIPO's administration. WIPO applies UN staff regulations and salary levels and is subject to the jurisdiction of the ILO Administrative Tribunal (ILOAT). WIPO also participates in the UN security system.⁹⁴ Moreover, as a specialized agency of the UN, the Convention on Privileges and Immunities of Specialized Agencies is also applicable to WIPO.⁹⁵ The UN may also intervene in the event of perceived shortcomings in the functioning of WIPO. For example, the investigation of corruption charges against former DG Idris was triggered by the UN Joint Inspection Unit.

5.5.2 WTO/TRIPs

In practice, one of WIPO's more important cooperation partners is the World Trade Organization (WTO). WIPO concluded a cooperation agreement with the WTO in 1995,⁹⁶ with a view to the WTO Agreement on **Trade-Related Aspects of Intellectual Property Rights (TRIPs)**. The 1995 WIPO-WTO agreement regulates the responsibility of WIPO for providing technical assistance to states in implementing TRIPs, the mutual access to certain kinds of documents and the exchange of information between both organizations. WIPO

⁸⁷ A list of the organizations can be found at www.wipo.int/enforcement/en/cooperation.html.

⁸⁸ The Agreement is available online at www.wipo.int/treaties/en/agreement/

⁸⁹ Art. 6- 8 of the Agreement between the UN and WIPO.

⁹⁰ Art. 3 of the Agreement between the UN and WIPO.

⁹¹ Art. 16 of the Agreement between the UN and WIPO.

⁹² Art. 1, 9, 10 of the Agreement between the UN and WIPO.

⁹³ Interview with A. Schäfers.

⁹⁴ See document A/46/11.

⁹⁵ May 2007, p.25. The Convention is available on the Union of International Associations website: www.uia.org/legal/app51.php.

⁹⁶ Online at http://www.wto.org/english/tratop_e/TRIPs_e/wtowip_e.htm

moreover has observer status in the TRIPS Council meetings while the WTO participates as an observer in WIPO meetings. There has been only a low development of institutional co-operation between WIPO and the WTO,⁹⁷ however, which may be due, in part, to the fact that the WTO has only a small IP department.

With the advent of the WTO TRIPs Agreement, some observers had initially feared that WIPO would lose its central place in the international IP system, most observers agree now that **WIPO has maintained its role in international IP protection**.⁹⁸ While TRIPs plays a leading role in implementation -- likely due in part to the WTO review and dispute settlement mechanisms -- WIPO continues to be the primary forum for generating new forms of intellectual property protection, administering existing treaties and providing technical assistance to countries.⁹⁹ Moreover, while the WTO works slowly to establish consensual agreements among the entire membership, WIPO can act to initiate treaties and agreements between willing sub-groups that can, in time, become more generally acceded to. According to some observers, the division of tasks between both organizations and the shift to a more specialized role within the governance regime has prompted WIPO to become more rather than less active.¹⁰⁰

Some observers claim that the continuing significance of WIPO after the establishment of WTO is in part due to **fast action on the part of WIPO**. In a move aimed at preserving its relevance in the new scenario, the General Assembly of WIPO passed two resolutions in 1994 and 1995. The first required the organization's secretariat to assist WIPO members in relation to their obligations under TRIPs. The second expanded this obligation to offer support in establishing TRIPs compliance to WTO members that are not WIPO members, as part of a formal agreement over the coordination of technical assistance and other matters with the WTO.¹⁰¹

5.5.3 Cooperation with other Intellectual Property Organizations

WIPO is not the only international organization dealing with intellectual property matters. There are other organizations, particularly at the regional level, which have become part of the broader WIPO system for IP registration. For example, in 1978, WIPO concluded an agreement on working relations and cooperation with the **European Patent Office (EPO)**. The cooperation between EPO and WIPO is close, particularly with respect to PCT operations, patent documentation and information, and in the field of technical assistance to developing countries.¹⁰² WIPO has also concluded agreements with EPO and a limited number of other national/regional patent offices that set forth the rules according to which

⁹⁷ Niemann 2008, p. 167.

⁹⁸ See for example May, p. 95 et seq.

⁹⁹ Helfer 2004, p. 25.

¹⁰⁰ May 2007, p. 52, 53.

¹⁰¹ May/Sell 2005, p. 210.

¹⁰² WIPO Intellectual Property Handbook, Chapter 6, p. 381.

these offices act as international authorities for purposes of international applications under the Patent Cooperation Treaty.¹⁰³

5.5.4 Cooperation with the EU

WIPO also has a close cooperative relationship with the EU, as the EU runs an industrial property system of its own, represented by the Community Trade Mark and the Community Industrial Design, administered by the Office for the Harmonization of the Internal Market in Alicante. In the General Assembly and in most of the Unions – with the exception of the Madrid and the Hague Union – the EU has ordinary observer status as an international organization.

5.6 Membership and Observers

WIPO is made up of 184 member states, a **nearly universal organization**.¹⁰⁴ Membership has increased significantly since the establishment of WIPO in 1967, and especially since the establishment of the WTO. Membership is open to any state that

- is a member of one of the Unions, or
- is a member of the UN, or any of its specialized agencies, the International Atomic Energy Agency, or a party to the Statute of the ICJ.

Moreover, the WIPO GA may invite states to become members of WIPO.¹⁰⁵ Any country may become a member of the Berne and Paris Unions.¹⁰⁶ Today, the Berne Union has 164 members, while the Paris Union has 173. Numbers of membership diverge slightly, depending on whether all members of the Unions are counted or only those with current voting rights in the respective assembly.¹⁰⁷

WIPO members are also organized into country groups, which coordinate the negotiation of positions among themselves and are represented in different WIPO bodies, such as the Coordination Committee and the Program and Budget Committee. Each of the groups has a coordinator with a mandate for political negotiations; the coordinators are frequently in contact with each other. The **WIPO country groups** are the following:

¹⁰³ See for example the Agreement between the European Patent Organisation and the International Bureau of the World Intellectual Property Organization in relation to the functioning of the European Patent Office as an International Searching Authority and International Preliminary Examining Authority under the Patent Cooperation Treaty, online at http://www.wipo.int/export/sites/www/pct/en/texts/agreements/ag_ep.pdf

¹⁰⁴ See <http://www.wipo.int/members/en>.

¹⁰⁵ Art. 5 WIPO Convention.

¹⁰⁶ Art. 29 Berne Convention; Art. 21 Paris Convention.

¹⁰⁷ For example, according to Art.22.1a Berne Convention only those countries are members of the assembly of the Berne Union that are bound by certain procedural provisions of the Convention. This is, however, the case for the overwhelming majority of the members of the Berne Union – only three of the countries members to the Berne Union do not seem to be members of the assembly of that Union, see numbers of members in the assembly obtainable at http://www.wipo.int/treaties/en/SearchForm.jsp?search_what=B

Name	Countries
B-Group	North America, Europe, Japan, Australia, New Zealand and Turkey
Group of Central European and Baltic States	Poland, Czechia , Hungary, Baltic States
Group of East European and Central Asia	Krgyzstan, Uzbekistan, Russian Federation, Belarus, Ukraine
Group of Latin American and Carribean States (GRULAC)	Central and South America
African Group	African continent
Asian Group	Asian states without Central Asia, Japan and China

WIPO meetings are open to **observers from civil society and non-governmental organizations** (NGO)¹⁰⁸. Over 250 NGOs and IGOs currently have official observer status at WIPO, with trade and industry organizations and associations of the relevant professions (patent and trademark attorneys, lawyers, authors, inventors) from developed countries making up the vast majority of these.¹⁰⁹ WIPO has been described as very open to the participation at individual meetings of ad-hoc observers other than governments; observers are, quite regularly, allowed to speak at meetings.¹¹⁰ Some observers suggest, however, that public-interest NGOs, particularly those from developing countries, should have a stronger role.¹¹¹

5.7 Budget

Thanks to its unique, mainly **fee-based funding structure**, WIPO is sufficiently funded for performing its tasks.¹¹² Fees are due for the different services that WIPO provides, including the filing of applications, the examination of claims by the patent offices or the renewal of certain intellectual property rights. The WIPO budget for the 2008/2009 is close to 650 million Suisse Francs (ca. 430 million Euro at time of writing), of which 630 million are earmarked for expenditure.¹¹³ Fees are estimated to represent about 90% of overall WIPO income in

¹⁰⁸ See the guidelines for admission of observers at <http://www.wipo.int/members/en/admission/observers.html>.

¹⁰⁹ Gross 2007, p.65; for the list of observers see: <http://www.wipo.int/members/en/organizations.jsp>.

¹¹⁰ Interview with A. Schäfers.

¹¹¹ Gross 2007, p.73.

¹¹² See Ryan 1998, p.133.

¹¹³ WIPO: Proposed Program and Budget for the 2008/09 Biennium - Memorandum of the Director General; A/44/2, p.17.

2008/09, with 75% of total income coming from fees under the PCT alone.¹¹⁴ 5% of total income is made up of contributions from Member States. For the purposes of determining the contribution of each Member State, each state belongs to one of 14 classes. Member States of Class I, the highest slot, pay 25 contribution units, whereas members belonging to the lowest class pay 1/32 of one contribution unit.¹¹⁵ The Member State contributions in the 2008/2009 budget range from about 1,400 Swiss francs to 1.1 million Swiss francs.¹¹⁶

Although according to Article 11 of the WIPO Convention, WIPO should have two budgets -- one for common expenses of the Unions, and one for the Conference, as competent organ of WIPO. However, since 1993, **WIPO and the Unions have, in practice, one joint budget.** The budget allocates how much money is earmarked for WIPO and for the Unions. Members pay their contributions to the budget on the basis of a system of unitary payments to both WIPO and the Unions. The Working Group on Constitutional Reform proposed turning this practice into a treaty amendment,¹¹⁷ which was adopted by the WIPO General Assemblies in 2002.¹¹⁸

In the process of **preparing a draft budget**, the WIPO Director General and secretariat play a major role. Every two years, after revision by the Program and Budget Committee and - nowadays - after extensive consultations with member states, WIPO's Director General presents a draft program and budget to the Member States for approval.¹¹⁹ The WIPO Assemblies then adopt the budget and program. The current mechanism for the preparation of the WIPO Program and Budget was approved by the Member States at the WIPO General Assemblies in October 2000.¹²⁰

6 Which Elements of the WIPO Model Could Address IEG's Shortcomings?

It has been contended that WIPO's structure as an umbrella organization has ensured flexibility through the autonomy of small and independent Unions, while guaranteeing coherence and consistency through the guidance of joint Assemblies, one secretariat and one Director General. Furthermore, standing committees of experts are at the core of WIPO's work and have provided continuity and consistency of the organization's dealings with specific subject matters. In sum, WIPO's umbrella structure has been successful in providing guidance, coherence and consistency; although Member States have held the view

¹¹⁴ Generally, fees for applications are based on the filing of the application as well as changes and renewals. Their amount depends on the volume of the application and the volume of work required from WIPO entities. The fees are published on the WIPO website, see for example <http://www.wipo.int/hague/en/fees/sched.htm> for industrial designs and <http://www.wipo.int/export/sites/www/pct/en/fees.pdf> for patents. In the area of dispute resolution, fees depend on the amount of money in dispute.

¹¹⁵ See http://www.wipo.int/treaties/en/convention/summary_wipo_convention.html. A list with the member states and their respective contribution classes may be found at http://www.wipo.int/treaties/en/contribution_classes.html.

¹¹⁶ See Proposed Program and Budget for the 2008/09 Biennium, A/44/2, p.17. The WIPO, currently, expects a lower level of patent applications due to the economic and financial crises than the original estimate in the budget.

¹¹⁷ See documents WO/GA/WG-CR/4/2 and WO/GA/WG-CR/4/3.

¹¹⁸ See document A/39/2 for the amendments and A/37/14, para. 301 for the decision of the

¹¹⁹ See document A/44/12 – Proposed program and budget for the 2008/2009 biennium, para 1.

¹²⁰ See document A/35/15, paragraph 151(a)). The existing mechanism is described in document A/35/6.

that the WIPO structure is too complex and required streamlining.¹²¹ The question then is whether a governance structure with elements similar to WIPO could help solve the fundamental problems of IEG. Given the differences between the WIPO system and the IEG system, comparison is not straightforward. We have therefore **disaggregated the possible lessons to be learned from the WIPO system into four sections**, examining the problems of fragmentation in the IEG system, of the lack of policy guidance, political clout and of adequate funding.

6.1 The WIPO Model: Addressing the Fragmentation of IEG?

Fragmentation of the current IEG system undermines its efficiency and results in duplication. The IEG system is in need of effective coordination. The **JIU report** concluded that the current framework of international environmental governance is weakened by institutional fragmentation and responsibilities that are not clearly defined. The JIU report also concluded that the duplication and fragmentation of the work of the UN system's organizations stem principally from a blurred distinction in their work programmes between environmental protection and sustainable development and from the absence of a single strategic planning framework.

The sheer number and difference in the administration of the various **MEA secretariats and other UN bodies** with environmental portfolios is a key factor driving the system's fragmentation. The IEG system's web of MEA's with separate secretariats is rather unusual in comparison to other institutional arrangements for multilateral conventions within the United Nations system. According to the JIU Report, the UN specialized agencies manage their conventions more efficiently within their regular work programmes. In addition, the number of MEAs has contributed to inconsistent, sometimes contradicting policies.

In contrast to this picture of the IEG system, the WIPO system manages to deal with many different IP issues coherently and has avoided duplication. This is owing to a number of its characteristics and practices:

- The WIPO system is organized in such a way that the **roles and responsibilities** of its various constituent parts **are clearly defined**. Its institutional setup neatly encompasses the administrative functions of a secretariat, the advisory and decision-making functions of governing bodies, and negotiation forums.
- WIPO's International Bureau (together with the Director General, constituting the WIPO Secretariat) serves as a **primary point of administrative coordination**. This includes coordinating meetings; providing background information, reports, and agendas; and supporting the implementation of the 24 international treaties under the WIPO roof by performing tasks assigned to it under the various treaties.

¹²¹ See WIPO General Assembly Working Group on Constitutional Reform, Sixth Session, Report, Geneva, June 24 to 28, 2002 (WO/GAWG – CR/6/3 Paragraph 15)

- The arrangement of WIPO's **negotiation forums** and its method of holding **joint meetings** provide for **exchange between the treaties**. All relevant assemblies and bodies concerned with the issue or agenda item at hand attend negotiation forums and joint meetings.
- WIPO's **single General Assembly Agenda** and **single Program and Budget** grant the system with a **coherent planning framework** and help ensure that the various IP treaties are applied in a coordinated way.
- WIPO's **cooperation agreements** with other UN specialized agencies, the WTO, and national and regional organizations also help coordinate IP.
- Much of **WIPO's day-to-day activities** consist of providing services of a technical and administrative nature to those who apply for or wish to register patents, marks and other forms of intellectual property. It is in this area that WIPO disposes with several hundred staff persons and generates most of its revenues.¹²² In these activities, national and regional IP authorities are strongly involved, either in their function as, for example, an international searching authority, or because they apply the harmonized procedures and classification schemes developed in the WIPO framework. These operational mechanisms are central to the overall coordination of WIPO activities.

Against this backdrop, the WIPO system provides the following **lessons for addressing the fragmentation of IEG**:

- **Permanent structures dealing with technical issues:** WIPO has achieved a high level of consistency of its technical and day to day work through its umbrella structure and institutional setup. Standing committees of national experts and regular meetings have ensured that the organisation and its treaties take consistent approaches to a great number of technical issues. These features could help addressing the fragmentation problem of IEG, in particular the creation of standing committees on specific (technical) issues.
- **Provision of broader and encompassing angle:** It has been helpful that WIPO, as an umbrella organisation, has often taken a broader view on some IP issues, and has regularly avoided a very specific approach to subject matters which sometimes dominate the technical discussions in specific Unions and treaties. This role of WIPO in IP negotiations could inform the IEG debate as the negotiations under MEAs are often confined to very specific detail issues and not open to relevant negotiation subjects of other MEAs. The debate on biofuels of the recent years, for example, might have benefitted from a more institutionalized exchange between the UNFCCC and the CBD. IEG might benefit from an umbrella organisation, which ensures such exchange. Similarly, it has been criticised that the GEF funds projects designed to help MEA implementation on a case by case basis, leading to duplication or even contradicting projects. In consequence, the work of the GEF *vis a vis* the MEAs might benefit from stronger coordination of an umbrella organisation.

¹²² Interview with A. Schäfers.

- **Cooperation with the CSD:** While an umbrella organisation in the field of the environment might be able to address the lack of coordination between different MEAs, the relationship between the CSD and such an organization is unclear. The CSD is the main high-level forum for sustainable development in the UN system – a subject broader than environmental protection – and its mandate is neither normative nor operational. The CSD’s role could perhaps be reformulated – based on its existing mandate to ensure the effective follow up of Rio, to review progress of the implementation of Agenda 21, and to provide policy guidance to the follow up of the JPOI – to perform a review function that would monitor and assess Member States’ progress on implementing the MEAs. It could also constitute a Permanent Committee that would advise on the follow up of Agenda 21 and the JPOI.
- **Moderation between MEAs:** WIPO’s structure and institutional setup has granted significant authority to the organisation, in addition to the fact that WIPO began operating at a time when no other international body had assumed important responsibilities in the field of international IP protection. Given similar levels of authority, an umbrella organisation in the field of international environmental policies could initiate an overarching discussion on specific areas where MEAs and their policies might be inconsistent or even contradictory. Arguably, a case in point is the debate on Hydrofluorocarbons (HFCs), and to what extent these substances should be regulated under the UNFCCC or the Montreal Protocol or both.

6.2 The WIPO Model: Addressing the Lack of Policy Guidance?

It is a widely accepted presumption that the **IEG system has failed to provide consistency and clear overarching policy guidance**. At present, for example, there is no single strategic-planning framework embracing the entire United Nations system. The JIU Report noted that UNEP lost its effective instrument of coordinating planning and programming when its System-Wide Medium-Term Environment Programme (SWMTEP) was discontinued in 1999 and its Medium-Term Strategy for 2010-2013 is not a system-wide instrument.

The WIPO system, on the other hand, demonstrates the following strengths in providing policy guidance:

- The WIPO system has a relatively smooth and effective **mechanism for treaty formation and adaptation**. The setup of its negotiation forums allow for the input both of concerned Member States and for the consultation of experts. This setup also allows for both the discussion of broader issues of consequence to many treaty constituencies and for the detailed examination of specific issues. The use of **soft-law** and **treaty picking**¹²³ have also been important tools in WIPO policy development.

¹²³ May, 2007, p. 42, 52. The fact that states can adopt treaties they consider most suitable to their needs has led to the adoption of new intellectual property-related treaties. As pointed out above, the treaties that are administered by WIPO remain

- WIPO's International Bureau serves successfully an important **information-sharing function**. It commissions and publishes studies, compiles statistics and regional surveys of law administration, and manages public databases on registered IP.
- WIPO provides **technical assistance** to Member States through the word of its Regional Economic Development Bureaus. It also provides legal advice and technical assistance to states (including non-WIPO members) implementing the WTO TRIPs agreement. Through these activities, WIPO supports and maintains an important link to national and regional IP governance (see figure # core tasks).
- WIPO's Arbitration and Mediation Center performs a **dispute resolution function** that is critical to the effective implementation of the IP treaties.

However, while the WIPO system has managed to provide policy guidance in most areas of its work, it is noteworthy that **WIPO has not provided adequate guidance in the area of IP protection and development**. While WIPO has a particularly good track record of coordinating technical issues, where regular meetings at expert level have helped create networks of experts and were instrumental to successful coordination, it appears that the WIPO governance system reaches its limits when it deals with **contested political issues**. For example, one of the most powerful strands of criticism directed at WIPO in recent years is its alleged one-sidedness in favour of developed countries and its neglect of development concerns.¹²⁴ In response to this criticism, the WIPO General Assembly adopted 45 recommendations under the Development Agenda.¹²⁵ In addition, a Committee on Development and Intellectual Property was established, which has met three times in 2008 and 2009. While the Development Agenda of WIPO certainly shows a certain political-discursive responsiveness of WIPO to new topics on its agenda, it remains to be seen how far WIPO will reform its approach and procedures in response to the concerns of the proponents of the Development Agenda.¹²⁶

Against this backdrop, the WIPO system provides the following **lessons for addressing the lack of policy guidance of IEG**:

- **Umbrella Organization as primary forum for policy guidance:** WIPO has managed – particularly through its institutional setup and umbrella design – to provide political leadership in the field of international IP protection. There is little discussion as to which institution should be primarily in charge of international IP protection. WIPO's role is rather uncontested in this context. In contrast, IEG has suffered from the fact that a number of bodies have inserted strong influence on international

unevenly ratified, with numbers of contracting parties to an individual treaty ranging from anywhere between two dozen to more than 180. While this asymmetrical membership was previously seen by US and EU negotiators as a serious implementation problem, the ability to mediate agreements on further treaties between smaller groups of WIPO members has become an advantage, opening up the possibility that a treaty may come into effect after a relatively small number of ratifications and other states may join later on. This is particularly useful to those countries' governments pushing for further expansion of protection of IPRs, given the opposition by many developing countries to such moves.

¹²⁴ Weinstock Netanel 2009.

¹²⁵ See <http://www.wipo.int/ip-development/en/agenda/recommendations.html>

¹²⁶ See Weinstock Netanel 2009.

environmental policies, ranging from the CSD, the UNFCCC, and other strong MEAs to UNEP. The creation of an umbrella organisation might solve the issue of which body is primarily in charge of providing policy guidance.

- **Cooperation with the CSD:** The CSD is responsible for reviewing progress in the implementation of Agenda 21 and the Rio Declaration on Environment and Development; as well as providing policy guidance to the follow-up of the Johannesburg Plan of Implementation (JPOI) at the local, national, regional and international levels. In consequence, it is possible that the mandate of an umbrella organisation would overlap or even conflict with the mandate of the CSD. To avoid such conflict, the umbrella organization and CSD need to be institutionally separate, with the CSD clearly being in charge of independent review. However, it is quite likely that a clear separation between the mandate of the umbrella organization and the CSD will have many grey areas and might lead to differing or even conflicting outputs.
- **Flow of information:** International environmental policy has failed to establish a functional information-sharing mechanism on the myriad of environment-related projects implemented by United Nations agencies and other organizations. The IEG system would greatly benefit from a comprehensive clearinghouse mechanism on international environmental projects, building, for example, on the work already begun on the Clearing-House Mechanism for the Convention on Biological Diversity. WIPO has established comprehensive databases for IP matters, which are the core of its registration systems. However, it is clear that the creation of such a database on environmental projects is a greater challenge, in particular because it has to work with a variety of projects that cannot be easily categorized.

6.3 The WIPO Model: Injecting More Political Clout into International Environmental Policies?

It has long been said that the IEG system – and UNEP in particular – is in critical need of more political clout.¹²⁷ Transferring the WIPO model to IEG could ultimately entail the **creation of a specialized agency** in the field of environmental policymaking – as WIPO is a specialized agency itself. There is a long political and academic discussion on the advantages and disadvantages of creating a specialized agency for international environmental policy making. Proponents have made the case that a specialized agency would imbue UNEP with more political clout than it currently has. As a specialized agency, based on an intergovernmental agreement, which would be ratified by all its Member States, an **environmental agency or organisation could arguably have greater prominence and greater political clout than UNEP**, which is currently a programme, based on a resolution of the General Assembly. In a similar way in which the transformation of the General Agreement on Tariffs and Trade (GATT) into the WTO resulted in an increased focus and more force behind international trade policies, establishing a specialized agency would possibly give rise to more political environmental policy leverage in global policy making.

¹²⁷

Nils Meyer-Ohlendorf and Markus Knigge: A United Nations Environment Organization, 2007

Proponents of a specialized agency have also argued that existing institutional jealousies – as referred to also in the High-level Panel on system-wide coherence – have led to a situation in which UNEP is often politically sidelined within the UN system.

In considering WIPO as an institutional model for IEG, however, it is important to note that **WIPO's political clout cannot be attributed too heavily to its specialized agency status.** Over the decades, influential coalitions of non-state actors have been supportive of and played an active role in the current system of IP protection. International environmental policy making, on the other hand, has not received similar support, which in large part explains the deficits in today's environmental policy making. For example, WIPO's openness to the participation of non-state actors in its decision-making processes¹²⁸ – though criticized for the way it may allow the input of business lobby groups¹²⁹ to outweigh that of actors who are not able to participate – has been key in ensuring that WIPO's work is taken up by these actors. In addition, the fact that the revenue of WIPO's fee-based system relies heavily on corporate money shows that the economic interests of key stakeholders in the IP system are aligned with WIPO's mandate and agenda, which is not the way corporate money regards environment.

According to some, the initial proposal to establish WIPO and to eventually make it a UN agency was advocated, partly, to head off attempts by other UN bodies, particularly the United Nations Economic and Social Council (ECOSOC), to deal with the subject of international property.¹³⁰ Indeed, some other institutions like ECOSOC, UNESCO and ILO had begun to assume tasks of the WIPO-predecessor-organization, BIRPI. This was mainly due to a lack of fora in which states could deliberate and decide on IP matters and the lack of an international secretariat with an adequate budget and staff.¹³¹ WIPO's emergence therefore did not pose a threat to other actors in the field, which has spared it from the turf wars that are a setback in the environmental field. In addition, it appears that transforming WIPO into an UN specialized agency has opened the organization to other policy issues that strongly resonate in the UN agenda, notably the IP implications on development. This has arguably increased WIPO's political standing within the UN; a similar effect for environmental policy making is desirable.

6.4 The WIPO Model: Providing IEG with Adequate Funding?

It is widely held that UNEP is in critical need of an adequate financial base. Environmental governance within the UN system is largely based on the voluntary contributions of Member States, which are often earmarked for specific projects and programmes. Unlike the funding of many other international organizations, assessed contributions make up only a small share of UNEP's funding. This system has led not only to unpredictable, but also inadequate funding of international environmental governance. An overview of current levels of funding for multilateral environmental activities can be found in Annex II.

¹²⁸ Schäfers 1996, p. 765.

¹²⁹ See for example Musungu/Dutfield 2003, p. 8.

¹³⁰ Musungu, 2005, p.11.

¹³¹ Niemann 2008, p.159.

In contrast, **WIPO's fee-based system of funding has been adequate**. In fact, WIPO has been considered one of or the wealthiest and best-funded international organizations. While fees for services have funded WIPO adequately, the system cannot guarantee for stable funding, as the volume of registration requests depends on global economic development, i.e. an economic slowdown has led to decreasing revenues from fees, and vice versa. In addition, the revenues of the fee-based system rely largely on corporate money, a fact that has led to criticisms from NGOs of undue corporate and Northern influence. Despite this inherent weakness, WIPO's system of funding has been very successful, as it has provided sufficient funding for the organization and its programmes.

In light of the persisting underfunding of environmental policies, the WIPO model might offer a solution. However, the **transfer of such a fee-based system to the environment would be difficult**. WIPO offers a tangible service with specific economic value when granting, for example, international registration of a patent. In contrast, environmental policies produce general benefits in the long run for society as a whole. These services are not tangible and generally not to the benefit of one specific individual, making the establishment of a fee-based system unlikely. It seems a great challenge to transfer the WIPO system to international environmental policies, not only because a system of assessed contributions has been routinely rejected but also because it seems very difficult to design environmental services that would yield tangible and economically valuable results for an individual. In addition, international environmental policy making is in need of funding of an altogether different scale.

6.5 Transferability: Conclusions

In spite of inherent differences in the governance needs of environmental protection and intellectual property protection, the WIPO model does offer several insights into options for a reformed institutional setup for IEG. As an international governance system that does share some structural similarities with the IEG landscape, the WIPO model indicates a few ways in which an umbrella organization for environment could be structured. In light of the promising opportunity of settling on IEG reform measures at a Rio plus 20 Conference in 2012, institutional elements of WIPO relevant to IEG will be important to consider among the reform options at hand.

7 References

Abbott, F. M. (2000). Distributed governance at the WTO-WIPO: An evolving model for open-architecture integrated governance. In: M. Bronckers and R. Quick. *New Directions in International Economic Law*. The Hague, Kluwer Law International: p. 15-33.

Beier, F.-K. (1984): "One Hundred Years of International Cooperation - The Role of the Paris Convention in the Past, Present and Future", *International Review of Intellectual Property and Competition Law* 1984:1, p.1-19.

Commission on Intellectual Property Rights (2002): *Integrating Intellectual Property Rights and Development Policy*, London, online at http://www.iprcommission.org/graphic/documents/final_report.htm

Forkel, H. (1997): "Das Erfinder- und Urheberrecht in der Entwicklung – vom nationalen zum internationalen Schutz des ‚geistigen Eigentums‘", *Neue Juristische Wochenschrift* **1997**:25, 1672-1678

Gross, R. (2007): „World Intellectual Property Organisation”. In: *Global Information Society Watch, Report 2007*, Uruguay, p. 65-73, online at [ww.giswatch.org/files/pdf/GISW_WIPO.pdf](http://www.giswatch.org/files/pdf/GISW_WIPO.pdf)

Helfer, L. (2004). "The TRIPS Agreement and the New Dynamics of International Intellectual Property Lawmaking." *Yale Journal of International Law* **29**: 1-84.

Inomata, T. (2008) Management Review of Environmental Governance within the United Nations System. Geneva: United Nations.

Kwakwa, E. (2002). "Some Comments on Rule-Making at the World Intellectual Property Organization." *Duke Journal of Comparative and International Law* **12**: 179 -195.

May, C. (2007). The World Intellectual Property Organization. London; New York, Routledge.

May, C. and S. K. Sell (2005). Intellectual Property Rights - A Critical History. London, Lynne Rienner.

Meyer-Ohlendorf, Nils; Knigge, Markus: A United Nations Environment Organization, in Global Environmental Governance: Perspectives on the Current Debate, edited by Lydia Swart and Estelle Perry, 2007

Musungu, S. F. (2005). Rethinking innovation, development and intellectual property in the UN. TRIPS Issue Papers No 5, Ottawa, Quaker International Affairs Programme.

Musungu, S. F. and G. Duffield (2003). Multilateral Agreements and a TRIPS-plus World: The World Intellectual Property Organization (WIPO). TRIPS Issue Paper No 3, Geneva, Quaker UN Office.

Najam, A., Papa M. and N. Taiyab (2006). Global Environmental Governance: A Reform Agenda. Winnipeg: International Institute for Sustainable Development, 2006.

Niemann, I. (2008). Geistiges Eigentum in konkurrierenden völkerrechtlichen Vertragsordnungen - Das Verhältnis zwischen WIPO und WTO/TRIPS. Heidelberg, Springer.

Pfanner, K. (1979). The World Intellectual Property Organization, International Review of Intellectual Property and Competition Law 1979(1): 1 – 19.

Ryan, M. P. (1998). Knowledge Diplomacy - Global Competition and the Politics of Intellectual Property. Washington DC, Brookings Institution Press.

Schäfers, A. (1996). "Normsetzung zum geistigen Eigentum in internationalen Organisationen: WIPO und WTO - ein Vergleich." GRUR Int 1996(7): 763-778.

Visser, C. (2007). "The Policy-Making Dynamics in Intergovernmental Organizations: A Comment on the Remarks of Geoffrey Yu." Chicago Kent Law Review 82(3): 1457-1466.

Weinstock Netanel, N. (2009). The WIPO Development Agenda and Its Development Policy Context. In N. Weinstock Netanel (ed): The Development Agenda - Global Intellectual Property and Developing Countries. Oxford, Oxford University Press.

Weinstock Netanel, N.(1997). "The Next Round - The Impact of the WIPO Copyright Treaty on TRIPS Dispute Settlement." Virginia Journal of International Law 37: 441-498.

WIPO, Intellectual Property Handbook: Policy, Law and Use, online at <http://www.wipo.int/about-ip/en/iprm/>

Yu, G. (2007). "The Structure and Process of Negotiations at the World Intellectual Property Organization." Chicago Kent Law Review **82**(3): 1445-1453.

8 Interview Partner

In the course of compiling this study, an interview was conducted with Alfons Schäfers, Ministerialdirigent a.D. and former WIPO Deputy Director General.

9 Annex I: Overview of recent IEG reform initiatives

An incomplete but representative sampling of some recent IEG reform initiatives:

- *UN Secretary General, Kofi Annan, launched a UN-wide reform initiative (1997)*. Kofi Annan placed the issue of improving the coordination and effectiveness of environmental institutions on the international political agenda by releasing his 1997 program for reform *Renewing the United Nations*.
- *The Nairobi Declaration on the Role and Mandate of UNEP (1997)* restated UNEP's role as the leading authority in the field of the environment. The Declaration was adopted by the UNEP Governing Council and endorsed by the UN General Assembly to revive UNEP and reestablish its authority, which had diminished since the creation of the Commission on Sustainable Development (CSD).
- *The UN Task Force on Environment and Human Settlements (1997)* was appointed by the Secretary General, Kofi Annan, to focus on inter-agency linkages and the revitalization of UNEP. The Task Force's recommendations were adopted by the General Assembly, leading to the creation of two new coordinating bodies: the Environmental Management Group (EMG) and the Global Ministerial Environment Forum (GMEF).
- *The Inter-agency Environment Management Group (1999)* was established as a mechanism to provide UNEP with an effective and strong coordinating role within the UN system on environmental matters.
- *The Malmo Declaration (2000)* was adopted by the GMEF. It requested that the World Summit on Sustainable Development (WSSD) review the requirements for an enhanced institutional structure for GEG, including how to strengthen UNEP and broaden its financial base and how to better incorporate non-state actors into the GEG system.
- *The Cartagena Process (2000–2002)* was initiated to assess options for reforming GEG. The 21st Session of the UNEP Governing Council/Global Ministerial Environment Forum (GC/GMEF) convened the Open-Ended Intergovernmental Group of Ministers or Their Representatives on International Environmental Governance (IGC/IEG) to assess the options for strengthening UNEP, improving the effectiveness of MEAs and improving international policymaking coherence. The report from the process was transmitted to the CSD and to the WSSD.
- *The Johannesburg Plan of Implementation (2002)*, adopted by the WSSD, called for the full implementation of the Cartagena decision.
- *The Eighth Special Session of the UNEP Governing Council/Global Ministerial Environment Forum Jeju, Republic of Korea* met to discuss progress on the Cartagena decision.

- *Former French President Jacques Chirac, called for creation of a United Nations Environmental Organization (UNEO) at the UN General Assembly (2003).* In response to President Chirac's presentation, an informal working group was set up to facilitate dialogue among governments on UNEP reform
- *The Bali Strategic Plan for Technical Support and Capacity-building was adopted by the GC/GMEF (2004).* The Bali Plan outlined proposals for improving the capacity of developing countries and economies in transition to implement MEAs.
- *The EU Spring Council in 2005 proposed that the UN summit in September 2005 initiate a process, to be part of UN reforms, and leading to negotiations on the establishment of a UN environmental agency, "based on UNEP, with a revised and strengthened mandate, supported by stable, adequate and predictable financial contributions and operating on an equal footing with other UN specialised agencies."*
- *The UN Summit (2005) called for strengthening coordination within the framework of international environmental governance and for the integration of environmental activities at the operational level into the broader sustainable development framework. It also agree to explore the possibility of a "more coherent institutional framework", building on existing institutions and internationally agreed instruments, as well as treaty bodies and the specialized agencies.*
- *A High Level Panel on UN-wide Coherence in the Areas of Humanitarian Assistance, the Environment, and Development was created in 2006, after the World Summit in New York (2005). It recommended, in its 2006 report, that an independent assessment of international environmental governance within the UN system and related reform needs should be carried out. Moreover it recommended the upgrading of UNEP and that UNEP should have "real authority as the environmental policy pillar of the UN system".*

10 Annex II: Financing of the IEG System

Financial resources for multilateral environmental activities (US\$) (from Inomata 2008, Annex II)

ORGANIZATIONS	2000		2001		2005		2006	
	Core budget	Non-Core budget	Core budget	Non-Core budget	Core budget	Non-Core budget	Core budget	Non-Core budget
I. MEAs: UN/ UNEP assisted (1 to 11 below)	48,546,742	18,164,915	47,954,058	19,985,015	67,342,042	44,222,220	79,963,312	48,122,339
Sub-total								
1. ECE conventions								
Three Conventions #		112,700		222,100		956,200		584,800
Aarhus Convention	242,000	93,800	320,700	204,000	826,200	307,500	726,900	246,300
LRTAP Convention	242,900	2,085,500	247,700	2,528,000	355,300	3,006,900	337,400	2,251,600
2. UNCLO & Fish stocks agreement	2,866,200	0	2,866,200	0	3,575,275	293,500	3,575,275	293,500
3. UNFCCC (a)	12,643,000	6,522,770.50	12,643,000	6,522,770.50	19,790,572.50	12,892,397.50	23,520,411	13,007,952
4. UNCCD (b)	6,262,000	2,908,570	6,262,000	2,908,570	7,969,500	4,040,387.50	8,352,500	6,235,276
Sub-total of 1-4 /UN	22,256,100	9,544,041	22,018,900	12,181,441	32,516,848	21,189,385.00	36,175,086	22,619,428
5. Vienna Convention and Montreal Protocol (figure for 2006 based on COP 19 documents)	4,050,269		4,099,385		5,467,075		5,517,857	285,140
6. CBD&BS protocol	8,998,600	5,376,400	8,594,000	4,559,100	10,497,800	5,820,353	10,918,500	5,326,057
7. CITES (figures for 2005-2006 based on COP documents)	4,735,849.50	1,093,485	4,735,849.50	1,093,485	4,480,000	1,188,322	4,658,307	3,052,021
8. CMS	1,958,572.50	94,389	1,958,572.50	94,389	2,271,787	195,611	2,271,787	195,611
9. Basel Convention (figures for 2006 based on COP decision SC-1-4)	4,201,854	2,056,600	4,201,854	2,056,600	4,345,415	15,082,704.50	4,345,415	15,082,704.50
10. Rotterdam Convention	2,345,497	0	2,345,497	0	3,688,632.50	745,844	3,710,224	932,579
11. Stockholm Convention					4,074,485		5,366,136	1,561,378
Sub-total of 5-11	26,290,642	8,620,874	25,935,158	7,803,574.00	34,825,195	23,032,835	36,788,226	25,502,912
II. Other major MEAs								
12. World Cultural and Natural Heritage	7,737,300	2,784,450	7,737,300	2,784,450	7,988,419.50	16,660,135	7,988,419.50	16,660,135
13. ITPGRFA/FAO							448,500	
14. Ramsar Convention (c)	3045		3106		3,885,941		4,090,861	
Sub-total of 12-14	7,740,345	2,784,450	7,740,406	2,784,450	11,874,360.50	16,660,135	12,527,781	16,660,135
Multilateral Fund for the Implementation of Montreal Protocol	158,566,667		158,566,667		191,000,000		179,866,667	
III. UN system organizations								
1. ECE environment programme ##	2,982,000	2,469,700	2,946,900	3,306,800	3,765,700	4,664,200	4,221,100	4,285,500
2. ESCAP (d)	2,540,000	1,100,000	2,540,000	1,100,000	2,625,000	1,445,000	2,709,500	1,816,700
3. ESCWA (d)	1,753,100	12,100	1,753,100	12,100	2,949,100	175,400	2,922,050	167,450
4. UNEP	4,350,000	90,850,000	4,350,000	90,850,000	5,250,000	116,750,000	5,988,550	130,509,850
5. UNDP	44,000,000	207,000,000	43,000,000	200,000,000	45,000,000	282,000,000	50,000,000	326,000,000
6. UNICEF (e)								94,169,000
7. GEF*	600,000,000		600,000,000		600,000,000		600,000,000	
8. UNITAR**		4,200,000		4,200,000		11,000,000		11,000,000
9. UNRWA**		30,000,000						35,000,000
10. UNU** estimate		7,479,000		7,479,000		10,796,000		10,796,000
11. UNWTO**	200,000		200,000		200,000			
12. WHO Health and environment **							45,000,000	
Memorandum items								
UNOPS**through GEF	64,601,310.50		64,601,310.50		89,135,532.50			
UNDP, UNFPA, UNICEF, WFP & specialized agencies ***	176.7 million			423.5 million(2004)	381.5 million		323.7 million	