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**Working Paper**

## The governance of the World Intellectual Property Organization: A reference guide

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# The Governance of the World Intellectual Property Organization: A Reference Guide

Updated 26 May 2015

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**Carolyn Deere Birkbeck**



The  
**Global  
Economic  
Governance**  
Programme



# The Governance of the World Intellectual Property Organization: A Reference Guide

Carolyn Deere Birkbeck\*

## Abstract

The World Intellectual Property Organization (WIPO) is the multilateral system's key agency charged with intellectual property (IP). This working paper is the first of two documents prepared as background for a political analysis of WIPO's governance and reform debates. This first paper presents an overview of the core components of WIPO's governance system, described in practical, readily-accessible terms for policymakers and stakeholders in the form of a factual reference guide. The second paper provides a chronological review of governance discussions at WIPO since 1967, as well as actions taken by Member States and the Secretariat to date. The third paper offers a political assessment of WIPO's governance and reform efforts, critically reviewing the power politics and dynamics of governance.

After presenting a framework for analysing WIPO's governance system, this paper reviews the origins of WIPO and sets out its current functions and activities, as well as the leadership, size and structure of the Secretariat. The core of the paper identifies and examines the core components of WIPO's current governance system in five thematic areas: mandate and legal foundations; decision-making structures, processes and practices for Member State representation; financial arrangements (e.g., income sources and budget process); accountability mechanisms (i.e., for oversight, audit and evaluation); and transparency and external relations. The paper highlights that WIPO's financial model is unique among UN organisations: the organization relies almost entirely on self-financing, raising revenue from private sector fees in exchange for treaty-related services rather than from Member State contributions. The paper also shows that while the WIPO Secretariat is a core subject of WIPO's formal governance structure, it is also an actor in the wider governance system that impact what the organisation does and how.

\* Senior Researcher, GEG. The author thanks Ahmed Abdel-Latif and participants in the Global Economic Governance Programme's research group for their input, particularly Emily Jones, Taylor St John and Geoffrey Gertz. She is also grateful for editorial and research assistance from Catherine Saez, Iveta Cherneva, Emma Burnett, and Alexa Zeitz, and archival assistance from Lise Macleod at the WIPO Library. The paper benefited from feedback from an informal dialogue with officials from WIPO, a number of WIPO Member States, and experts hosted by the International Centre for Trade and Sustainable Development in March 2015, where a draft of this paper was distributed. The author thanks Edward Kwakwa, WIPO's Legal Counsel, for his feedback and clarification of several aspects of WIPO's governance system, and to Christine Castro Hublin, Head of the Legal and Constitutional Affairs Section within the Office of WIPO's Legal Counsel. The Secretariat of WIPO assumes no liability or responsibility with regard to the transformation of data provided by WIPO. For comments or feedback, please contact: [carolyn.deerebirkbeck@bsg.ox.ac.uk](mailto:carolyn.deerebirkbeck@bsg.ox.ac.uk).

\*\* This working paper forms the basis for a forthcoming book to be published by Edward Elgar in March 2016. The book elaborates and supplements the analysis provided here, updating information for the status at the end of 2015, and also includes numerous appendices.

*The Global Economic Governance Programme, co-hosted by University College and the  
Blavatnik School of Government, is directed by Ngaire Woods.*

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## INTRODUCTION

The World Intellectual Property Organization (WIPO) is the multilateral system's key agency charged with intellectual property (IP). Over the past five decades, WIPO has taken a lead role in promoting the strengthening of IP rights, their use and enforcement across the world. A United Nations (UN) specialised agency, WIPO is the administrator of 26 international IP treaties and boasts a larger budget for supporting the modernisation of IP systems in developing countries than any other single organisation, national or international. WIPO also serves as a forum for intergovernmental negotiations on new legal instruments and for debate on how IP intersects with a range of public policy goals – from public health to food security.

The World Intellectual Property Organization's work occurs amidst a rapidly changing global economy – as evidenced by the rise of the digital economy – where markets and societies are increasingly connected, and the rising power of emerging economies has changed the dynamics of international diplomacy across global policy issues. WIPO's work also occurs in the context of a growing array of political, economic and social debates on IP treaties, laws, policies and practices around the world. Yet, although IP policy and rules are at the heart of many high-stakes battles across the global knowledge economy, WIPO is largely unknown beyond IP experts and is generally neglected in debates on global economic governance.

In its outreach efforts, the WIPO Secretariat describes the Organization as the global forum for IP policy, services, information and cooperation. Dedicated to making IP 'work for everyone,' the Secretariat characterises WIPO's work as driven by the need for an international IP system that is efficient and easily accessible worldwide, and that provides a set of international rules that 'balance the interests of those who produce and consume the fruits of innovation and creativity.'<sup>1</sup> WIPO's pursuit of this ambitious agenda has spurred an expanding array of activities – from norm-setting and policy dialogue to public-private partnerships and technical assistance.

The starting point for this Reference Guide is that the growing importance and influence of WIPO's expanding work must be accompanied by more active and constructive engagement of governments, stakeholders and scholars with the organisation and more critical oversight of its activities. The prospects for improved oversight and deeper, wider engagement in WIPO's work will depend, however, on greater understanding and transparency of WIPO's governance system and action to address its shortfalls. The need to improve WIPO's governance was underscored in 2014 by the UN Joint Inspection Unit (JIU),<sup>2</sup> and a growing number of Member States and stakeholders acknowledge the array of governance challenges facing the organisation, although views vary on which warrant greatest attention.

The governance matters that provoke debate at WIPO include: the complexity of the Organization's governance structure; the relationship between WIPO and the treaty-based Unions it administers; the appropriate role of the Secretariat and stakeholders; decision-making practices and financial arrangements. In recent years, Member States and stakeholders alike have regularly underscored the importance of bolstering WIPO's Member-driven nature; they have also routinely registered their dissatisfaction with inefficient and opaque decision-making practices. In addition, there are ongoing debates about the scope for plurilateral treaty negotiations at WIPO and their implications for the organisation's multilateral character. Views on which governance challenges demand attention vary. Some stakeholders, for instance, call for

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<sup>1</sup> WIPO, *WIPO: Making IP Work* (WIPO 2014).

<sup>2</sup> JIU, *Review of Management and Administration in the World Intellectual Property Organization (WIPO)* JIU/REP/2014/2 (UN Joint Inspection Unit 2014) 7.



attention to WIPO's provisions for public participation and transparency and clarity on the private sector's role in WIPO. The Secretariat has emphasised the need for higher-level engagement from Member States. While most Member States agree are in favour of improved efficiency in WIPO decision-making, they struggle to agree on concrete steps to be taken. Some Member States propose getting started on reform through incremental, practical improvements on specific procedural matters, while others insist on a more comprehensive approach to reform. The the core governance priority for many developing country Member States is mainstreaming the Development Agenda throughout the organisation and changing the Secretariat's institutional culture.<sup>3</sup>

Unlike other UN agencies, WIPO does not face one common governance challenge – lack of resources. Rather than relying on Member State contributions, WIPO earns over 95 per cent of its income through fees paid in exchange for IP registration services. As the UN's most successful self-financing organisation, WIPO nonetheless faces a range of governance challenges that arise from these unique financial arrangements.

To date, however, there is no consolidated reference text on WIPO's governance. In 2014, for instance, the UN JIU highlighted the absence of a clear or regularly updated overview of WIPO's governance framework. Member States, staff and stakeholders are instead left to locate, navigate and piece together a multitude of dispersed documents, including the WIPO Convention, procedural rules for WIPO's governing bodies, regulations and rules, working methods, and hundreds of proposals and meetings reports, as well as a suite of internal policies. Although the Secretariat and a number of WIPO committees have produced official WIPO documents that cover some aspects of WIPO's governance structure<sup>4</sup> and the organisation's history,<sup>5</sup> these offer a fragmented, incomplete and sometimes out-dated picture. Moreover, such documents do not capture the many informal dimensions of WIPO's governance system, those that occur where the formal framework is silent or ambiguous, and those that exist alongside formal processes and impact how governance actually occurs in practice.

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<sup>3</sup> See Carolyn Deere Birkbeck, 'Inside View: Strengthening WIPO's Governance for the Next 50 Years: A Time for Action' *Intellectual Property Watch* (26 September 2014); Nick Ashton-Hart, 'Inside Views: How to Reboot WIPO' *Intellectual Property Watch* (12 September 2014); James Boyle, 'A Manifesto on WIPO and the Future of Intellectual Property' (2004) 9 *Duke Law and Technology Review* 1–12; Nandini Kotthapally, 'From World Intellectual Property Organization (WIPO) to World Innovation Promotion Organization (WIPO): Whither WIPO?' (2011) 3(1) *The WIPO Journal* 56–71; Civil Society Coalition, 'Geneva Declaration on the Future of the World Intellectual Property Organization' (2004) <<http://www.futureofwipo.org/futureofwipodeclaration.pdf>> accessed 7 May 2015; CIEL, *A Citizens' Guide to WIPO* (CIEL 2007); Robin Gross, 'World Intellectual Property Organisation (WIPO): Institutional Overviews' (2007) *Global Information Society Watch* <<http://www.giswatch.org>> accessed 30 October 2014.

<sup>4</sup> See, for instance, the following WIPO documents: WIPO, *Introduction to WIPO: Objectives, Organization Structure and Activities, Development Cooperation Program* WIPO/ACAD/E/94/2 (WIPO 1994); WIPO, *The Governance Structure of WIPO: Memorandum of the International Bureau* A/32/INF/2 (WIPO 1998); WIPO, *Constitutional Reform: Memorandum of the Secretariat* A/33/3 (WIPO 1998); WIPO, *Report of the WIPO Audit Committee since 2008* WO/GA/38/2 (WIPO 2009); WIPO, *WIPO Governance Structure* WO/PBC/18/20 (WIPO 2011); WIPO, *Governance at WIPO: Report Prepared by the WIPO Independent Advisory Oversight Committee* WO/PBC/19/26 (WIPO 2012). Also see WIPO, *WIPO Intellectual Property Handbook: Policy, Law and Use* (WIPO 2004); WIPO, *A Users' Guide: An Introduction to the Organization for Delegates*, Publication No. 1040 (WIPO 2012).

<sup>5</sup> See Jacques Secretan, 'L'évolution de structure des unions internationales pour la protection de la propriété intellectuelle' in BIRPI, *Les Unions Internationales pour la protection de la propriété industrielle, littéraire et artistique, 1883–1963* (BIRPI 1962); Árpád Bogsch, *Brief History of the First 25 Years of the World Intellectual Property Organization* (WIPO 1992); WIPO, *World Intellectual Property Organization: 1992–2007* (WIPO 2003).

In the academic literature, scholars have offered reflections on WIPO's role in the global governance of IP<sup>6</sup> and in the development of international IP law<sup>7</sup> as well as on its response to initiatives such as the WIPO Development Agenda.<sup>8</sup> Only a handful of studies, however, focus specifically on WIPO as an institution – on its evolution,<sup>9</sup> internal culture and political economy.<sup>10</sup> Although these works address some aspects of WIPO's governance framework, and several papers analyse the process of decision-making at WIPO,<sup>11</sup> the task of systematic analysis of WIPO's governance system has thus far escaped the scholarly attention it deserves. As such, there has not yet been any comprehensive scholarly review of WIPO's governance or governance reform efforts.

This paper is intended to serve as a factual reference guide to WIPO's governance system. It does not aim to assess WIPO's governance system, analyse the political dynamics of WIPO's governance, or critique the power politics that shape them, although it does seek to offer a much-needed foundation stone for that important work.<sup>12</sup> The paper does, nonetheless, highlight some

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<sup>6</sup> Academic publications that reflect on WIPO's role in the governance of IP include: Frederick M. Abbott, 'Distributed Governance at the WTO-WIPO: An Evolving Model for Open-Architecture Integrated Governance' (2000) 3(1) *Journal of International Economic Law* 63–81; Frederick M. Abbott, Francis Gurry and Thomas Cottier *The International Intellectual Property System: Commentary and Materials* (Kluwer Law 1999); Graeme B. Dinwoodie, 'The Architecture of the International Intellectual Property System' (2002) 77(3) *Chicago-Kent Law Review* 993–1014; Paul Salmon, 'Cooperation between the World Intellectual Property Organization and the World Trade Organization' (2003) 17 *St. John's Journal of Legal Commentary* 429–42; Ruth L. Okediji, 'The International Relations of Intellectual Property: Narratives of Developing Country Participation in the Global Intellectual Property System' (2003) 7 *Singapore Journal of International and Comparative Law* 315–85; Ruth L. Okediji, 'WIPO-WTO Relations and the Future of Global Intellectual Property Norms' (2008) 39 *Netherlands Yearbook of International Law* 69–125; Graeme Dinwoodie and Rochelle Dreyfuss, 'Designing a Global Intellectual Property System Responsive to Change: The WTO, WIPO and Beyond' (2009) 46(4) *Houston Law Review* 1187–234.

<sup>7</sup> For a concise recent study of the evolution and future of WIPO's role in the development of IP treaties, see Daniel Gervais 'Rethinking the International Intellectual Property System: What Role for WIPO?' in *Rethinking International Intellectual Property Law: What Institutional Environment for the Development and Enforcement of IP Law? Global Perspectives and Challenges for the Intellectual Property System, Issue 1* (Geneva and Strasbourg: ICTSD and CEIPI 2015). Also see various contributions in Daniel Gervais (ed.), *International Intellectual Property: A Handbook of Contemporary Research* (Cheltenham, UK: Edward Elgar 2015);

<sup>8</sup> See Carolyn Deere, 'Reforming Governance to Advance the WIPO Development Agenda', in Jeremy de Beer (ed), *Implementing WIPO's Development Agenda* (Wilfrid Laurier University Press 2009); Susan K. Sell, 'Everything Old Is New Again: The Development Agenda Now and Then' (2011) 3(1) *The WIPO Journal* 17–23; Peter K. Yu, 'A Tale of Two Development Agendas' (2008) 35 *Ohio Northern University Law Review* 466–573; Francis Gurry, 'The Dispute Resolution Service of the World Intellectual Property Organization' (1999) 2(2) *Journal of International Economic Law* 385–98, 385.

<sup>9</sup> Scholarly works on the history of WIPO include: Ulf Anderfelt, *International Patent Legislation and Developing Countries* (Martinus Nijhoff 1971); F-K Beier, 'One Hundred Years of International Cooperation: The Role of the Paris Convention in the Past, Present and Future' (1984) 15(1) *International Review of Industrial Property and Copyright Law* 1–20; Debora J. Halbert 'The World Intellectual Property Organization: Past, Present and Future' (2005) 54(1) *Journal of the Copyright Society of the USA* 253–84.

<sup>10</sup> See James Boyle, 'A Manifesto on WIPO and the Future of Intellectual Property' (2004) 9 *Duke Law and Technology Review* 1–12; Christopher May, *The World Intellectual Property Organization: Resurgence and the Development Agenda* (Routledge 2006); Alexander Stack, *International Patent Law: Cooperation, Harmonization and an Institutional Analysis of WIPO and the WTO* (Edward Elgar Publishing 2011); Andrea Wechsler, 'WIPO and the Public-Private Web of Global Intellectual Property Governance' in Christoph Hermann, Markus Krajewski and Jörg Philipp Terhechte (eds), *2013 European Yearbook of International Economic Law* (Springer 2013) 413–40. In addition, two notable critical assessments of WIPO's governance have been published by NGOs. See Sisule F Musungu and Graham Dutfield, *Multilateral Agreements and a TRIPS-Plus World: The World Intellectual Property Organisation TRIPS Issues Paper 3* (Quaker United Nations Office (QUNO) and Quaker International Affairs Program (QIAP) 2003) and CIEL, *A Citizens' Guide to WIPO* (CIEL 2007).

<sup>11</sup> Edward Kwakwa, 'Some Comments on Rule Making at the World Intellectual Property Organization' (2002) 12(1) *Duke Journal of Comparative and International Law* 179–95; Geoffrey Yu, 'The Structure and Process of Negotiations at the World Intellectual Property Organization' (2007) 82 *Chicago-Kent Law Review* 1443–53, 1452.

<sup>12</sup> For political assessments of the current challenges facing WIPO's governance and the reform process to date, see Carolyn Deere Birkbeck, *Governing the World Intellectual Property Organization: The Power Politics of Institutional Crisis and Reform* (Routledge forthcoming 2016). Also see Carolyn Deere Birkbeck, 'Inside View:



of the key political and informal dimensions of WIPO's governance system and notes where WIPO diverges significantly from other international organisations in terms of policies or practice, such as its self-financing business model. In describing the components of WIPO's governance system, the paper refers to recent debates where they are pertinent to understanding the relevance to governance, but it defers for future scholarship the task of assessing the merits of different views points and reform options.

This paper is the first in a series of working papers that addresses the need for a more comprehensive view of WIPO's governance. To set the foundations, this paper is intended to serve as a factual reference document on WIPO's governance system. It does not aim to offer either a critical assessment of the governance system or a political analysis of governance dynamics and the power politics that shape them. It does, however, note areas where WIPO's governance diverges significantly from other international organisations in terms of policies or practice, such as its self-financing business model.<sup>13</sup> The second working paper presents a chronological review of governance discussion at WIPO since 1967, as well as actions taken by Member States and the Secretariat to date.<sup>14</sup> The third paper offers a political assessment of the current challenges facing WIPO's governance and the reform process thus far, and sets out reform priorities for the future.<sup>15</sup>

This paper begins by presenting a framework for analysing WIPO's governance. Part 2 introduces the origins of WIPO, its current functions and many activities, as well as the WIPO Secretariat and its leadership. Part 3 reviews the core components of WIPO's governance system in five thematic areas: legal foundations, mandate and purpose; decision-making structures, processes and practices for Member State representation; financial arrangements (including income and budget process); mechanisms for accountability and control of the Secretariat (i.e., for oversight, audit and evaluation); and transparency and external relations. Through this review, the paper provides examples of how the WIPO Secretariat is both a subject of WIPO's formal governance structure and an actor in the wider governance system that impacts what the organisation does and how.

The primary sources for the analysis presented in this paper were official WIPO documents (including Secretariat reports and minutes of intergovernmental meetings, WIPO treaties and policies, and the WIPO website), as well as informal interviews of WIPO staff and delegates undertaken by the author, and personal observations of WIPO decision-making processes for over a decade. In addition to academic works and analysis by stakeholder organisations, the research drew extensively on reporting by the independent news service *Intellectual Property Watch*.

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Strengthening WIPO's Governance for the Next 50 Years: A Time for Action' *Intellectual Property Watch* (26 September 2014).

<sup>13</sup> For political assessments of the current challenges facing WIPO's governance and the reform process to date, see Carolyn Deere Birkbeck, *Governing the World Intellectual Property Organization: The Power Politics of Institutional Crisis and Reform* (Routledge forthcoming 2016). Also see Carolyn Deere Birkbeck, 'Inside View: Strengthening WIPO's Governance for the Next 50 Years: A Time for Action' *Intellectual Property Watch* (26 September 2014).

<sup>14</sup> See Deere Birkbeck, C. (forthcoming 2016) "Governance Reform at the World Intellectual Property Organization: A Review of Debates and Reforms (1967-2014)," *GEG Working Paper*. Global Economic Governance Programme and Blavatnik School of Government, Oxford.

<sup>15</sup> Deere Birkbeck, C. (forthcoming 2016) "WIPO's Faulty Governance", *GEG Working Paper*. Global Economic Governance Programme and Blavatnik School of Government, Oxford.

## PART 1. ANALYSING WIPO'S GOVERNANCE

The Member States of WIPO have discussed reform of the Organization's governance for over 18 years,<sup>16</sup> provoking debates in a number of WIPO's decision-making and advisory bodies,<sup>17</sup> as well as among stakeholders and within the Secretariat. The discussions have also given rise to a number of reports and reviews of WIPO governance that form part of the organization's official records (see Table 1) and highlight the shifting focus of debate over time.

*Table 1. Examples of major internal and UN reports on WIPO governance since 1998*

Year	Name	Document Number	Source
1998	The Governance Structure of WIPO: Memorandum of the International Bureau	A/32/INF/2	WIPO Secretariat
1998	Constitutional Reform: Memorandum of the Secretariat	A/33/3	WIPO Secretariat
2002	Final Recommendations of the WIPO General Assembly Working Group on Constitutional Reform	A/37/5	Working Group on Constitutional Reform
2005	Review of the Management and Administration in WIPO: Budget, Oversight and Related Issues	JIU/REP/2005/1	UN Joint Inspection Unit
2007	Desk-to-Desk Assessment Final Report	WO/GA/34/12	Pricewaterhouse Coopers, commissioned by the WIPO Secretariat
2007	Desk-to-Desk Assessment Final Report: Secretariat's Comments	WO/GA/34/12	WIPO Secretariat
2007	Constitutional Matters: Prepared by the Secretariat	A/42/4	WIPO Secretariat
2009	Report of the WIPO Audit Committee since 2008	WO/GA/38/2	WIPO Audit Committee
2011	WIPO Governance Structure	WO/PBC/17/2	WIPO Secretariat
2011	WIPO Governance Structure	WO/PBC/18/20	WIPO Secretariat
2012	Governance at WIPO: Report Prepared by the WIPO Independent Advisory Oversight Committee (IAOC)	WO/PBC/19/26	WIPO IAOC
2014	JIU Report 'Review of Management and Administration in the World Intellectual Property Organization (WIPO)'	JIU/REP/2014/2	UN Joint Inspection Unit
2014	WIPO Secretariat Comments on JIU Report 'Review of Management and Administration in the World Intellectual Property Organization (WIPO)'	WO/PBC/22/20	WIPO Secretariat

*Note:* The table does not include the numerous background documents that focus specifically on WIPO's Internal Oversight Division (IOD), Independent Advisory Oversight Committee (IAOC) and External Auditor.

*Source:* Table compiled by author.

<sup>16</sup> See, for instance, WIPO, *The Governance Structure of WIPO: Memorandum of the International Bureau* A/32/INF/2 (WIPO 1998).

<sup>17</sup> Debate on different aspects of governance reform has taken place in several WIPO bodies, most notably the WIPO General Assembly, the Program and Budget Committee (PBC), the Independent Advisory Oversight Committee (IAOC), the Committee on Development and Intellectual Property (CDIP), and to some extent in the Assemblies and Working Groups of the Unions, such as the PCT Union, as well as informally at side events running parallel to formal discussions. For analysis of the evolution and dynamics of this debate, see Carolyn Deere Birkbeck, *Governing the World Intellectual Property Organization: The Power Politics of Institutional Crisis and Reform* (Routledge forthcoming 2016).

In this paper, the term ‘governance system’ refers to the web of treaty provisions, rules, regulations, policies and practices that impact how WIPO Member States provide strategic direction and oversight of its activities; exercise authority and control over the organization; and with stakeholders, hold the Secretariat to account.<sup>18</sup> Whereas much of the official documentation of WIPO’s governance focuses on the structure for decision-making,<sup>19</sup> this paper proposes a broader approach to WIPO’s governance system. It identifies and examines five thematic areas of WIPO’s governance system, exploring the core components of each as follows (also see Table 2):

1. **Mandate and purpose:** The organisation’s legal foundations, mandate and purpose as established by the WIPO Convention, described in the WIPO’s Agreement with the United Nations, and debated in the context of the WIPO Development Agenda.
2. **Decision-making:** The organisation’s decision-making structures, processes and practices, including the organs and bodies constituted by WIPO-administered treaties, along with the subsidiary committees established by those organs and bodies; rules and processes for decision-making as well as formal and informal mechanisms, practices and customs for consensus-building and consultation among regional groups of Member States; and arrangements for the representation of Member States and composition of their delegations, as well as mechanisms for Member State interaction with each other and the Secretariat.
3. **Financing:** The organisation’s financial arrangements, including its main sources of income (user fees, Member State contributions through the Unitary Contribution System, and extra-budgetary contributions), WIPO’s Financial Regulations and Rules, the role of the WPO Controller, policies on investments and reserves, the Program and Budget process and reporting requirements, as well as the financial arrangements for the WIPO-administered Unions.
4. **Accountability:** The organisation’s mechanisms and policies related to oversight, audit, internal control, and evaluation of the Secretariat, including the processes for the development of WIPO’s work program and budget (see point 3 above).
5. **Transparency and external relations:** This includes the organisation’s policies on access to documents and meetings, and its relationships with external actors, such as with the wider United Nations system and stakeholders.

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<sup>18</sup> For examples of the rich academic literature on the governance of international organisations, and related issues of accountability, see: Thomas G Weiss and Rorden Wilkinson (eds), *International Organisation and Global Governance* (Routledge 2013); Monica Blagescu, Lucy de las Casas, and Robert Lloyd, *Pathways to Accountability: The GAP Framework* (One World Trust 2011); Thomas Hale ‘Transparency, Accountability and Global Governance’ (2008) 14(1) *Global Governance* 73–94; Ngaire Woods, ‘Good Governance in International Organizations’ (1999) 5(1) *Global Governance* 39–61.

<sup>19</sup> See WIPO, *WIPO Governance Structure: Document Prepared by the Secretariat* WO/PBC/17/2.Rev. (WIPO 2011) 2.

*Table 2. Key components of WIPO's governance system*

Themes	Key Components of WIPO Governance System	Examples of Relevant Rules, Mechanisms, Processes and Practices
<b>Mandate and Purpose</b>	Legal documents establishing the organisation and its mandate, as well as subsequent decisions, statements and agreements adopted by Member States relevant to the interpretation of the organisation's mandate and purpose	The mandate as defined by the 1967 WIPO Convention as well as decisions and statements relevant to mandate and purpose such as the 1974 WIPO–UN Agreement and the 2007 WIPO Development Agenda.
<b>Decision-Making Structures, Processes and Practices for Member States</b>	The organs constituted by a WIPO-administered treaty, as well as all the subsidiary bodies established by those organs	Convention-defined organs (such as the General Assembly and the unions established by WIPO treaties) as well as subsidiary WIPO bodies such as Standing Committees, expert committees and working groups; and the Development Agenda Coordination Mechanism.
	Rules, processes and mechanisms for decision-making as well as informal mechanisms, practices and customs for consensus-building and consultation among Member States	WIPO General Rules of Procedure, Special Rules of Procedure for treaty-based bodies and WIPO Committees; Rules of Procedure for Diplomatic Conferences; coordination mechanisms, such as the Development Agenda Coordination Mechanism; working methods adopted by WIPO committees; practices related to voting and consensus-building; financial arrangements for the participation of Member States in WIPO meetings; informal practices related to the composition, consultation and role of regional groups; informal practices related to the selection of chairs; General Assembly decisions and policies related to the admission of observers, documentation and languages; and the Office of the Legal Counsel to the extent that it offers clarifications and interpretations of WIPO's procedural rules
	Representation of Member States	Rules and practices regarding membership of WIPO and its treaties, representation at WIPO, composition of delegations, as well as processes and practices for interaction among Member State delegations, and between Member States and the Secretariat
<b>Income and Financial Arrangements</b>	Arrangements for financing the organisation, including user fees, Member State contributions, and extra-budgetary contributions	Income from Member States and Fees; extra-budgetary, voluntary contributions to Funds-in-Trust; Financial Regulations and Rules; Rules related to the authority and responsibility of the WIPO Controller, policies on reserves and investments; the Program and Budget process and the unitary presentation of the budget; and financial arrangements for the WIPO-administered Unions
<b>Control and Accountability of the Secretariat</b>	WIPO's work program and budget, including the processes for its development and related accountability mechanisms (such as on reporting and evaluation)	The Program and Budget documents, the Program and Budget Mechanism; the Program Performance and Validation Reports; Financial Management Reports; management and reporting of Funds-in-Trusts (FITs) financed activities; and WIPO evaluation policies

	Rules, policies and practices related to the accountability of WIPO's chief executive, senior management, and staff for their activities and performance	Rules and practices regarding the selection and role of the Director General and Senior Management; scope for organisational change initiatives (such as the Strategic Realignment Program); staff accountability mechanisms (such as the Staff Regulations and Rules; and the Code of Ethics; including provisions and Office Instructions on issues such as conflict of interest and corruption; policies on procurement and the supplier Code of Conduct; the WIPO Staff Association; policies related to staff evaluation, investigation; and the WIPO Whistleblower policy
	Accountability mechanisms and policies related to financial oversight, audit, internal financial controls and risk management	WIPO Financial Regulations and Rules and the Internal Oversight Charter; the Independent Advisory Oversight Committee (IAOC), the External Auditor, and the Internal Oversight Division (IOD); IOD's evaluation, investigation and audit policies; the Office of the Legal Counsel; and complaints and response mechanisms for users of the WIPO services, procurement activities and WIPO staff
<b>Transparency and External Relations</b>	Relationships with external actors, such as with the wider United Nations system and stakeholders from the private sector, civil society, and scientific and creative communities	The UN Convention, the UN-WIPO Agreement and the WTO–WIPO Cooperation Agreement; Memoranda of Understanding (MOUs) and arrangements for cooperation and joint activities with other UN agencies and international organisations; policies with respect to observers at WIPO meetings; informal practices of consultation and interaction with stakeholders, such as non-governmental organisations (NGOs) representing the private sector, the scientific and creative communities, and civil society
	External and internal transparency, particularly with respect to policies on documents and access to meetings	Policies with respect to access to documents and budget data, translation, access to meetings, the WIPO website and webcasting

For each of the five thematic areas of WIPO's governance system, the primary focus of this paper is on the formal conventions, regulations, structures, procedures and policies as formally adopted by WIPO Member States as well as rules and internal policies, decisions and procedures adopted by the WIPO Secretariat. In addition, and as widely observed in the scholarly literature on international organisations, the analysis in the coming sections recognises that a number of 'informal' factors also impact how governance occurs in practice, as well as the prospects for organisational change. Examples of such informal dimensions include consensus-building processes, organisational culture, bureaucratic inertia, the quality of leadership, and the diffusion of ideas within networks of technical experts that include the staff of international organisations and Member State officials.<sup>20</sup> As is the case for most international organisations, each of the five core components of WIPO's governance has both formal and informal dimensions, and has evolved over time.

<sup>20</sup> See, for instance, Michael N Barnett and Martha Finnemore, 'The Politics, Power and Pathologies of International Organizations' (1999) 53(4) *International Organization* 699–732; Michael N Barnett and Martha Finnemore, *Rules for the World: International Organizations in Global Politics* (Cornell University Press 2004); Jutta Joachim, Bob Reinalda and Bertjan Verbeek, *International Organizations and Implementation: Enforcers, Managers, Authorities?* (Routledge 2008); and John Mathiason, *Invisible Governance: International Secretariats in Global Politics* (Kumarian Press 2007).



The analysis in the following sections underscores the ways in which informal practices and customs are, de facto, part of WIPO's governance system. Part 3 of this paper, for instance, observes that WIPO Member States and the Secretariat regularly use 'regional groups' of countries as vehicles through which to build consensus and consult on decisions. It notes that the Director General has a number of strategies for informal interaction with Member States, including through breakfasts with groups of ambassadors, meetings with individual heads of IP offices, visits to officials and ministers in national capitals, and the addition of high-level meetings to engage ministers in WIPO's work. Further, although WIPO's General Rules of Procedure provide the framework for formal intergovernmental meetings, Member States routinely derogate from these Rules, such as in the case of the election of chairs for the various WIPO committees. In addition, several of the existing provisions in the General Rules of Procedure have been superseded by new policies (such as on languages) adopted since the last updating of the Rules.

In the following sections, the WIPO Secretariat is analysed as the subject of WIPO's governance structure (i.e., acknowledging that Member States formally have authority over the Secretariat), and as an actor that can also sometimes form part of the system governing what WIPO does and how. The Secretariat has demonstrated in numerous instances its ability to shape the Organization's priorities and to influence treaty-making processes and Member State decision-making on what the bureaucracy itself should do. While a detailed account of WIPO's internal management and administration is beyond the scope of this paper, the analysis recognises that internal decisions can impact and alter WIPO's governance system and that the Secretariat has considerable scope for independent action. Actions by the Director General to establish advisory groups, change staff and financial rules, and forge partnerships, as well as decisions on staff and the process of decision-making by Senior Management all have a governance dimension. They can, for instance, influence the Organization's agenda, the substantive direction of its activities and their implementation, internal transparency and accountability; and the powers of the Director General; and they can serve as tools for managing internal political challenges. Similarly, changes in internal practices with regard to evaluation of the organization's activities and improved availability of data can each be considered 'governance-related' as they improve the basis for transparency and accountability to Member States.

## PART 2: WHAT IS WIPO AND WHAT DOES IT DO?

### 2.1 WIPO's origins

The origins of WIPO date back to the 1883 Paris Convention for the Protection of Industrial Property and the 1886 Berne Convention for the Protection of Literary and Artistic Works, which together laid the foundations for contemporary international IP regulation.<sup>21</sup> Both conventions provided for the establishment of an 'International Bureau' to provide administrative support to the Unions formed by their respective States Parties. The two bureaux combined in 1893 to create the United International Bureaux for the Protection of Intellectual Property (usually referred to by its French acronym, BIRPI). With the conclusion of further conventions on specialised aspects of IP (such as on trademarks, industrial designs and appellations of origin), the Unions created by several of these treaties were also integrated into BIRPI (that is, the Madrid, Hague, Nice, and Lisbon Unions).

Following the entry into force of the 1967 Convention Establishing the World Intellectual Property Organization (the WIPO Convention), BIRPI was replaced by WIPO in 1970.<sup>22</sup> As an 'umbrella organisation,' WIPO 'federated the Unions dealing with intellectual property issues into an expanded international organization.'<sup>23</sup> In 1974, WIPO became a specialised agency of the UN system.<sup>24</sup>

By 2015, WIPO had 188 Member States, of which over 120 were developing countries.<sup>25</sup> Together, these Member States are responsible for determining the direction, budget and activities of WIPO.<sup>26</sup>

### 2.2 What is WIPO's purpose?

The WIPO Convention sets out WIPO's general objectives as: 'to promote the protection of intellectual property throughout the world through cooperation among States' and 'to ensure administrative cooperation among the Unions.'<sup>27</sup> The Preamble to the Convention refers to the States' desire to:

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<sup>21</sup> See F-K Beier, 'One Hundred Years of International Cooperation: The Role of the Paris Convention in the Past, Present and Future' (1984) 15(1) *International Review of Industrial Property and Copyright Law* 1–20; Geoffrey Gaultier, 'The History of AIPPI' in General Secretariat of AIPPI, *1897–1997 Centennial Edition: AIPPI and the Development of Industrial Property Protection 1897–1997* (AIPPI Foundation 1997); John Braithwaite and Peter Drahos, *Global Business Regulation* (CUP 2000) 60.

<sup>22</sup> The Convention was adopted by the Parties of the existing Unions. See Convention Establishing the World Intellectual Property Organization (WIPO Convention) 1967 (amended 1979).

<sup>23</sup> See JIU, *Review of Management and Administration in the World Intellectual Property Organization (WIPO)* JIU/REP/2014/2 (UN Joint Inspection Unit 2014) 2.

<sup>24</sup> See WIPO, *Agreement between the United Nations and the World Intellectual Property Organization* WIPO Publication No. 111 (WIPO 1975).

<sup>25</sup> For a complete current listing of WIPO Member States, see WIPO, 'Member States' <<http://www.wipo.int/members/en/>> accessed 1 May 2015.

<sup>26</sup> To become a WIPO Member, a state must deposit an instrument of ratification or accession with the Director General. The WIPO Convention provides that membership is open to any state that is: a) a member of the Paris Union or Berne Union; b) a member of the UN, or of any of the UN's Specialized Agencies, or of the International Atomic Energy Agency, or that is a party to the Statute of the International Court of Justice; or c) invited by the WIPO General Assembly to become a Member State of the organisation. States already party to the Berne or Paris Conventions must concurrently ratify or accede to at least the administrative provisions of the Stockholm 1967 Act of the Paris Convention or of the 1971 Act of the Berne Convention.

<sup>27</sup> See WIPO Convention, Article 3.

...contribute to better understanding and co-operation among States for their mutual benefit on the basis of respect for their sovereignty and equality; encourage creative activity, to promote the protection of intellectual property throughout the world; and modernize and render more efficient the administration of the Unions established in the fields of the protection of industrial property and the protection of literary and artistic works, while fully respecting the independence of each of the Unions.</extract>

In 1974, Article 1 of an agreement between WIPO and the UN established WIPO as a specialised agency of the UN 'for promoting creative intellectual activity and for facilitating the transfer of technology related to industrial property to...the developing countries in order to accelerate economic, social and cultural development.'<sup>28</sup>

In 2007, WIPO Member States adopted the WIPO Development Agenda, which included 45 recommendations that together aim to make the organisation as a whole and its various activities more focused on the needs of its developing country Member States.<sup>29</sup>

Over the years, the WIPO Secretariat has advanced a number of interpretations of the organisation's mission. In 2010, for instance, WIPO described its mission as: 'the promotion of innovation and creativity for the economic, social and cultural development of all countries through a balanced and effective international IP system.'<sup>30</sup> On the home page of WIPO's website, the Secretariat describes the organisation as the 'global forum for IP services, policy, information and cooperation.'<sup>31</sup> In a 2014 brochure on WIPO, the Secretariat further elaborated, describing the organisation as a 'self-funding, specialized agency of the UN, dedicated to making IP work for innovation and creativity.'<sup>32</sup>

## 2.3 What does WIPO do in practice?

Whereas WIPO was initially created to serve primarily as the secretariat of intergovernmental treaties and treaty negotiations, its activities have increased enormously over the past four decades. The organisation's growing workload has been due in part to the rising use of its global protection system treaties. It also results from the significant diversification of both WIPO's functions and the scope of its activities. As Member State demands on the organisation have grown, and public expectations have expanded, the WIPO Secretariat has grown in terms of budget and staff (see Figure 1).

In practical terms, WIPO's main day-to-day activities can be clustered in two core areas. First, WIPO provides a forum for Member States to pursue legal negotiations and policy discussions that shape international rules and practices on IP, and which occur through its various Committees, supported by the WIPO Secretariat. The agency hosts some 20 intergovernmental committees tasked with different aspects of global IP law and policy. These include committees charged with oversight of existing WIPO treaties and negotiation of new treaties and soft law instruments (such as guidelines), as well as committees focused on issues ranging from IP enforcement to the relationship of IP and development.

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<sup>28</sup> See WIPO, Agreement between the United Nations and the World Intellectual Property Organization WIPO Publication No. 111 (WIPO 1975).

<sup>29</sup> See WIPO, *General Report of the 2007 WIPO Assemblies A/43/16* (WIPO 2007) para. 334. For the text of the agenda, see <<http://www.wipo.int/ip-development/en/agenda>> accessed 1 October 2014.

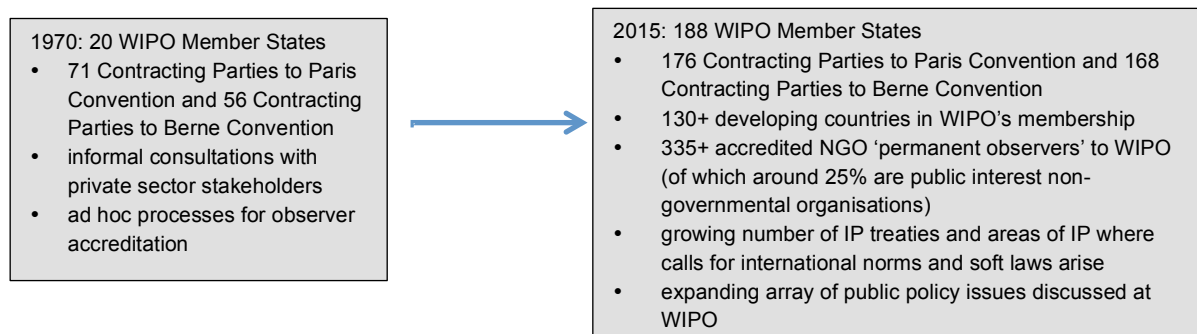
<sup>30</sup> This mission was advanced in WIPO, *Medium Term Strategic Plan, 2010–15 A/48/3* (WIPO 2010).

<sup>31</sup> See WIPO website, <<http://www.wipo.int>> accessed 1 May 2015.

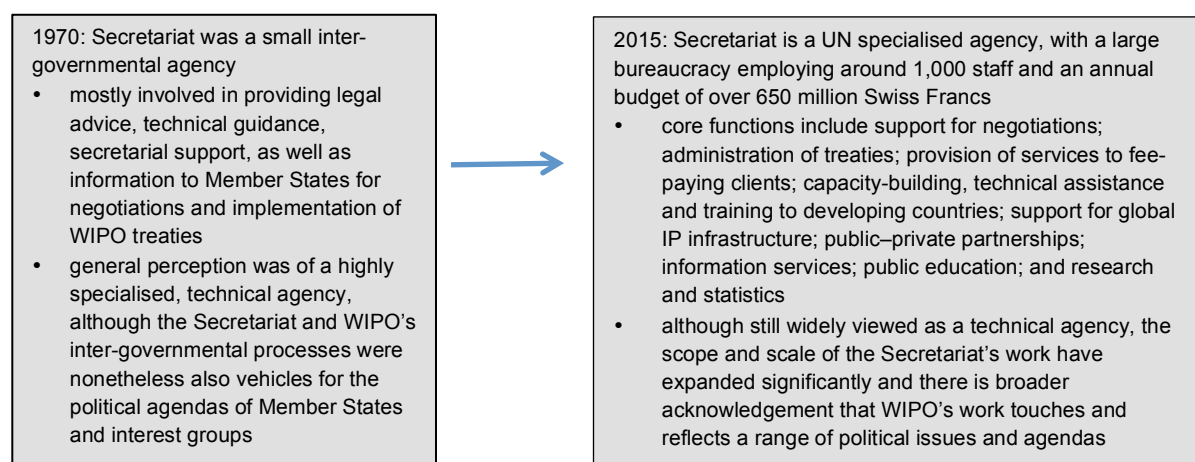
<sup>32</sup> See WIPO, *WIPO: Making IP Work* (WIPO 2014).

Figure 1. Growing Demands on WIPO Governance from 1970 – 2015

**Increasing Complexity of Intergovernmental Rule-Making and Decision-Making by Member States**



**Growing Size of the WIPO Secretariat, Expanding Scope of its Activities and Rising Political Interest in WIPO's Work**



Second, the WIPO Secretariat is a bureaucracy that provides a range of services to Member States, stakeholders and the public. In this area of WIPO's work, the Secretariat:

1. Administers the 25 intergovernmental IP treaties (plus the WIPO Convention) and their financial arrangements where relevant (see Table 3).<sup>33</sup> WIPO's agreements fall into three main categories: 15 IP protection treaties (which define international substantive standards on IP);<sup>34</sup> 4 classification treaties (which aim to organise information concerning inventions,

<sup>33</sup> Although the International Union for the Protection of New Varieties of Plants (UPOV), established by the International Convention for the Protection of New Varieties of Plants, is an independent intergovernmental organisation, the Director General of WIPO is its Secretary-General and WIPO provides administrative and financial services to the organisation. For more information on UPOV, see <<http://www.upov.int>> accessed 1 September 2014.

<sup>34</sup> For each of WIPO's 15 main protection treaties, Members agree to grant nationals of other countries of the Union the same protection as they grant to their own, and also to follow certain common rules, standards and practices. The 15 protection treaties are the Beijing Treaty on Audiovisual Performances; Berne Convention for the Protection of Literary and Artistic Works; Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (Brussels); Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods; Nairobi Treaty on the Protection of the Olympic Symbol; Paris Convention for the Protection of Industrial Property; Patent Law Treaty; Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of Their Phonograms; International Convention for the Protection of Performers; Producers of Phonograms and Broadcasting Organizations (Rome); Singapore Treaty on the Law of Trademarks; Trademark Law Treaty; WIPO Copyright Treaty; WIPO Performances and Phonograms Treaty; and the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled. The Washington Treaty on Intellectual Property in Respect of Integrated Circuits, which

trademarks and industrial designs through an indexed classification system),<sup>35</sup> and 6 global protection system treaties (which establish procedural rules mainly aimed at ensuring that one international registration or filing of an industrial property will have effect in all the countries signatory to the relevant treaties).<sup>36</sup> In addition, WIPO provides administrative and financial services to the International Union for the Protection of New Varieties of Plants (UPOV), an independent intergovernmental organisation established by the International Convention for the Protection of New Varieties of Plants, and the Director General of WIPO simultaneously serves as UPOV's Secretary-General.<sup>37</sup> The Rome, Phonograms (Geneva) and Satellites (Brussels) Conventions are co-administered by WIPO, UNESCO and the International Labour Organization (ILO).<sup>38</sup>

Notably, all but two of the world's multilateral IP treaties are WIPO agreements. The exceptions are the 1994 World Trade Organization (WTO) Agreement on Trade-related Aspects of Intellectual Property Rights (TRIPS)<sup>39</sup> and the 1954 United Nations Educational, Scientific and Cultural Organization (UNESCO) Universal Copyright Convention.<sup>40</sup>

Even though TRIPS is now considered the world's most comprehensive and powerful multilateral IP agreement (because it obliges countries to adopt minimum standards of protection across most types of IP and has an effective enforcement mechanism in the form of the WTO's Dispute Settlement Understanding),<sup>41</sup> it did not supersede WIPO agreements. Rather, TRIPS incorporates and builds on the provisions of four WIPO agreements

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has never entered into force at WIPO, is not included in this list.

<sup>35</sup> These are the Locarno Agreement Establishing an International Classification for Industrial Designs; Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks; Strasbourg Agreement Concerning the International Patent Classification; and the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks.

<sup>36</sup> These are the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purpose of Patent Procedure; Hague Agreement Concerning the International Deposit of Industrial Designs (including the Geneva Act of 1999); Lisbon Agreement for the Protection of Appellations of Origin and their International Registration; Madrid Agreement Concerning the International Registration of Marks; Protocol Relating to the Madrid Agreement; and the Patent Cooperation Treaty (Washington).

<sup>37</sup> For more information, see UPOV, 'About UPOV' <<http://www.upov.int/about/en>> accessed 1 May 2015.

<sup>38</sup> For the latter two Conventions, this is without much consequence as they do not provide for any assembly or other body, but the Rome Convention provides for a separate Intergovernmental Committee which has its own Rules of Procedure and meets (when not suspended) in separate meetings organised in turn by the three organisations (Article 32 of the Rome Convention).

<sup>39</sup> The TRIPS Agreement was adopted as part of the Final Act of the Uruguay Round of GATT Negotiations in 1994. For full text of the Agreement, see WTO, 'TRIPS: Agreement on Trade-Related Aspects of Intellectual Property Rights 1994' <[https://www.wto.org/english/docs\\_e/legal\\_e/27-trips.pdf](https://www.wto.org/english/docs_e/legal_e/27-trips.pdf)> accessed 1 May 2015.

<sup>40</sup> UNESCO, 'UNESCO Universal Copyright Convention 1954' <[http://portal.unesco.org/en/ev.php-URL\\_ID=15381&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=15381&URL_DO=DO_TOPIC&URL_SECTION=201.html)> accessed 1 May 2015.

<sup>41</sup> The TRIPS Agreement is subject to the WTO's Dispute Settlement Understanding (DSU), which enables a WTO Member to launch dispute settlement proceedings when it believes another member government is violating an agreement or a commitment that it has made in the WTO, such as those included in the TRIPS Agreement. For more information on the DSU, see WTO, 'Dispute Settlement' <[www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm)> accessed 1 May 2015.



*Table 3. WIPO treaties by category and number of ratifications (as of 2015)*

<b>Titles</b>	<b>Purpose</b>	<b>Ratifications</b>
WIPO Convention (1967)	Establishing the World Intellectual Property Organization (WIPO)	188
<b>Protection Treaties</b>	<b>Purpose</b>	
Paris Convention (1883)	Concerning protection of industrial property, including patents, marks, industrial designs, utility models, trade names, and the repression of unfair competition	176
Berne Convention (1886)	Concerning the protection of literary and artistic work	168
Madrid Agreement (Source) (1891)	For the repression of false or deceptive indications of the source of goods	36
Rome Convention (1961)	Concerning protection of performances of performers, producers of phonograms and broadcasts of broadcasting organisations	92
Phonograms Convention (1971)	Concerning the protection of phonograms	78
Brussels Convention (1974)	Relating to the distribution of programme-carrying signals transmitted by satellite	37
Nairobi Treaty (1981)	Concerning the protection of the Olympic symbol	51
Washington Treaty (1989)	Concerning intellectual property in respect of integrated circuits	3
Trademark Law Treaty (1994)	Establishing more user-friendly national and regional trademark registration systems	55
WIPO Copyright Treaty (1996)	Introducing new international rules and clarifying the interpretation of certain existing rules in order to respond to the impact of information and communication technologies on the creation and use of literary and artistic works	93
WIPO Performances and Phonograms Treaty (1996)	Introducing new international rules responding to the impacts of information and communication technologies on the production and use of performances and phonograms	94
Patent Law Treaty (2000)	Harmonising and streamlining formal procedures in respect of national and regional patent applications and patents to make such procedures more user-friendly	40
Singapore Treaty (2006)	On the law of trademarks	38
Beijing Audiovisual Treaty (2012)	Protecting the rights of audiovisual performers	6
Marrakesh Treaty (2013)	Facilitating access to published works for persons who are blind, visually impaired or otherwise print disabled	8
<b>Classification Treaties</b>		
Nice Agreement (1957)	Concerning the international classification of goods and services for the purpose of the registration of marks	84
Locarno Agreement (1968)	Establishing a system of classification for industrial designs	54
Strasbourg Agreement (1971)	Establishing the International Patent Classification (IPC) system	62
Vienna Agreement (1973)	Establishing a system of classification for marks	32
<b>Global Protection System Treaties</b>		
Madrid Agreement (Marks) (1891)	Concerning the international registration of marks	55
Hague Agreement (1925) (including the Geneva Act of 1999)	Concerning the international registration of industrial designs	64 (51)
Lisbon Agreement (1958) (including the Geneva Act of	Concerning the protection of appellations of origin and their international registration	28 (0)

2015)		
Patent Cooperation Treaty (1970)	Enabling applicants to file an 'international' patent application seeking protection in many countries	148
Budapest Treaty (1977)	Concerning the international recognition of the deposit of microorganisms for the purposes of patent procedure	79
Madrid Protocol (on Registration of Marks) (1989)	Rendering the Madrid system more flexible and more compatible with the domestic legislations of certain countries that had not been able to accede to the Agreement	96

*Note:* The table does not include the 1989 Film Register Treaty on the international registration of audiovisual works. The operation of the Treaty was discontinued due to lack of demand. The Washington Treaty on the Protection of Integrated Circuits is included in this table given its importance as a treaty substantively incorporated into the TRIPS Agreement, although it is not counted as one of the 15 WIPO protection treaties as it has never entered into force. The Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indication was adopted by a Diplomatic Conference of the Lisbon Union on 20 May 2015. At the time of this paper's publication, no country had deposited their instruments of ratification or accession.

*Source:* WIPO, 'Summary Table of Membership of the World Intellectual Property Organization (WIPO) and the Treaties Administered by WIPO, plus UPOV, WTO and UN' <<http://www.wipo.int/treaties/en/summary.jsp>> accessed 31 May 2015.

as the source of its rules.<sup>42</sup> Further, the global protection system treaties (i.e., the Patent Cooperation Treaty (PCT), the Madrid treaty and its Protocol, and the, Hague, Lisbon and Budapest treaties) remain unique to WIPO and, since TRIPS emerged in 1994, WIPO Member States have concluded eight multilateral IP negotiations, resulting in the WIPO Copyright Treaty, the WIPO Performances and Phonograms Treaty, the Geneva Act of the Hague Agreement, the Patent Law Treaty, the Singapore Treaty on the Law of Trademarks, the Beijing Treaty on Audiovisual Performances, the Marrakesh Treaty (for the visually impaired), and the Geneva Act of the Lisbon Agreement.

2. Provides a range of services for users of the IP system. The Secretariat offers treaty-related services that help fee-paying applicants and holders of IP rights protect their IP across borders. WIPO enables applicants to seek patent protection, and to register trademarks and appellations of origin, in multiple countries by filing one international application through WIPO. It also facilitates registration of industrial designs in multiple countries with minimum formalities and expense. In addition, WIPO's Arbitration and Mediation Center offers alternative dispute resolution (ADR) procedures to help businesses, associations and their legal counsels to resolve IP disputes outside courts,<sup>43</sup> most prominently relating to abusive registration and use of Internet domain names (or 'cybersquatting').<sup>44</sup>
3. Supports global infrastructure for the IP system through services to patent offices and copyright agencies, such as systems that enable patent offices to share documents, including search and examination documentation, to facilitate a more efficient international examination process for patent applications.<sup>45</sup> It also includes systems for the modernisation of offices,

<sup>42</sup> The TRIPS Agreement incorporates the Berne, Paris and Rome Conventions as well as the substantive provisions of WIPO's Washington (Integrated Circuits) Treaty of 1989, which never entered into force at WIPO. See Carlos M Correa (ed), *Research Handbook on the Protection of Intellectual Property under WTO Rules* (Edward Elgar Publishing 2010).

<sup>43</sup> The WIPO Center maintains a detailed database of 1,500 independent arbitrators, mediators and experts (neutrals) from more than 70 countries, with further neutrals added to meet the specific needs of each case it administers. Cases submitted include both contractual disputes (e.g., patent and software licenses) and non-contractual disputes (e.g., patent infringement) under the WIPO Mediation, Arbitration, Expedited Arbitration and Expert Determination Rules, which parties may adopt by including model WIPO clauses in contracts and by concluding WIPO submission agreements. To view examples of such clauses and agreements, see WIPO, 'Recommended WIPO Contract Clauses and Submission Agreements,' <http://www.wipo.int/amc/en/clauses/>.

<sup>44</sup> Most prominently, this occurs through the Uniform Domain Name Dispute Resolution Policy (UDRP), see WIPO, 'WIPO Guide to the Uniform Domain Name Dispute Resolution Policy (UDRP)' <<http://www.wipo.int/amc/en/domains/guide/>> accessed 8 August 2014.

<sup>45</sup> WIPO tools that facilitate these activities include its Digital Access Service (DAS), the WIPO Centralized

such as WIPO's Industrial Property Automation System (IPAS) and the WIPO Copyright Management System (WIPOCOS).<sup>46</sup>

4. Provides information services through a series of global databases of patent documents (Patent Scope), brands and marks (the Global Brands Database) and laws and treaties (WIPO Lex), as well as statistics and economic research on IP and innovation.<sup>47</sup>
5. Provides assistance to developing countries, ranging from legal assistance on IP legislation, policy advice and training to institutional support for national and regional IP offices. In 1995, WIPO and the WTO forged an agreement, wherein WIPO undertook to provide assistance to developing countries for the implementation of the TRIPS Agreement.<sup>48</sup>
6. Hosts a number of multi-stakeholder platforms and public–private partnerships (PPPs), such as WIPO Green (an online marketplace that promotes innovation and diffusion of green technologies by connecting technology and service providers), WIPO Re:Search (a consortium of public and private sector organisations that aims to share IP and expertise with the global health research community to promote the development of new drugs, vaccines and diagnostics) and the Accessible Books Consortium (ABC) (a partnership of WIPO, organisations serving people with print disabilities and organisations of publishers and authors that aims to increase the number and availability of books in accessible formats for people who are blind or visually impaired), as well as initiatives to improve Access to Research for Development and Innovation (ARDI) and Access to Specialised Patent Information (ASPI) in developing countries.<sup>49</sup>

## 2.4 The WIPO Secretariat

The Secretariat of WIPO is responsible for the planning and delivery of the work program approved by Member States. Although the term 'Secretariat' has been used increasingly since the year 2000, the WIPO Secretariat has traditionally been referred to as the International Bureau, such as in the WIPO Convention, and still is referred to that way by the governing bodies of the WIPO-administered international IP treaties and in their official documentation.

The WIPO Convention sets out a number of functions for WIPO (see Article 4) and certain responsibilities of the Director General (see Article 9), but it does not have an Article that explicitly defines particular tasks for the Secretariat. The functions envisaged in the Convention do, however, give implicit guidance on the Secretariat's role.

In practice, the Secretariat serves a broad range of functions (as outlined above in section 2.3) – from administering treaties and delivering technical assistance to servicing negotiations among Member States on new international norms – most but not all of which are mentioned in the WIPO Convention. In several of these areas, there has been considerable debate about the overriding purpose of WIPO's work, and the Secretariat's activities, with critics arguing that the WIPO

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Access to Search and Examination (CASE) system, and its classification system.

<sup>46</sup> See: WIPO, 'WIPOCOS: Software for Collective Management of Copyright and Related Rights' <<http://www.wipo.int/copyright/en/initiatives/wipocos.html>> accessed 21 January 2015; WIPO, 'WIPO, Technical Assistance – Business Software Solutions for IP Offices' <[http://www.wipo.int/global\\_ip/en/activities/technicalassistance](http://www.wipo.int/global_ip/en/activities/technicalassistance)> accessed 21 January 2015.

<sup>47</sup> See: WIPO, 'PatentScope' <<http://www.wipo.int/patentscope/search/en/search.jsf>> accessed 7 January 2015; WIPO, 'About WIPO Lex' <<http://www.wipo.int/wipolex/en/about.html>> accessed 7 January 2015.

<sup>48</sup> See WTO 'WTO–WIPO Cooperation Agreement 1995' <[http://www.wto.org/english/tratop\\_e/trips\\_e/wtowip\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/wtowip_e.htm)> accessed 8 August 2014.

<sup>49</sup> For the WIPO Secretariat's view on the importance of these voluntary initiatives as a mode of cooperation for achieving shared policy objectives, see WIPO, *Address of the Director General: WIPO Assemblies 2014* (WIPO 2014) and WIPO, *Report of the Director General to the WIPO Assemblies: The Year in Review*, WIPO Publication 1040/14 (WIPO 2014). For information on each initiative, see <[http://www.wipo.int/cooperation/en/multi-stakeholder\\_platforms/](http://www.wipo.int/cooperation/en/multi-stakeholder_platforms/)> accessed 5 October 2014.

Convention, now almost 40 years old, does not properly capture contemporary priorities and challenges or reflect more recent developments such as the 1974 WIPO-UN Agreement, and the WIPO Development Agenda. In practice, Member States has not limited the Secretariat to the functions or purposes envisaged in the Convention. Some ongoing Secretariat activities are not specifically provided for in the Convention (such as the pursuit of PPPs and the provision of dispute settlement services) and several functions have expanded in scope (WIPO's portfolio of development cooperation activities, for instance, goes far beyond the legal assistance envisaged in the Convention).

Details of the range of activities in the Secretariat's work program, expected results and associated budgets are contained in WIPO's biennial Program and Budget documents (See Annex 1). (For discussion of the process for elaborating the Program and Budget, see section 3.3.6).

#### 2.4.1 Leadership and staffing

The Director General of WIPO is the executive head and representative of the Secretariat. The WIPO Convention makes the Director General responsible for the preparation of draft Program and Budget documents as well as periodical reports on activities, and also calls on him or her to serve as *ex-officio* secretary to the many WIPO bodies and committees (Article 9). Appointed by the WIPO General Assembly upon nomination by the Coordination Committee for a 6-year term, the Director General is eligible for reappointment once for a further 6 years.<sup>50</sup> (For more on the appointment process, see section 3.2.1).

The Director General reports to the General Assembly and is responsible for carrying out its instructions. The Director General is charged with providing strategic direction for WIPO's programs, ensuring delivery of results in line with the organisation's nine strategic goals, the Program and Budget, and agreed work plans; and managing the budget, activities, and human and financial resources of the organisation. Despite the possibility of long tenure of Directors General at WIPO, there is no provision for annual or mid-term reviews or feedback from Member States on his or her performance.<sup>51</sup>

Since its creation, WIPO has had four Directors General (see Table 4). During Georg Bodenhausen's tenure from 1970 to 1973, Árpád Bogsch served as WIPO's Deputy Director General and was elected to the post of Director General in November 1973.<sup>52</sup> Upon Bogsch's

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<sup>50</sup> See WIPO Convention, Articles 8(v) and 6(2)(i). The WIPO Convention establishes that the period and conditions of appointments shall be fixed by the General Assembly, but does not set a limit on the tenure of the Director General (see Article 9). Also see WIPO, *Policies and Practices for the Nomination and Appointment of Directors General* WO/GA/23/6 (WIPO 1998) para. 5; and WIPO, *Report: adopted by Member States, 23<sup>rd</sup> Session of the WIPO General Assembly* WO/GA/23/7 (WIPO 1998) para. 22. Notably, Member States amended Article 9(3) of the WIPO Convention in 1999, stipulating that the maximum term of appointment of a Director General shall be 12 years. Although the amendment has not yet entered into force, the presumption among Member States and the Secretariat appears to be that the General Assembly's 1999 decision is nonetheless to be followed in practice.

<sup>51</sup> A study on leadership practices in international organisations conducted jointly by the World Economic Forum and Oxford's Blavatnik School of Government proposes that 'best practices' and structures that facilitate good, accountable and effective leadership in international organisations include: clear, transparent performance expectations set by leaders for themselves; a performance management program that includes annual performance appraisals and feedback on performance, as well as the possibility for coaching and development to address weaknesses over time; remuneration or benefits tied to outcomes of the performance management program; consideration of performance management criteria in the re-election process; and incentive structures that encourage leadership to engage with a diverse range of stakeholders. See Global Agenda Council on Institutional Governance Systems, *Effective Leadership in International Organizations* (World Economic Forum and Blavatnik School of Government 2015).

<sup>52</sup> Notably, Bogsch was also a Deputy Director of WIPO, and was responsible for overseeing much of the

retirement some 24 years later in 1997, Kamil Idris was elected to be WIPO's Director General and was then reappointed for a further 6 years in 2003. In late 2007, however, Idris submitted his early resignation amidst complaints of misconduct.<sup>53</sup> The current Director General, Francis Gurry, was elected to serve for 6 years from the time of Idris' departure in 2008. In 2014, Gurry was re-elected for a second term until 2020.

*Table 4. WIPO Directors General and their period of tenure*

Director General	Period of Tenure
Georg Bodenhausen (The Netherlands)	1970–73
Árpád Bogsch (United States)	1973–97
Kamil Idris (Sudan)	1997–2008
Francis Gurry (Australia)	2008–term ends in September 2020.

The Director General is supported by a Senior Management Team (SMT), which consisted in 2015 of four Deputy Directors General (DDGs) and four Assistant Directors General (ADGs) (including the Chief of Staff). Although the Director General appoints the DDGs, this occurs only after the approval of his or her nominations by the WIPO Coordination Committee (as established by Article 9(7) of the WIPO Convention) (for more on the Coordination Committee, see section 3.2.1).<sup>54</sup> The Director General appoints the ADGs but is required by the WIPO Staff Regulations and Rules to take into account the advice of the Coordination Committee (in accordance with Regulation 4.8).

The posts of DDG and ADG are generally considered to be political appointments. The first step in the DDG selection process has traditionally been a Secretariat communication inviting Member States wishing to nominate candidates to submit proposals. In 2014, however, the WIPO Director General took the unprecedented step of combining this practice with a 'call for applications' published on WIPO's website inviting interested individuals to submit applications directly (that is, individuals could present their own candidacies). The final set of DDG appointments generally reflects a combination of merit-based considerations (qualifications, experience and skills) and personal political considerations on the part of the Director General, as well as Member State expectations regarding geographical representation and rotation and pressures for the representation of one of their national citizens in the organization's Senior Management Team.<sup>55</sup>

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transformation of BIRPI into WIPO. He was also on the US delegation to BIRPI at the time of the first discussions of this transformation; in this capacity, he led a Working Group that prepared the first formal proposals in this respect. See BIRPI, *Report of the Working Group on the Plan of Reorganisation of BIRPI* BPCP/II/2 (BIRPI 1962); BIRPI, *Joint Meeting of the Permanent Bureau of the Paris Union and the Permanent Committee of the Berne Union* C(BIRPI 1962).

<sup>53</sup> See JIU, *Review of the Management and Administration in WIPO: Budget, Oversight and Related Issues* JIU/REP/2005/1 (JIU 2005).

<sup>54</sup> Regarding the procedure for nomination and selection of DDGs, Article 9(7) of the WIPO Convention states: 'The Director General...shall appoint the Deputy Directors General after approval by the Coordination Committee. The conditions of employment shall be fixed by the staff regulations to be approved by the Coordination Committee on the proposal of the Director General. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.' Regulation 4(8) of the WIPO Staff Regulations and Rules also provides that the Director General shall appoint Assistant Directors General 'taking into account the advice of' the Coordination Committee. Article 9(2) refers to the Director General being assisted by two or more Deputy Directors General. No further clarification is made on the number of Deputy Directors General.

<sup>55</sup> Although the Director General's proposal does not explicitly mention political considerations, Member States frequently refer to them in their discussion of the proposals, as noted in the relevant reports of the Coordination Committee. See for instance WIPO, *Appointment of Deputy Directors General and Assistant Directors General: Document prepared by the Director General* WO/CC/70/2 (WIPO 2014). Also see WIPO, *Appointment of Deputy*



In 2014, the WIPO Director General also gave his Chief of Staff a 'personal promotion' to the rank of ADG in recognition of his service (but underlined that this additional ADG post would not constitute a precedent as to the future number of DDGs or ADGs). The practice of personal promotions on the part of the Director General similarly exists in other UN organisations, such as the ILO and WHO, and personal promotions, particularly at senior staff levels, have long been part of the organization's culture. However, the extensive use of personal promotions by previous WIPO Directors General raised concerns that the practice was overused and abused as a vehicle for personal and political favours.<sup>56</sup> Member States have subsequently been in favour of a more accountable, merit-based approach to human resource management, although this has not ruled out the Director General's discretionary power to grant personal promotions where warranted.

The terms of office for the current SMT coincide with the mandate of the Director General (and six months after the end of the Director General's appointment should his term of office come to an end more than six months before its stated term on 30 September 2020).<sup>57</sup>

The SMT meets as an executive management committee on a regular but confidential basis. In conducting its work, the SMT requires individual Directors across the organization to prepare and submit Quarterly Management Reports for its consideration. These reports are not usually accessible to the staff at large, except at the discretion of individual Directors who may choose to draft and share them with their staff.

There is no document setting out the SMT's terms of reference, working methods or decision-making process. There has been no consistent practice over time with regard to the existence and availability of the SMT agenda or minutes or to the circulation of a report or decisions to SMT members. Neither the agenda of SMT meetings nor a summary of decisions is routinely available to Member States or staff. Communication of the results of SMT meetings to WIPO Directors (mid-level management) and staff occurs instead at the discretion of individual SMT Members or through Office Instructions where relevant.<sup>58</sup>

The issuance of an Office Instruction is a key tool used by the Director General to communicate and implement internal management decisions. Such Office Instructions can include announcements of new organisational structures and staff, as well as new policies introduced by management (see Table 5). Office instructions are internal Secretariat documents, but the Secretariat can make them available to Member States or even to the public on request.

WIPO recruits staff employed in its higher and professional categories on the basis of the UN system's principle of equitable geographic distribution, and other staff are drawn from a range of countries across the world.<sup>59</sup> The number of staff at WIPO has grown from a staff count of 544 in

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*Directors General and Assistant Directors General: Document prepared by the Secretariat, WIPO Coordination Committee WO/CC/70 (WIPO: 2014)*

<sup>56</sup> See JIU, *Review of the Management and Administration in WIPO: Budget, Oversight and Related Issues* JIU/REP/2005/1 (New York: UN Joint Inspection Unit 2005). In 2007, the issue of personal promotions arose in the course of an independent expert assessment conducted by PricewaterhouseCoopers, the final report of which can be found in WIPO, *Final Report of the Desk-to-Desk Assessment of the Human and Financial resources of the World Intellectual Property Organization: prepared by the Secretariat, WO/GA/34/1* (WIPO 2007).

<sup>57</sup> See WIPO, *Appointment of Deputy Directors General and Assistant Directors General: Document prepared by the Director General WO/CC/70/2* (WIPO 2014).

<sup>58</sup> JIU, *Review of Management and Administration in the World Intellectual Property Organization (WIPO)* JIU/REP/2014/2 (UN Joint Inspection Unit 2014) 14–15.

<sup>59</sup> See WIPO, *WIPO Intellectual Property Handbook: Policy, Law and Use* (WIPO 2004) 9.

1992<sup>60</sup> to 1,247 in mid-2015.<sup>61</sup> The geographical diversity of staff has grown from 58 nationalities in 1992 to over 114 nationalities in 2015.<sup>62</sup>

*Table 5. Examples of Office Instructions relevant to WIPO governance*

Subject	Office Instruction Number
WIPO Ethics Office	Office Instruction 25/2010
WIPO Code of Ethics	Office Instruction 84/2012
The Office of the Ombudsperson	Office Instruction 32/2009
Policy to protect against retaliation for cooperating in an oversight activity or reporting misconduct or other wrongdoing ('Whistleblower Protection Policy')	Office Instruction 58/2012
Personal Accountability and Financial Liability Office	Office Instruction 43/2013
Honors and Gifts	Office Instruction 2/2013
Policy on preventing and deterring corruption, fraud, collusion, money laundering and the financing of terrorism	Office Instruction 13/2013

### 2.4.2 Headquarters and external offices

WIPO's headquarters in Geneva has also grown in size. WIPO's first headquarters building was completed in 1978. In 1998, construction of an adjacent, supplementary headquarters building in Geneva began. In 2008, space requirements led to the start of work on an additional WIPO administrative building (which was inaugurated in 2011) and a new conference hall (which was inaugurated in 2014), both on the same Geneva campus.<sup>63</sup> The Organization enjoys a number of privileges and immunities as granted under the 1947 Convention on Privileges and Immunities of Specialized Agencies of the United Nations<sup>64</sup> and its 1970 Headquarters Agreement with the Swiss Federal Council, notably being exempt from paying most forms of direct and indirect taxation.

The number and location of WIPO's external offices has evolved over time. As of 2015, WIPO has such offices based in Brazil, China, Japan, the Russian Federation and Singapore (established in 2010, 2014, 2006, 2014 and 2005, respectively), as well as a Coordination Office in New York, charged with liaison between the WIPO Headquarters and the UN.<sup>65</sup> Members and the Secretariat are currently working to address the absence of a policy to guide the establishment and activities of external offices. According to the WIPO Financial Regulations and Rules (see section 3.3.2), the external offices obtain funds through remittances from

<sup>60</sup> See WIPO, *World Intellectual Property Organization: 1992–2007* (WIPO 2003) 15.

<sup>61</sup> These figures include staff in regular-funded and other funded posts, as well as temporary staff (but not interns, fellows, temporary agency personnel, individual contractors and short-term translators, who are referred to as 'non-staff.' See WIPO, *Annual Report on Human Resources, Prepared by the Director General*, WO/CC/70/01 (WIPO 2014) 5. In 1933 by contrast, BIRPI had just 19 officials and in 1962, 51 officials of which 31 were permanent staff. See BIRPI, *Observations of BIRPI on their draft reorganisation*, BPCP/I/2 (BIRPI 1962) 4.

<sup>62</sup> See WIPO, *Annual Report on Human Resources, Prepared by the Director General*, WO/CC/70/01 (WIPO 2014) 5, and WIPO, *WIPO Overview*, WIPO Publication No. 1007/E/11 (WIPO 2011).

<sup>63</sup> WIPO, *Progress Report on the New Construction Project and the New Conference Hall Project: Prepared by the Secretariat A/54/11* (WIPO 2014). Also see WIPO, *WIPO: Financial Supervision Audit Relating to Construction Projects and New Security Measures, Report of the External Auditor: Swiss Federal Audit Office* WO/PBC/19/18 Appendix (WIPO 2012).

<sup>64</sup> Edward Kwakwa, E and Marie-Lea Rols, 'The Privileges and Immunities of the World Intellectual Property Organization: Practice and Challenges', in Niels Blokker and Nico Schrijver (eds) *Immunity of International Organizations* (Brill Nijhoff 2015).

<sup>65</sup> Former WIPO offices in Washington and Brussels have been closed for several years.

headquarters, which are designed to cover cash requirements of the offices for the subsequent two and a half months.<sup>66</sup>

### **2.4.3 Internal organisation**

Within the WIPO Secretariat, the internal organisational structure for managing its activities has changed several times over the past decade. As of early 2015, the work of implementing WIPO's 31 Programs is divided among seven organisational sectors (such as the Development Sector, Brands and Designs Sector, Global Issues Sector, Culture and Creative Industries Sector and the Patents and Technology Sector) (see Annex 1). In addition, a number of departments and divisions report directly to the Director General.<sup>67</sup> Over half of WIPO's Programs rely on the engagement and cooperation of divisions in more than one sector for their implementation.<sup>68</sup> High among the tasks of the Secretariat in many of these programs is to support and serve the various WIPO committees and treaties, particularly in regard to the revision of treaties and development of new ones, for which the Secretariat acts to support cooperation and negotiations among Members.

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<sup>66</sup> Rule 104.5 states that: 'In the absence of a special authorization from the Controller, those remittances shall not exceed the amount required to bring cash balances up to the levels necessary to meet the recipient liaison office's estimated cash requirements for the next two and a half months.'

<sup>67</sup> The number and name of Programs changes according to the priorities set in the biennial Program and Budget process.

<sup>68</sup> The remaining Programs are each implemented by an individual Sector. Some Sectors, such as the Global Challenges Sector, have responsibilities for expected results across many Programs.

## PART 3. WIPO'S GOVERNANCE SYSTEM

WIPO currently has 188 Member States, of which over 120 are developing countries.<sup>69</sup> Together, the Member States are responsible for determining the direction, budget and activities of WIPO.<sup>70</sup>

This section examines the core components of WIPO's governance system in the five thematic areas outlined above. Where relevant, it provides examples of how the Secretariat can impact WIPO's governance system and dynamics, and thus the agenda and decisions of Member States and outcomes of the organisation (for a systematic analytical account of the role of the Secretariat in WIPO's governance, see Working Paper 3 of this series on the politics of WIPO governance).

### 3.1. WIPO's mandate and legal foundations

#### 3.1.1. *The WIPO Convention*

The World Intellectual Property Organization's founding legal instrument is the 1967 WIPO Convention; it defines the roles and functions of WIPO's main or 'principal' organs through which Member States exercise their governance responsibilities. The WIPO Convention is 'administrative' in the sense that it does not establish any substantive or procedural standards for various categories of IP (these are taken up by the other 25 treaties administered by WIPO).<sup>71</sup> Further, membership of WIPO does not lead to any obligations concerning other treaties administered by WIPO. The WIPO Convention has been ratified by each of WIPO's 188 Member States.

To achieve the objectives as set out in Article 1 of the WIPO Convention, Article 4 envisioned seven functions for WIPO: (i) to promote the development of measures designed to facilitate the efficient protection of intellectual property throughout the world and to harmonise national legislation in this field; (ii) to perform the administrative tasks of the Paris Union, the Special Unions established in relation with that Union, and the Berne Union; (iii) to assume, or participate in, the administration of any other international agreement designed to promote the protection of intellectual property; (iv) to encourage the conclusion of international agreements designed to promote the protection of intellectual property; (v) to offer its cooperation to Member States requesting legal-technical assistance in the field of intellectual property; (vi) to assemble and disseminate information concerning the protection of IP; and to carry out, promote, and publish studies in this field; and (vii) to maintain services facilitating the international protection of intellectual property and, where appropriate, provide for registration in this field and the publication of the data concerning the registrations.

The Member States of WIPO adopted their first amendment to the WIPO Convention on 28 September 1979 (entering into force on 25 June 1984), with the aim of aligning WIPO's budget

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<sup>69</sup> For a complete current listing of WIPO Member States, see: <http://www.wipo.int/about-wipo/en/members/index.html> (last viewed 20 October 2014).

<sup>70</sup> To become a WIPO Member, a state must deposit an instrument of ratification or accession with the Director General. The WIPO Convention provides that membership is open to any state that is: a) a member of the Paris Union or Berne Union; b) a member of the UN, or of any of the UN's Specialized Agencies, or of the International Atomic Energy Agency, or that is a party to the Statute of the International Court of Justice; or c) invited by the WIPO General Assembly to become a Member State of the organization. States already party to the Berne or Paris Conventions, must concurrently ratify or accede to, at least the administrative provisions of the Stockholm 1967 Act of the Paris Convention or of the 1971 Act of the Berne Convention.

<sup>71</sup> Abbott *et. al.* (1999), p. 303.

process with the practice of biennial budgets prevalent elsewhere in the UN system. WIPO Member States subsequently approved four further amendments to the Convention. In 1998, for instance, Member States approved an amendment to Article 9(3) of the Convention, which they adopted in September 1999, to limit the term of appointment of the Director General to a maximum of 12 years. In September 2003, Member States approved three further amendments, related to: (i) the abolition of the WIPO Conference; (ii) a change in the periodicity of the ordinary sessions of the WIPO General Assembly, and the other Assemblies of the Unions, from biannual to annual meetings; and (iii) formal adoption of the unitary contribution system (which Member States had adopted in practice since 1993) and new contribution classes (as adopted in 1989, 1991 and 1993), thereby simplifying the system for Member State contributions.<sup>72</sup> The 2003 decisions required not only amendments to the WIPO Convention but also to other WIPO-administered treaties impacted by the decisions, such as the Berne and Paris Conventions. Although the 1999 and 2003 amendments have not yet entered into force (only 52 and 15 notifications of acceptance have been deposited by Member States respectively), the decisions are nonetheless reflected in WIPO's relevant practices (as discussed in related sections below).

### **3.1.2. Agreement between the United Nations and WIPO**

In 1974, Article 1 of WIPO's agreement with the UN established the organisation's new status as a UN specialised agency "for promoting creative intellectual activity and for facilitating the transfer of technology related to industrial property to...the developing countries in order to accelerate economic, social and cultural development."<sup>73</sup> The UN-WIPO agreement entered into effect on 17 December 1974, upon its approval by the General Assembly of the United Nations and General Assembly of WIPO. A Protocol incorporating the agreement was subsequently signed by Kurt Waldheim, Secretary-General of the United Nations, and Árpád Bogsch, Director General of WIPO, on 21 January 1975. The agreement includes provisions on a range of matters, such as coordination, reporting and sharing of data within the UN system, and also formalised WIPO's participation in the UN staff remuneration and pension systems. In addition, the agreement provided that relevant WIPO staff could be issued with a UN 'laissez-passer' travel document and gave WIPO's senior staff and leadership clearer professional standing in regard to interaction and cooperation with other UN organisations (For a more detailed review of the agreement's provisions, see section 3.5.1).

### **3.1.3. The WIPO Development Agenda: a key decision relevant to debates on WIPO's mandate**

The 2007 approval by WIPO Member States of the WIPO Development Agenda had numerous implications for the organisation's governance system. The WIPO Development Agenda included 45 recommendations that aim to mainstream development throughout WIPO's work, divided into six clusters: Cluster A – technical assistance and capacity building; Cluster B – norm-setting flexibilities, public policy and public domain; Cluster C – technology transfer, information and communication technologies (ICT) and access to knowledge; Cluster D – assessment, evaluation and impact studies; Cluster E – institutional matters including mandate and governance; and Cluster F – other issues (see Annex 3).

The WIPO Development Agenda is regularly invoked by developing countries in a range of WIPO deliberations when arguments about WIPO's mandate arise. They argue that the adoption of the

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<sup>72</sup> See WIPO, *WIPO Intellectual Property Handbook: Policy, Law and Use* (WIPO 2004) 9. Also see WIPO, *Final Recommendations of the WIPO General Assembly Working Group on Constitutional Reform A/37/5* (WIPO 2002).

<sup>73</sup> See footnote 28.



Development Agenda affirmed the centrality of development objectives to WIPO's purpose, insisting that the organisation's commitment and responsiveness to the needs of developing countries must be a core benchmark against which WIPO's performance and accountability are to be assessed.<sup>74</sup> The adoption of the Development Agenda has been described as the first formal acknowledgement by the organisation of the 'importance of moving away from an agenda essentially limited to promotion and protection of intellectual property rights, to embracing the need to assist developing countries in different aspects of this crucial area.'<sup>75</sup>

Also on the governance front, the General Assembly agreed to create a Committee on Development and IP (CDIP) to oversee the implementation of the Development Agenda recommendations and undertake further work.<sup>76</sup> In addition, a number of the Development Agenda recommendations specifically relate to WIPO's governance and mandate, most notably those in Cluster E on institutional matters. Several recommendations in other Clusters also have governance implications, such as those designed to boost the transparency, development-orientation and accountability of the organisation's activities and norms. Specific examples of components of the WIPO Development Agenda particularly relevant to WIPO's governance include recommendations for implementing a yearly review and evaluation mechanism for all WIPO's development-oriented activities; strengthening capacity to perform objective assessments of the development impact of WIPO's activities; intensifying cooperation with UN agencies; reviewing WIPO technical assistance to developing countries; enhancing participation of civil society in WIPO activities; improving WIPO's role in finding partners for its activities in developing countries; boosting transparency and openness of meetings related to norm-setting; and creating a public, online roster of consultants and database of technical assistance projects. In addition, in 2010, WIPO Member States adopted a Development Agenda Coordination Mechanism to improve monitoring and coordination of the efforts to mainstream development considerations throughout WIPO's work (discussed in section 3.2.1).

## 3.2. WIPO's decision-making structure, processes, and practices

### 3.2.1. WIPO's complex governance structure

The World Intellectual Property Organization's decision-making structure is often described as complex. In 2014, for instance, a UN Joint Inspection Unit report observed that WIPO has 'one of the most complex governance structures' in the UN system.<sup>77</sup> This complexity arises in part from WIPO's historical origins and evolution; most notably from the amalgamation of several existing treaty-based structures into WIPO and the progressive adding of new treaties.

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<sup>74</sup> Susan K. Sell, 'Everything Old Is New Again: The Development Agenda Now and Then' (2011) 3(1) *The WIPO Journal* 17–23.

<sup>75</sup> See JIU, *Review of Management and Administration in the World Intellectual Property Organization (WIPO)* JIU/REP/2014/2 (UN Joint Inspection Unit 2014).

<sup>76</sup> See WIPO, *General Report of the 2007 WIPO Assemblies A/43/16* (WIPO 2007) para. 334. The existence of a WIPO Member State body focused specifically on development issues was not novel. Although the CDIP had an expanded mandate, its antecedent was the Permanent Committee on Cooperation for Development Related to Intellectual Property (PCIPD), which was an advisory body focused on technical assistance created in 1998 that reported to the WIPO Conference and met in four sessions held between 1998 and 2005. In 2005, Member States agreed to an Inter-sessional Intergovernmental Meeting on a Development Agenda for WIPO, which met over three sessions. At the 2005 Assemblies, Member States agreed to constitute a Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA) to take forward discussions on the Development Agenda proposals. Member States also agreed that the PCIPD would cease to exist. The PCDA held four sessions from 2006 to 2007.

<sup>77</sup> JIU, *Review of Management and Administration in the World Intellectual Property Organization (WIPO)* JIU/REP/2014/2 (UN Joint Inspection Unit 2014) 5.

As elaborated below, The World Intellectual Property Organization's main decision-making organs coexist with the governing bodies of the Unions created by a number of WIPO-administered IP treaties, several of which date back to the late 19th century.<sup>78</sup> Further, the main convention-based organs established by the WIPO Convention are complemented by several layers of subsidiary bodies also involved in decision-making and/or negotiations, including committees, expert committees established by treaty provisions, and working groups. Some of these bodies focus on governance matters (such as the Program and Budget Committee (PBC) and the Independent Advisory Oversight Committee (IAOC)), and others on more substantive and technical matters of IP. Diplomatic conferences are further important components of WIPO's governance system. Although Member State views vary on the role and significance of coordination mechanisms such as the Development Agenda Coordination Mechanism, it is discussed below as a component of WIPO's governance system due to its focus on coordination across WIPO's decision-making structure. Each of these elements is discussed below. (Figure 2 presents a visual view of the structure and composition of WIPO's main decision-making bodies, and the relationships among them.)

### The main organs

The World Intellectual Property Organization's three main decision-making organs, as defined by the 1967 WIPO Convention, are the WIPO General Assembly (179 Member States), the WIPO Conference (188 members) and the WIPO Coordination Committee (83 members). For each of these core organs, one delegate, who may be assisted by alternate delegates, advisors and experts, can represent each Member State.<sup>79</sup>

Each of the organs established by the WIPO Convention, as well as the governing bodies created by other WIPO treaties (discussed in section 5.3 below), can only be formally modified through amendments to the relevant treaties, which subsequently enter into force after accession/ratification by the required number of members, according to their respective constitutional processes.<sup>80</sup> Although the mandates of WIPO's main organs can not be formally changed through decisions made by the General Assembly, some Member State decisions and practices have nonetheless led informally and incrementally altered how decision-making occurs in the main organs, and which of these main organs, or other committees, Member States, serves in reality as the venue for discussion of different agenda items.

Notably, whereas many international organisations have an executive committee or board comprised of a sub-group of member states (most of which consist of between 30 and 50 member states representing different geographic or economic groupings of countries) that meet several times a year to guide and oversee the organisation, WIPO does not have such an executive organ among its convention-based or statutory governing bodies.<sup>81</sup> In practice, however, the Program and Budget Committee (PBC), one of the General Assembly's subsidiary bodies, performs many of the powerful functions (but not all) that such executive bodies are commonly charged with (the PBC is discussed in detail below).<sup>82</sup>

<sup>78</sup> See WIPO, *WIPO Governance Structure* WO/PBC/18/20 (WIPO 2011).

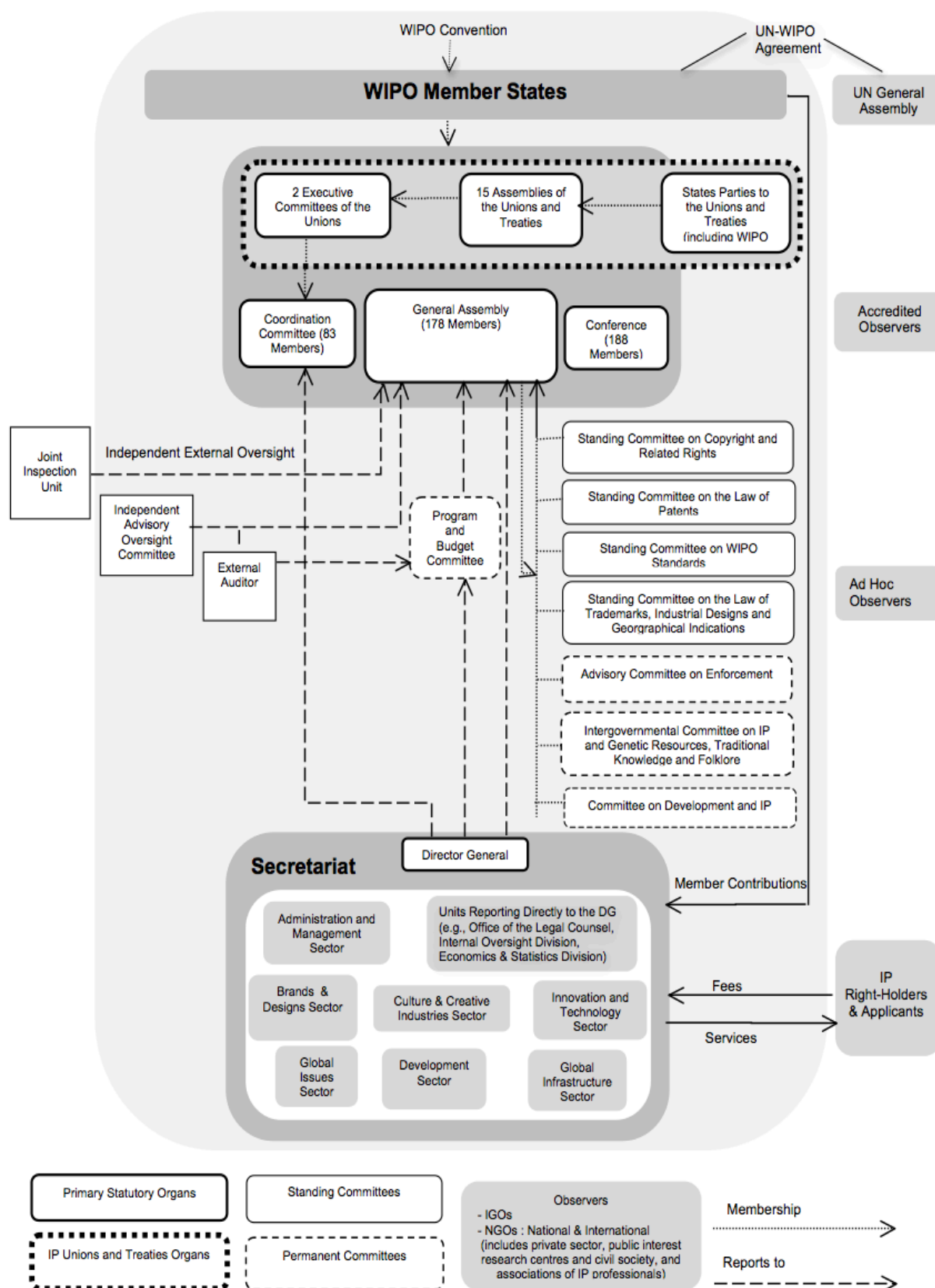
<sup>79</sup> See, for instance, Article 6(1) of the WIPO Convention.

<sup>80</sup> See WIPO, *The Governance Structure of WIPO: Memorandum of the International Bureau* A/32/INF/2 (WIPO 1998) 7.

<sup>81</sup> For a review of practices related to executive boards and committees, and to subsidiary bodies dealing with administrative and/or budgetary issues, see WIPO, *Report of the WIPO Audit Committee since 2008* WO/GA/38/2 (WIPO 2009) Appendix 1. This information was subsequently updated in WIPO, *WIPO Governance Structure: Document Prepared by the Secretariat* WO/PBC/17/2.Rev. (WIPO 2011) Annex III.

<sup>82</sup> See JIU, *Review of Management and Administration in the World Intellectual Property Organization* (WIPO) JIU/REP/2014/2 (UN Joint Inspection Unit 2014) 7.

Figure 2. A View of WIPO's Complex Governance Structure



Source: Author's own diagram.

**The General Assembly** is WIPO's highest legislative body. Its 179 members represent all states party to the WIPO Convention that are also members of any of the WIPO-administered Unions (i.e., the Assembly thus does not include all WIPO Member States).<sup>83</sup> The main tasks of the General Assembly are to: (i) appoint the Director General upon nomination by the Coordination Committee; (ii) review and approve reports of the Director General and give the incumbent all necessary instructions on strategic matters and policy issues; (iii) review and approve the reports and activities of the Coordination Committee and give instructions to that Committee; (iv) adopt the biennial budget of expenses common to the Unions; (v) approve the measures concerning the administration of the international agreements; (vi) adopt the financial regulations of the Organization; (vii) determine the working languages of the Secretariat; (viii) invite states to become party to the WIPO Convention; and (ix) determine which states that are not members of WIPO and which intergovernmental organisations and international NGOs should be admitted to its meetings as observers.

The General Assembly generally meets as part of the annual Assemblies of the Member States of WIPO, a practice enabled by alternating between biennial 'ordinary' sessions called for by the Convention and 'extraordinary' sessions.<sup>84</sup> Additional 'extraordinary' sessions of the General Assembly are also sometimes held for particular purposes (e.g., to conclude unfinished agenda items from earlier sessions, such as the approval of the Program and Budget, or the appointment of the Director General). The General Assembly adopts the final decisions on the recommendations of all subsidiary bodies, such as the PBC and the Standing Committee on Copyright and Related Rights (SCCR), that report to it. The Chair of the General Assembly is elected for a 2-year term.

**The WIPO Conference** is the second highest decision-making body. It comprises all 188 States party to the WIPO Convention, irrespective of whether they are also members of WIPO-administered Unions (meaning that the Conference has more members than the General Assembly). The tasks originally set out for the Conference included serving as a forum for discussion among members of matters of general interest in the field of IP; in that context the Conference was empowered to adopt recommendations. The Conference was also entrusted with responsibility for amending the WIPO Convention (proposals for such amendments may be initiated by any WIPO Member State, the Coordination Committee or the Director General).<sup>85</sup> In practice, however, the Conference meets at the same time in the same room as the General Assembly, and rarely considers any separate items of business.<sup>86</sup> That is, the functional division of work originally envisaged between the General Assembly and the Conference has rarely occurred. Indeed, WIPO Member States agreed in 2003 to amend the WIPO Convention to abolish the Conference, which will occur when the amendment comes into force (which requires ratification by three-quarters of WIPO's Member States).<sup>87</sup> The last time the Conference met separately on a substantive agenda item was in 2005 on matters concerning the Permanent

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<sup>83</sup> The General Assembly does not include the following eight states, which are not members of the Paris and Berne Unions: Afghanistan, Eritrea, Ethiopia, Kiribati, Kuwait, Maldives, Myanmar, Niue and Somalia.

<sup>84</sup> Without extraordinary sessions, there would be only a biennial ordinary session.

<sup>85</sup> The tasks originally set out for the WIPO Conference in Article 7(2) are to: '(i) discuss matters of general interest in the field of intellectual property and [may] adopt recommendations relating to such matters, having regard for the competence and autonomy of the Unions; (ii) adopt the biennial budget of the Conference; (iii) within the limits of the budget of the Conference, establish the biennial program of legal technical assistance; (iv) adopt amendments to [the WIPO] Convention as provided in Article 17; (v) determine which States not Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers; and (vi) exercise such other functions as are appropriate under [the WIPO] Convention.'

<sup>86</sup> Normally, the only ostensible difference in the proceedings is the difference in presiding officer.

<sup>87</sup> See WIPO, *Final Texts of Proposed Amendments to the Convention Establishing the World Intellectual Property Organization: Document Prepared by the Secretariat A/39/2* (WIPO 2003).

Committee on Cooperation for Development related to IP (PCDIP). Nonetheless the Conference is still an important and relevant part of WIPO's governance system. At the 2013 Assemblies, debate on the quorum necessary to take a decision on WIPO's Program and Budget led the WIPO Legal Counsel to clarify that as the Program and Budget requires adoption by the Member States of WIPO and all of the Unions, the plenary session that adopts the Program and Budget has in practice been the WIPO Conference, at which time the General Assembly and other relevant Assemblies simultaneously make their decision.<sup>88</sup>

**The WIPO Coordination Committee** has 83 Member States. Its Members consist of those States party to the WIPO Convention that are also Members of the Executive Committees of the Paris Union, the Berne Union or both.<sup>89</sup> The functions of the Coordination Committee are both advisory and executive. They include: (i) giving advice to the organs of the Unions, the General Assembly, the Conference, and the Director General, on all administrative, financial and other matters of common interest, and in particular on the budgetary expenses common to the Unions; (ii) preparing the draft agenda of the General Assembly and the Conference; (iii) preparing the draft agenda and draft program and budget of the Conference; and (iv) nominating a candidate for Director General to the General Assembly.<sup>90</sup> Any WIPO Member that is not a member of the Coordination Committee may observe its meetings, "having the right to take part in the debates but without the right to vote."<sup>91</sup> The existence of the Coordination Committee highlights that WIPO's founders perceived the Organization's two core treaties, the Paris and Berne Conventions, and its treaty-making functions, as central to the Organization's purpose and activities. As such, the WIPO Convention did not eliminate the Unions of the existing treaties or diminish their autonomy or responsibilities.

On a practical basis, among the Coordination Committee's most important, regular responsibilities relates to WIPO's human resources, including the nomination of candidates for Director General, the approval of nominations for WIPO's Deputy Directors General, advice on proposed Assistant Directors General, and approval of changes to WIPO Staff Regulations. On the choice of Director General, in some years the Committee has only received one nomination to consider, and in other instances, the nomination has followed a formal election process conducted by the Coordination Committee. In 1998, the General Assembly decided in favour of a transparent process where the nomination is made if possible by consensus, while recognising that consultations and voting will likely be a necessary means for building such consensus. The procedures for voting, which occurs by secret ballot in several steps with a view to the gradual reduction of the number of candidates to a short list of three, are clearly set out. However, the informal processes for consensus-building around candidates are not transparent nor are the criteria used by Member States. In practice, a mix of factors are relevant to the emergence of top candidates, including: a candidate's individual campaign strategy; the degree to which candidates receive effective support from their country of origin; power politics and political jockeying among Member States; considerations of regional representation and rotation in WIPO's leadership (and of the regional composition of leadership appointments across international organisations); trade offs by Member States between the choice of Director General and other substantive priorities at

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<sup>88</sup> WIPO, *General Report: adopted by the Assemblies A/51/20* (Geneva: WIPO 2013) 108-11.

<sup>89</sup> Subject to the rule that only a number equal to one-quarter of the Assembly Members that elected the respective Executive Committees of the Unions can be part of the Coordination Committee. The number of Members of the Coordination Committee increases when there are new accessions to the Paris and/or Berne Conventions.

<sup>90</sup> See Article 8 (3) of the WIPO Convention. Other functions include approving the Director General's choice of Deputy Directors General before their appointment.

<sup>91</sup> See Article 8 (7) of the WIPO Convention.



WIPO; the degree of support from regional groups; and the merits and experience of the candidates.<sup>92</sup>

### The annual WIPO Assemblies and the Governing Bodies of the Unions

In total, there are 20 WIPO bodies<sup>93</sup> that meet in ordinary or extraordinary sessions annually or bi-annually. The sessions of these bodies are referred to collectively as the Annual Meeting of the Assemblies of Member States,<sup>94</sup> which normally occurs over a ten-day period in September/October.

In addition to the three main organs, some 13 of the treaties administered by WIPO establish a Union of their parties,<sup>95</sup> such as the Paris Union,<sup>96</sup> with a number of responsibilities relevant to the treaty, such as amending the agreement and formulating related rules and regulations.<sup>97</sup> Each Union has an Assembly and in some cases Executive Committees charged with the execution of their respective treaties and related agreements (any Union may also establish Working Groups, Committees and ad hoc groups).<sup>98</sup>

The practice of the Assemblies has evolved such that in lieu of a series of separate meetings, the Secretariat presents the draft agendas of the 20 Assemblies and other bodies in a consolidated,

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<sup>92</sup> The WIPO General Assembly adopted procedures in this respect in 1998, which are reproduced in WIPO, *Information Concerning Procedures, Membership and Voting : Memorandum prepared by the Secretariat* WO/CC/69/INF/1 (WIPO 2014).

<sup>93</sup> These bodies are: the WIPO General Assembly, the WIPO Conference, the WIPO Coordination Committee, the Paris Union Assembly, the Paris Union Executive Committee, the Berne Union Assembly, the Berne Union Executive Committee, the Madrid Union Assembly, the Hague Union Assembly, the Nice Union Assembly, the Lisbon Union Assembly, the Locarno Union Assembly, the IPC (International Patent Classification) Union Assembly, the PCT (Patent Cooperation Treaty) Union Assembly, the Budapest Union Assembly, the Vienna Union Assembly, the WCT (WIPO Copyright Treaty) Assembly, the WPPT (WIPO Performances and Phonograms Treaty) Assembly, the Singapore Treaty on the Law of Trademarks Assembly and the PLT (Patent Law Treaty) Assembly.

<sup>94</sup> The general rule is that the main organs meet in ordinary session once every 2 years, and in extraordinary session once every 2 years. In effect, they meet every year, alternating between ordinary and extraordinary sessions. There are exceptions to the general rule, such as the Coordination Committee and the Paris and Berne Executive Committees, which meet in ordinary session every year.

<sup>95</sup> The WIPO Secretariat notes that: 'In 1991, the Assembly of the Union for the International Registration of Marks (the TRT Union) decided to "freeze" the TRT and to suspend future ordinary sessions of the TRT Union Assembly...The Assembly of the Union for the International Registration of Audiovisual Works (the FRT Union) similarly suspended, in 1993, ordinary sessions of the FRT Union Assembly...For all practical purposes, these Assemblies can no longer be considered to be part of the governance structure of WIPO.' See WIPO, *WIPO Governance Structure: Document Prepared by the Secretariat* WO/PBC/17/2.Rev. (WIPO 2011) 4.

<sup>96</sup> The name of the Union is, in most cases, taken from the place where the text of the treaty was first adopted (thus, for instance, the Berne Union).

<sup>97</sup> The WIPO Secretariat notes that some of the governing bodies that were envisaged at the time the relevant treaties were adopted 'have not yet been constituted,' such as the Executive Committee of the PCT Union. See WIPO, *WIPO Governance Structure: Document Prepared by the Secretariat* WO/PBC/17/2.Rev. (WIPO 2011) 4.

<sup>98</sup> In the case of treaties first concluded before the 1967 Stockholm Diplomatic Conference, the earlier Acts created Conferences of Representatives (the predecessor bodies of the Assemblies of those Unions, which were introduced in the 1967 Acts of those treaties that were revised at that Diplomatic Conference). These conferences still exist in cases where there are states party to an Act earlier than the Stockholm Act (but not yet party to the Stockholm Act). The number of states belonging to those bodies is small, and declining as states progressively accede to the Stockholm Acts of the relevant treaties. Examples are the Conference of Representatives of the Paris Union, of which the Dominican Republic and Nigeria are the only members, and the Conference of Representatives of the Berne Union, of which Lebanon, Madagascar and New Zealand are the only members. The Conference of Representatives for the Paris Union, Berne Union, Nice Union and the Hague Union met for the last time in 2000, along with the Lisbon Union Council. The WIPO Secretariat has noted that: 'In practical terms, given the fact that the powers conferred on the Conferences of Representatives by their constituent instruments were extremely limited, that the bodies have never considered any item of substantive business, and that their convening has tended to be a formality only, all these bodies can no longer be considered part of the governance structure of WIPO.' See WIPO, *WIPO Governance Structure: Document Prepared by the Secretariat* WO/PBC/17/2.Rev. (WIPO 2011) 4; WIPO, *WIPO Intellectual Property Handbook: Policy, Law and Use* (WIPO 2004) 11.

single agenda. (When a matter concerns more than one Assembly or body, such a matter constitutes a single item).<sup>99</sup> For over 15 years, the Chair of the General Assembly has presided over most of the Assemblies, except for matters that are the responsibility of the Coordination Committee, over which the Chair of that Committee presides, and for matters that concern only a particular Union, where the chair of the relevant governing body presides. In practice, the great majority of the proceedings of the combined Assemblies proceed as though it were a unitary Assembly. Notably, members of WIPO's treaty-specific Unions remain responsible for adopting decisions and reports directly related to their activities through their respective Assemblies; for instance, treaty-related decisions adopted by members of the Paris, Berne or Lisbon Unions do not need subsequent approval by the WIPO General Assembly. However, where such decisions have budgetary or program implications for the WIPO Secretariat, this may require action from other WIPO committees, such as the Program and Budget Committee, which in turn may require approval by the General Assembly.

Drafted by the Secretariat, the General Report of the Assemblies refers to each of the items on the consolidated agenda of the 20 Assemblies and other bodies of Member States. The General Report includes a detailed record of the deliberations and decisions on many agenda items; it also, however, refers in many instances to reports adopted by other bodies (such as the General Assembly, the Coordination Committee and the governing bodies of the WIPO Unions) on agenda items where they have specific responsibility.

The final agenda item before the close of the annual Assemblies deals with the adoption by Member States of the reports of each of the Assemblies and other bodies. The Chair of the General Council presides for the adoption of the General Report of the Assemblies and the Report of the General Assembly, whereas the adoption of the reports by each of the concerned Assemblies or bodies is presided over by their respective Chairs. In 2014, however, the Chair of the General Assembly announced that due to the lateness of the meeting and the many statements made by delegations, the Secretariat's draft reports would instead be sent to Member States and posted on WIPO's website. In each of these years, the Chair specified a period within which comments should be submitted to the Secretariat, after which the final reports would be deemed adopted.<sup>100</sup>

### WIPO Committees and other subsidiary bodies

Beyond WIPO's main convention-based organs, a second tier of WIPO's governance is formed by committees and other subsidiary bodies, constituted under one or more of the main organs, such as the General Assembly. These subsidiary bodies include Committees, expert committees established by treaty provisions, and working groups.

At present, WIPO has eight subsidiary bodies that are formally known as 'Committees'. With the exception of the Program and Budget Committee (PBC), each of these committees is open to all Member States, which normally send relevant national officials and experts, and to accredited IGOs and observers. Most of the day-to-day activity engagement of Members with WIPO occurs through these Committees (and also in the working groups and expert Committees described below), as does a great portion of the substantive interaction among Member States and the Secretariat. Committees may, for instance, call for and review studies, request information from the Secretariat about its activities, and debate appropriate approaches to the adoption and

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<sup>99</sup> See for instance, WIPO, *Draft Consolidated and Annotated Agenda*, W/54/1 PROV.4 (WIPO 2014).

<sup>100</sup> See WIPO, *Draft General Report: Prepared by the Secretariat A/54/13/PROV* (WIPO 2014) 112.

implementation of recommendations and new agreements.<sup>101</sup> Most, but not all, of the committees introduced below have adopted Special Rules of Procedure (see section 3.2.2). The mandate and activities of such Committees can be created, adapted or ended by the WIPO General Assembly. The list of Committees that comprise WIPO's subsidiary bodies is as follows:

(i) **The Program and Budget Committee (PBC)**, a subsidiary organ created by the General Assembly, is responsible for all budgetary and financial aspects of WIPO.<sup>102</sup> In practice, the PBC is one of WIPO's most powerful bodies, dealing with program, budget, finance, premises, and personnel resources, and also increasingly with governance matters. Since 2007, the membership of the PBC has been 53 Member States (up from 35 Member States in 2002). The General Assembly appoints PBC Members for a 2-year term.

Neither the General Assembly nor the PBC has, however, adopted formal Special Rules of Procedure regarding the Committee's membership, the reappointment of countries or term limits. Some countries have served continuously for over 10 years or for numerous terms. There are also no formal criteria to guide the election of PBC members nor is there a formal quota for the number of seats by regional groups. In practice, the PBC submits a proposal on the composition of its membership to the General Assembly on the basis of informal consultations among regional groups, taking into consideration calls by a number of delegations to improve the geographical representation of the PBC. The WIPO General Assembly subsequently elects the members.<sup>103</sup> By tradition, Switzerland is an *ex officio* member of the PBC.

In budget years, the PBC meets twice in formal sessions (and also once in an informal session). In non-budget years, the PBC has one formal session per year.<sup>104</sup> Although non-members of the PBC, WIPO's External Auditor and members of WIPO's Independent Advisory Oversight Committee (IAOC – described below) are able to observe its meetings, they have no decision-making powers. Neither IGO nor NGO observers are admitted to PBC sessions. (Video-on-demand recordings of the formal proceedings of the September 2014 session can be viewed on WIPO's website, and some earlier sessions were available through webcasting);

(ii) Three **Standing Committees** established by the General Assembly in 1998 with specific mandates on substantive and policy-related issues, which report to the General Assembly and generally meet twice a year. These committees are the Standing Committee on Copyright and Related Rights (SCCR), created to examine matters of substantive law or harmonisation in the field of copyright and related rights;<sup>105</sup> the Standing Committee on the Law of Patents (SCP), established to serve as a forum to discuss issues, facilitate coordination and provide guidance

<sup>101</sup> Musungu and Dutfield (2003), p. 6.

<sup>102</sup> The PBC was created in 1998, following a proposal by the Secretariat in its 1998/9 proposed Program and Budget to merge the Budget Committee and Premises Committee. While the General Assembly decision that created the PBC specified the Committee's mandate as one of dealing with program, budget, premises and finance, the WIPO Financial Regulations and Rules define the PBC more broadly as 'the Committee constituted by the General Assembly to deal with program, budget, *personnel resources*, premises and finance' (emphasis supplied).

<sup>103</sup> See, for instance, WIPO, *Composition of the Program and Budget Committee: Document Prepared by the Secretariat* WO/GA/40/1 (WIPO 2014).

<sup>104</sup> This practice is in line with the Mechanism for the Preparation of the Program and Budget, approved at the 2006 Assemblies. See WIPO, *Report Adopted by the Assemblies of the 42nd Series of Meetings A/42/14* (WIPO 2006). Also see WIPO, *Report on, and Recommendations Adopted by, the Ninth and Tenth Sessions of the Program and Budget Committee A/42/9* (WIPO 2006); WIPO, *Proposals on a New Mechanism to Further Involve Member States in the Preparation and Follow Up of the Program and Budget: Document Prepared by the Secretariat*, WO/PBC/10/5 (WIPO 2006), Annex IV and V.

<sup>105</sup> The SCCR is composed of all Member States of WIPO and/or of the Berne Union. Certain UN member states that are non-members of WIPO and/or the Berne Union, as well as a number of accredited IGOs and NGOs, are admitted as observers.

concerning the progressive international development of patent law;<sup>106</sup> and the Standing Committee on Trademarks, Industrial Designs and Geographical Indications (SCT), created to serve as a forum to discuss issues, facilitate coordination and provide guidance on the progressive development of international law on trademarks, industrial designs and geographical indications, including the harmonisation of national laws and procedures.<sup>107</sup> Notably, these standing committees sometimes address topics that are simultaneously the subject of WIPO treaties, which can raise concerns about the relationship of work conducted by the committees, which are open to all WIPO Members, and the deliberations of WIPO's treaty-based Unions, the membership of which is limited to the parties to the respective treaties. At the SCT, for instance, Member States regularly discuss issues related to appellations of origin that are the subject of the Lisbon Treaty and have recently been the subject of negotiations among members of the Lisbon Union (see section 5.3.4).

(iii) The Advisory Committee on Enforcement (ACE), tasked in 2002 with 'coordinating with certain organizations and the private sector to combat counterfeiting and piracy activities; public education; assistance; coordination to undertake national and regional training programs for all relevant stakeholders and exchange of information on enforcement issues through the establishment of an Electronic Forum.' Notably, the Committee's mandate excludes norm-setting, and is largely limited to technical assistance and coordination;<sup>108</sup>

(iv) The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), created by the General Assembly in 2000 for the purpose of discussions on genetic resources, traditional knowledge and folklore. The IGC relies on the periodic renewal of its mandate by the General Assembly, meaning that it is not formally classified as a Standing Committee;<sup>109</sup> and

(v) The Committee on Development and Intellectual Property (CDIP), established by the General Assembly in 2007 to develop a work program for implementation of the adopted Development Agenda recommendations; (b) monitor, assess, discuss and report on the implementation of those recommendations in coordination with relevant WIPO bodies; and (c) discuss IP and development related issues as agreed by the Committee, as well as those decided by the General Assembly;<sup>110</sup> and

(vi) The Committee on WIPO Standards (CWS), established in 2010 by the General Assembly to 'continue to work on the revision and development of WIPO standards relating to intellectual property information.'<sup>111</sup>

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<sup>106</sup> The SCP is composed of all member states of WIPO and/or of the Paris Union. Certain UN member states that are not members of WIPO and/or the Paris Union, as well as a number of accredited IGOs and NGOs, also participate in the SCP as observers.

<sup>107</sup> The SCT is open to all members of WIPO or the Paris Union. A special rule of procedure extends membership without the right to vote to the European Union. In addition, certain member states of the UN that are not members of WIPO or the Paris Union, as well as accredited IGOs and NGOs, may participate as observers.

<sup>108</sup> See WIPO, *Report Adopted by the Assemblies of the 28th Session* WO/GA/28/7 (WIPO 2002) paras 82–120.

<sup>109</sup> See WIPO, *Matters Concerning Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore* WO/GA/26/6 (WIPO 2000); and WIPO, *Report Adopted by the Assemblies of the 26th Session* WO/GA/26/10 (WIPO 2000).

<sup>110</sup> The CDIP was established in October 2007 to: See WIPO, *General Report of the 2007 WIPO Assemblies* A/43/16 (WIPO 2007) para. 334.

<sup>111</sup> The CWS replaced the former Standing Committee on Information Technologies (SCIT), which had agreed earlier that it should be replaced by two bodies: the CWS and the Committee on Global IP Infrastructure (CGI). The 2010 General Assembly decision affirmed that the CWS would continue the work of the SCIT's former Standards and Documentation Working Group (SDWG). It also clarified that '[t]he mandate of the CGI would be to discuss matters concerning global intellectual property infrastructure that do not fall into the mandate of the CWS. Such matters include development of good practices, common tools and coherent approaches to various projects

## Expert committees established by treaty provisions

WIPO's four international classification treaties (see Table 2)<sup>112</sup> each have permanent Committees of Experts that discuss and adopt revisions to the classifications established by each treaty.<sup>113</sup> The committees comprise representatives of each Member of the Union's established by these treaties. Representatives of other intergovernmental organisations and international NGOs may also be invited to attend.<sup>114</sup>

## Working groups

Each of WIPO's main organs, committees, or committees of experts can establish working groups.<sup>115</sup> In general, working groups are intended to have limited missions and duration, and are created to facilitate the discussion and resolution of particular questions that, because of the technical or confidential nature of the questions, are more appropriately dealt with in a small group.<sup>116</sup> An example of such a group was a Working Group on Audit Committee Related Matters, which was established by the PBC and met in 2010. The governing bodies of one of WIPO's treaties can also create working groups. In 2007, for instance, the PCT Assembly established a PCT Working Group to do preparatory work on matters for submission to the Assembly, such as proposals for amendment of the PCT regulations.<sup>117</sup>

## Diplomatic conferences

A diplomatic conference is a high-level meeting of Member States, convened with the sole purpose of finalising negotiations on a new treaty or treaty revisions. For each diplomatic conference, States adopt Rules of Procedure for the Diplomatic Conference.<sup>118</sup>

If one of WIPO's standing or permanent committees determines that sufficient progress has been made to move towards treaty adoption, the General Assembly can decide to convene a Diplomatic Conference, which is open to equal participation by all WIPO Member States. The Assemblies of the Unions established by several WIPO-administered treaties may also decide to

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for strengthening international cooperation and interchange of data and information of intellectual property.' See WIPO, *Standing Committee on Information Technology: Document Prepared by the Secretariat* WO/GA/38/10 (WIPO 2009). As of early 2015, the CGI has never met.

<sup>112</sup> Also see footnote 35.

<sup>113</sup> For instance, Article 3 (5) of the Nice Agreement states that: 'Proposals for changes in the Classification may be made by the competent Office of any country of the Special Union, the International Bureau, any intergovernmental organization represented in the Committee of Experts pursuant to paragraph (2)(b) and any country or organization specially invited by the Committee of Experts to submit such proposals.'

<sup>114</sup> Article 3 (2) of the Nice Agreement, for instance, provides that: "(a) The Director General may, and, if requested by the Committee of Experts, shall, invite countries outside the Special Union which are members of the Organization or party to the Paris Convention for the Protection of Industrial Property to be represented by observers at meetings of the Committee of Experts. (b) The Director General shall invite intergovernmental organizations specialized in the field of marks, of which at least one of the member countries is a country of the Special Union, to be represented by observers at meetings of the Committee of Experts. (c) The Director General may, and, if requested by the Committee of Experts, shall, invite representatives of other intergovernmental organizations and international non-governmental organizations to participate in discussions of interest to them."

<sup>115</sup> The WIPO General Rules of Procedure (Rule 12) make provision for the establishment of such working groups for specific purposes.

<sup>116</sup> Further examples of working groups established in recent years include: the Working Group on the Review of Rule 3(4) to (6) of the Regulations Under the Singapore Treaty on the Law of Trademarks, the Working Group on the Legal Development of the Madrid System for the International Registration of Marks, the Working Group on the Development of the Lisbon System, and the Working Group on the Reform of the PCT (2001–2007).

<sup>117</sup> See PCT Union-Assembly, *Report Adopted by the Assembly of the 36th Session* PCT/A/36/13 (WIPO 2007).

<sup>118</sup> See, for instance, WIPO, Rules of Procedure of the Diplomatic Conference, Prepared for the Diplomatic Conference to Conclude a Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities VIP/DC/2 (WIPO 2013).



convene a diplomatic conference, such as for revising a treaty or adopting a new act of a treaty, without the need for approval by the WIPO General Assembly. In 2015, for instance, the 28 members of the Lisbon Union convened a diplomatic conference to adopt a new 'Geneva Act' of the Lisbon Agreement, the text of which had been under development since 2008.<sup>119</sup> The Assembly of the Union in question can in the Rules of Procedure it adopts for the Diplomatic Conference limit participation to members of that Union; it also has the power decide whether to open the negotiations to non-members as observers or as equal participants. That said, as the hosting of a diplomatic conference relies on a range of support activities from the WIPO Secretariat, the General Assembly (via the Program and Budget Committee) has the potential to influence whether, when and how negotiations proceed via decisions it makes on the allocation of the Organization's financial resources. The General Assembly's scope for influence could be lower, however, where the resources involved are minimal and/or could be obtained from already allocated budget lines.

Debate among WIPO Member States on the Lisbon Union's decision to convene the 2015 diplomatic conference highlights the complex relationship between WIPO's Unions – which are in effect plurilateral agreements among those Member States interested in joining – and the wider organisation. A number of WIPO Member States that are not members of the Lisbon Union (such as the United States, South Korea and Japan) opposed the convening of the diplomatic conference on several grounds. In so doing, they argued that the draft text did not reflect the diversity of economic interests at stake across WIPO's membership and that the subject of geographical indications was simultaneously under discussion in WIPO's SCT and under negotiation at the World Trade Organization. Further, they argued that the substance of the negotiating text reflected more than merely a revision of the Lisbon agreement (which could be negotiated among Lisbon members) but would in fact create a new WIPO treaty (which they argued would be a matter for the entire WIPO membership). The United States also objected to the allocation of resources from WIPO's general budget to help cover the costs of a diplomatic conference in which the majority of WIPO's membership was not able to have a voting role.

These debates deserve attention in this Reference Guide because they raised numerous governance questions, such as on how the distinction is to be made at WIPO between a new treaty and treaty revision; whether a diplomatic conference can be convened exclusively for a formal treaty negotiation or can be used for other types of instruments and revisions; which Member States should be involved in decisions to convene a diplomatic conference and granted a voting role in negotiations; and on what terms resources from WIPO's general budget should be allocated to administer Unions to which only a minority of WIPO's membership belonged.<sup>120</sup> (For further discussion on these financial arrangements, see section 3.3.8). Ultimately, the Lisbon Union refused to revise the rules of procedure for the Lisbon Union's diplomatic conference to ensure that all WIPO Member States could participate in the same capacity, irrespective of whether they were Lisbon members;<sup>121</sup> instead, non-Lisbon WIPO members were classified as 'observer delegations' to the diplomatic conference, giving them the right to contribute to negotiations but not to vote on the final language of the new Geneva Act.<sup>122</sup>

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<sup>119</sup> The Diplomatic Conference for the Adoption of a New Act of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration took place from 11 to 21 May 2015 and adopted the Geneva Act of the Lisbon Agreement on Appellations of Origin and Geographical Indications.

<sup>120</sup> WIPO, *Draft Report: Prepared by the Secretariat, WIPO General Assembly, Forty-Seventh Session, 5 to 14 October 2015* WO/GA/47/19 Prov. (WIPO 2015)19–22 and 63–5.

<sup>121</sup> See Catherine Saez, 'United States Hopeful Lisbon Members Will Open Diplomatic Conference to All' *Intellectual Property Watch* (7 May 2015).

<sup>122</sup> See WIPO, *Rules of Procedure: As Adopted on 11 May 2015 by the Diplomatic Conference, Diplomatic Conference for the Adoption of a New Act of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration* LI/DC/2 (WIPO 2015).

## Mechanisms for coordination across committees

To promote coordination across key WIPO decision-making bodies, the WIPO Convention envisaged an important role for the WIPO Coordination Committee, tasking it with providing advice to the various organs on matters of common interest to the Unions and the Organization. The coordination of WIPO's work also relies on day-to-day efforts by Member States to make coherent decisions across the various WIPO committees. In addition, the WIPO Program and Budget process is a vehicle that the Secretariat and Member States can harness to promote synergy and coordination between the agendas of the various WIPO committees, and the work plans of the organisation's Sectors and Divisions.

In terms of coordination between the Unions and the Organization, a particular challenge within WIPO concerns the relationship between deliberations underway in WIPO standing committees (which are open to all WIPO Member States) and negotiations pursued by the Unions of WIPO Treaties (in which only those WIPO Member States that have ratified the treaty at hand have decision-making power).

A key example of a mechanism adopted by Member States in recent years to address challenges of coordination is the Development Agenda Coordination and Monitoring Mechanism, adopted at the 2010 WIPO Assemblies. The Mechanism comprises a series of principles on monitoring, assessing and reporting modalities and on coordination among WIPO committees to ensure that development considerations form an integral part of WIPO's work.<sup>123</sup> Among other provisions, the decision instructs the relevant WIPO bodies to include a description of their contributions to the implementation of the respective Development Agenda Recommendations in their annual reports to the Assemblies. The Mechanism also calls on the General Assembly to forward the reports to the CDIP for discussion under the first substantive item of its agenda and to request the relevant WIPO bodies to provide it with any information or clarification on the report that may be required. Member States continue to debate which WIPO bodies should be considered 'relevant.'<sup>124</sup> At present, the IGC, SCP, SCT, SCCR, and the ACE each include an account of their activities relevant to the implementation of Development Agenda recommendations in their reports to the General Assembly, but not the PBC or CWS.<sup>125</sup>

### **3.2.2. Decision-making procedures, working methods and processes**

The rules governing the procedure of the WIPO Assemblies and other bodies, including the Unions administered by WIPO, are found in three types of documents: (i) the treaties establishing WIPO and the Unions; (ii) the WIPO General Rules of Procedure, which Member States adopted to govern the meetings of all bodies convened under the auspices of WIPO;<sup>126</sup> and (iii) Special

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<sup>123</sup> See WIPO, 'Coordination Mechanisms and Monitoring, Assessing and Reporting Modalities' <[http://www.wipo.int/ip-development/en/agenda/coordination\\_mechanisms.html](http://www.wipo.int/ip-development/en/agenda/coordination_mechanisms.html)> accessed 1 September 2014. Also see WIPO, *Coordination Mechanisms and Monitoring, Assessing and Reporting Modalities: Annex II of the Report of the CDIP* WO/GA/39/7 (WIPO 2010).

<sup>124</sup> See WIPO, *Decision on the Committee on Development and IP (CDIP) Matters: Document Prepared by the Secretariat* WO/GA/46/10 (WIPO 2014). For discussion on this matter at the Assemblies, see WIPO, *Draft Report: WIPO General Assembly 46th Session* WO/GA/46/12 Prov. (WIPO 2014).

<sup>125</sup> See WIPO (2014) *Description of the Contribution of the Relevant WIPO Bodies to the Implementation of the Respective Development Agenda Recommendations: Document by the Secretariat*, WO/GA/46/4, WIPO: Geneva.

<sup>126</sup> These rules were adopted in 1970 and amended in 1973, 1976 and 1979. The latest 1979 version of the rules is contained in WIPO, *WIPO General Rules of Procedure* WIPO Publication 339 Rev. 3. (WIPO 1998). The Rules govern the meetings of all bodies convened under the auspices of WIPO to the extent that any such body does not adopt special rules of procedure (see Rule 1(1) of the WIPO General Rules of Procedure). Regrettably, although this document can be found on WIPO's website under publications, it is not available directly from any of

Rules of Procedure, which can be adopted by any of WIPO's main organs and subsidiary bodies to supplement or adapt the General Rules of Procedure.<sup>127</sup> As noted above, diplomatic conferences establish their own rules of procedure. In addition, WIPO Committees often establish working methods. Together, the numerous rules of procedure and working methods play a crucial role in the outcomes of WIPO deliberations as Member States sometimes seek to advance their interests by make strategic use of the Rules, as well as their ambiguities and silence on a number of procedural matters;<sup>128</sup> in some instance, the Rules themselves can become the central point of contention.

### WIPO General Rules of Procedure

The WIPO General Rules of Procedure set out meeting procedures related to planning, participation and voting; the roles and responsibilities of chairs and the Secretariat; the conduct of business; languages and interpretation; and the admission of observers.<sup>129</sup> Within the WIPO Secretariat, the Office of the Legal Counsel is the custodian of the General Rules of Procedure and responsible for proposing updated rules to Member States where necessary, or drafting them on the request of Member States. WIPO's Legal Counsel is regularly called upon during intergovernmental meetings at WIPO to respond to questions that arise in regard to the meaning and application of the General Rules of Procedure, and to interpret the Rules, such as where requests for a vote arise.

The General Rules of Procedure Rules were last amended in 1979. Meanwhile, the Rules no longer reflect many of the actual practices followed by Member States and the Secretariat. In some instances, Member States have adopted new policies (such as policies on translation and languages) that supersede provisions in the General Rules, where the Rules have been effectively ignored by Member States, or where the Rules have been overtaken by the practices Member States use. Further, there are many matters on which the Rules are silent or ambiguous.

Despite the considerable influence that the chairpersons of inter-governmental meetings at WIPO can have on the direction, duration, format and outcome of meetings, the General Rules are silent on selection criteria or guidelines for the conduct of chairs, for instance. A further matter on which the General Rules are silent is increasingly common practice in WIPO Committees for the Chair to produce his or her own Summary of the meeting and its outcomes under their own responsibility. While it is normal procedure for committee members to formally adopt a general report of their meeting, and sometimes a summary of key decisions taken, the Rules make no provision for the practice of a Chair's Summary. Although such reports are often issued with WIPO document number and become part of the organisation's records, neither the prospect of a

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the sections of WIPO's website on governance and management.

<sup>127</sup> See Rule 1 on the application of the General Rules of Procedure.

<sup>128</sup> CIEL, *A Citizens' Guide to WIPO* (CIEL 2007) 31–2.

<sup>129</sup> Among others, the rules provide that the Director General shall fix the date, duration and place of each session of WIPO bodies (Rule 3(1)) and prepare the draft agenda for all ordinary sessions (any state member of a body may, at least 1 month before the session, request the inclusion of supplementary items in the draft agenda) (Rule 5). The rules also provide that each Member State can be represented by one or more delegates, who may be assisted by alternates, advisors, and experts (Rule 7). Further, there are provisions regarding the conduct of meetings. The Rules provide, for instance, that the chairman of a session opens and closes meetings, directs the discussions, accords the right to speak, puts questions to the vote and announces decisions (Rule 13). The chairman may also propose limiting the time allowed to speakers and the number of times each delegation may speak on any question, close the list of speakers, and the debate, as well as suspend or adjourn debate or the meeting (see Rule 13). The Director General or a designated staff member of the International Bureau can speak with the approval of the Chairman, at any time during a session and make statements on any subject under discussion (Rule 15). Further, proposals for the adoption of amendments to the drafts submitted to the session and all other proposals may be submitted orally or in writing by any delegation, although the session can only decide to debate and vote on the proposal if it is in writing (Rule 21).

chair's summary or the possibility of its approval by members is mentioned in the General Rules of Procedure, meaning that the official status of such summaries and the views contained therein is unclear. An additional example of the ambiguities that arise in regard to procedural matters at WIPO relates to the practice that has emerged according to which Member States follow a single consolidated agenda for WIPO's annual Assemblies. Although this approach has clear advantages in terms of efficiency, and the General Rules of Procedure provide for joint sessions of WIPO bodies on common agenda items (and include Rules on who should Chair such meetings), the Rules make no provision for the single consolidated agenda for the entire Assemblies, meaning that where questions arise about which bodies should make decisions, what quorum is needed, and where responsibility lies, the result is often confusion and frustration among Member States.

Finally, the provisions of the General Rules of Procedure and those of the Special Rules of Procedure of WIPO's main organs, treaty-based governing bodies, and subsidiary bodies vary widely, as well as their practices, can vary widely. For instance, on the election of officers, Chapter 3 of the General Rules states that a chair and vice-chair should be selected at the start of each ordinary session and remain in office until the election of new chairs, and should not be immediately eligible for re-election in the office they have held. In the case of the General Assembly and other governing bodies, such as the Paris and Berne Unions, the relevant treaties provide that chairs are appointed for a 2-year term. The chairs of the Coordination Committee as well as the Paris and Berne Executive Committees are, however, elected for 1 year. In practice, the tenure of chairpersons varies among WIPO's subsidiary committees. In the standing committees, for instance, some chairs are elected for 1 year only, while other chairs are appointed for only one meeting or are re-elected several times over.

### Special Rules of Procedure

Most of WIPO's main organs and governing bodies have adopted Special Rules of Procedure that supplement and/or adapt the General Rules,<sup>130</sup> as have some subsidiary bodies.<sup>131</sup> Notably, the Special Rules adopted by various WIPO governing and subsidiary bodies are not readily available on the WIPO website. There is no WIPO publication that contains all such Special Rules of Procedure adopted by WIPO's Committees; they can instead only be discerned through a detailed process of comparing the various Secretariat proposals for consideration by relevant committees, reports of Member State discussions in committee meetings and their Annexes, minutes of the Committees, including various Secretariat proposals, and the reports on final decisions.

In general, the Rules for each Committee similarly establish the terms of service for the Chair and Vice-Chairs (1 year) and immediately eligibility for their re-election (only the CDIP stipulates a maximum term of 3 consecutive years), the membership of the Committee, and observer status for UN Member States that are neither members of WIPO nor a relevant WIPO Union. For

<sup>130</sup> The special Rules of Procedure of the WIPO Coordination Committee can, for instance, be found in WIPO, *Special Rules of Procedure of the Governing Bodies: Compilation Prepared by the International Bureau, Twenty-Fifth Series of Meetings AB/XXV/INF/2* (WIPO 1994), and those of the Assembly of the Berne Union, Assembly of the Paris Union and the PCT Union Assembly, among others, are included in WIPO, *Special Rules of Procedure of the Governing Bodies: Compilation Prepared by the International Bureau, Twenty-Fourth Series of Meetings AB/XXIV/INF/2* (WIPO 1993). Regrettably, although these documents can be consulted in records held by the WIPO library, they are not publicly available on the WIPO website.

<sup>131</sup> For instance, for the IGC, members agreed that WIPO's General Rules of Procedure should apply, save as otherwise provided in two Special Rules of Procedure adopted at its first session in April 2001. Further examples of special rules of procedure are those adopted by WIPO committees of experts, such as the Committee of Experts of the Nice Union, see Nice Union, *Draft Revised Rules of Procedure of the Committee of Experts of the Nice Union CLIM/WG/3/2* (WIPO 2009).

several committees, the Rules also extend membership of the committee (without the right to vote) to the European Communities. The CDIP and the IGC include rules on ad hoc observers as part of their Special Rules (whereas other committees make no special mention of ad hoc observers or do so through decisions made in committee meetings on working methods), and the SCP includes in its Special Rules a decision that the Committee's working documents should be produced in all six official UN languages. The committees have in various sessions also adopted working methods on a variety of matters such as: languages, the number of sessions, the creation of electronic forums, financial support for the participation of delegates from developing countries and certain countries in Europe and Asia, and ad hoc observers.<sup>132</sup> Further, the actual practices followed by committees may diverge from their respective Special Rules (such as in regard to the terms of Chairs or languages) and working methods (such as on the number of sessions). And there are several matters, such as the procedure and criteria for the selection of Chairs, for which Committees have not adopted any Special Rules or working methods.

### Voting and consensus

Intergovernmental decision-making at WIPO occurs through a combination of consensus and voting.<sup>133</sup> The WIPO Convention sets out that in the General Assembly, the WIPO Conference and the WIPO Coordination Committee each Member State has one vote. In practice, voting is used relatively rarely or in specific circumstances, and Member States generally favour decision-making by consensus. On this note, both the Secretariat and Member States frequently use a variety of informal processes for consultation, information-sharing and consensus-building, including through the use of regional groups (discussed below)

During formal proceedings and informal consultations, Member States also sometimes raise the possibility of calling for a vote as a means to force action on an issue. This potential is particularly prized by developing countries, which represent the majority of WIPO's Member States and so collectively have the possibility of trumping developed country opposition to a given proposal through the force of numbers.

Where voting does occur in WIPO bodies, it is generally guided by WIPO's General Rules of Procedure (voting by the governing bodies of treaty-based Unions is governed by their respective Rules of Procedure). The General Rules state that voting shall normally occur by a show of hands (Rule 26), but provisions are also made for voting by roll-call (Rule 27) and secret ballot (Rule 28), if certain conditions are met. The Rules further state that decisions taken by voting shall normally be made by a simple majority (Rule 35). Before issues are put to a vote, formal discussions, informal consultations and consensus-building efforts usually take place. For WIPO's main organs, the WIPO Convention offers further guidance on voting. Where voting occurs in the General Assembly, decisions require a majority of two-thirds of the votes cast, subject to certain conditions,<sup>134</sup> as is also the case for the WIPO Conference.<sup>135</sup> In the

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<sup>132</sup> See, for instance, WIPO, *Matters Concerning Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore* WO/GA/26/6 (WIPO 2000); WIPO, *Rules of Procedure: Memorandum of the Secretariat, First Session of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, 30 April to 3 May 2001* WIPO/GRTKF/IC/1/2 (WIPO 2001); and WIPO, *Matters Concerning the Status of the Advisory Committee(s) on Enforcement: Document Prepared by the Secretariat, WIPO General Assembly, Twenty-Eighth (13th Extraordinary) Session* WO/GA/28/4 (WIPO 2002).

<sup>133</sup> See Geoffrey Yu, 'The Structure and Process of Negotiations at the World Intellectual Property Organization' (2007) 82 *Chicago-Kent Law Review* 1443–53, 1452; and Coenraad Visser 'The Policy-Making Dynamics in Intergovernmental Organizations: A Comment on the Remarks of Geoffrey Yu' (2007) 82 *Chicago-Kent Law Review* 1457–8.

<sup>134</sup> For instance, the WIPO Convention states that the approval of measures concerning the administration of any international IP agreement (see Article 4(iii)) requires a three-fourths majority of votes cast, and the approval of an agreement with the UN (under Articles 57 and 63 of the Charter of the United Nations) shall require a majority of



Coordination Committee, however, decisions are made by a simple majority of votes cast.<sup>136</sup> For the General Assembly and Coordination Committee, one-half of their respective Member States constitutes a quorum,<sup>137</sup> while for the WIPO Conference only one-third of its Member States is required.

In governing bodies such as the General Assembly, and in subsidiary bodies such as the PBC, only those countries not in arrears are eligible to vote. The potential linkage between the right to vote and Member State contributions is an important matter for Member States to be aware of, particularly where votes on matters related to the governance of the organisation arise. In 1998 and 2008, the Coordination Committee agreed that all Coordination Committee Member States could vote in respect of the selection of the Director General, irrespective of whether their financial contribution to WIPO is in arrears.

The practice among WIPO Member States with regard to voting is varied. Voting by a show of hands is the most commonly used possibility, and is sometimes used in Committees to gauge the degree of consensus among Member States as a way to move deliberations to a close; a show of hands is also sometimes used as the method for suspending meeting sessions, such as where the agenda of the meeting has not been completed. Although Member States vote via secret ballot for specific matters such as the selection of the Director General and appointment of the External Auditor,<sup>138</sup> formal requests for votes by roll-call or secret ballot in the ongoing work of WIPO's various decision-making bodies have otherwise emerged only a handful of times over the past decade. At the 2007 Assemblies, for instance, the General Assembly voted once in regard to the WIPO Program and Budget for the 2008/09 biennium (the result was that Member States did not approve the draft Program and Budget and an extraordinary session of the General Assembly was later convened to complete deliberations on that agenda item), and the PCT Assembly has voted in regard to a proposed reduction in PCT fees. At the level of WIPO's subsidiary bodies, Egypt proposed a vote by roll-call in a 2011 CDIP session. Supported by a group of developing countries, the request related to the adoption of a CDIP project on South-South cooperation on IP and development, on which despite significant and lengthy debate, Member States had not been able to reach consensus. A group of developed countries called instead for a secret ballot. Ultimately no vote occurred and the Members instead suspended the session by a show of hands.<sup>139</sup> The surrounding discussion within the Committee, and with the WIPO Legal Counsel,

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nine-tenths of the votes cast (Article 6(3)(f)). Further, the appointment of the Director General (Article 6(2)(i)), the approval of measures concerning the administration of international agreements (Article 6(2)(v)) and the transfer of headquarters (Article 10) require a majority not only in the General Assembly but also in the Assemblies of the Paris Union and the Berne Union.

<sup>135</sup> Subject to Article 18 of the Convention. See Article 7(3) of the WIPO Convention.

<sup>136</sup> See Article 8(5) and (6) of the WIPO Convention. The Convention also provides in Article 8(6)(b) that: 'Even if a simple majority is obtained, any member of the Coordination Committee may, immediately after the vote, request that the votes be the subject of a special recount in the following manner: two separate lists shall be prepared, one containing the names of the States members of the Executive Committee of the Paris Union and the other the names of the States members of the Executive Committee of the Berne Union; the vote of each State shall be inscribed opposite its name in each list in which it appears. Should this special recount indicate that a simple majority has not been obtained in each of those lists, the proposal shall not be considered as carried.'

<sup>137</sup> Notwithstanding the provisions of WIPO Convention Article 6(3)(b) if, in any session, less than one-half, but more or equal to one-third of General Assembly members are present, the Assembly may make decisions, but these decisions only take effect pending the following. First, after a 3-month period following receipt of a letter on the matter from the Secretariat, those states that were not represented have not expressed in writing their vote or abstention. Second, at the expiration of this period, the number of responses from states means that the appropriate quorum was attained, as well as the required majority.

<sup>138</sup> For instance, the selection panel for the appointment of the WIPO External Auditor uses a secret ballot to make their decision. See WIPO, *Report of the Selection Panel for the Appointment of the WIPO External Auditor* WO/GA/40/3 (WIPO 2011).

<sup>139</sup> See WIPO, *Draft Report: prepared by the Secretariat, Committee on Development and Intellectual Property (CDIP) Seventh Session, 2 to 6 May 2011* CDIP/7/8 PROV. (WIPO 2011).

underlined different interpretations among Member States on the conditions set out in WIPO's General Rules of Procedure for secret ballots (and also that a time-dimension can be relevant, because preparation of the secret ballot requires administrative work and thus time on the part the Secretariat).

### 3.2.3. Processes for rule-making: treaties and soft law

The World Intellectual Property Organization is involved in two types of rule-making: those related to treaty-making or revision, and those related to the development of new treaties and of 'soft law' norms.<sup>140</sup>

The treaty-making process begins with agreement among the membership on the need to develop a treaty on a particular subject.<sup>141</sup> The WIPO Secretariat or a committee of experts prepares draft articles as the basis for negotiations and discussions and, where applicable, draft rules and/or regulations. Member States also sometimes present draft articles for discussion. These drafts are then submitted to the relevant committee or working group where they are discussed in an interactive process until there is some consensus on most of the articles. When the Secretariat or the committee discussing the subject perceives that sufficient consensus exists for agreement on a final treaty text, Member States are asked to authorise the preparation of a diplomatic conference to finalise and adopt the treaty. Once adopted, the treaty is opened for signature and ratification and/or accession by Member States according to their own constitutional processes.<sup>142</sup>

Notably, the pursuit of treaty amendments or new treaties may emerge from decisions taken by either the WIPO General Assembly or WIPO's treaty-specific Unions. For instance, a WIPO General Assembly subsidiary committee, such as the SCCR, may recommend that the General Assembly adopt a decision to begin negotiations for a new treaty or treaty amendments or convene a diplomatic conference to conclude and adopt a treaty. Alternatively, Unions such as the Paris, Lisbon or Berne Union may adopt decisions on treaty-related matters (such as the revision or updating of a treaty), without prior or subsequent approval by the WIPO General Assembly. However, where such decisions have budget or program implications for the WIPO Secretariat (such as the need for additional resources for convening negotiations and diplomatic conferences), this may require action from the WIPO Program and Budget Committee, which in turn may require approval by the General Assembly. Where there is overlap in the subject matter, the relationship between negotiations pursued by the Unions and discussions underway in WIPO's subsidiary bodies may require consideration from Member States. As noted above, matters such as patents, copyright, trademark and geographical indications are the focus of several of WIPO's treaty-based Unions, but are simultaneously under discussion by WIPO committees, like the SCP, the SCCR, and the SCT.

Alongside treaty making, WIPO has increasingly used a soft law approach to develop new IP norms since the late 1990s. These soft law norms can take many forms including

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<sup>140</sup> The term soft law is generally used to refer to certain categories of technically non-binding norms, but which states nonetheless follow in practice or to which at least they subscribe. See Kwakwa, E, 'Some Comments on Rule Making at the World Intellectual Property Organization' (2002) 12(1) *Duke Journal of Comparative and International Law* 179–95, 187.

<sup>141</sup> This paragraph summarises Sisule F Musungu and Graham Dutfield, *Multilateral Agreements and a TRIPS-Plus World: The World Intellectual Property Organization TRIPS Issues Paper 3* (Quaker United Nations Office (QUNO) and Quaker International Affairs Program (QIAP) 2003), 6.

<sup>142</sup> Sisule F Musungu and Graham Dutfield, *Multilateral Agreements and a TRIPS-Plus World: The World Intellectual Property Organization TRIPS Issues Paper 3* (Quaker United Nations Office (QUNO) and Quaker International Affairs Program (QIAP) 2003), 6.

recommendations, resolutions, declarations and guidelines, and the procedure for their development varies widely.<sup>143</sup> Examples of soft law norms adopted by WIPO Member States include the 1999 Resolution Concerning Provisions on the Protection of Well-Known Marks<sup>144</sup> and the 2001 Recommendation Concerning the Provisions on the Protection of Marks, and Other Industrial Property Rights in Signs, on the Internet.<sup>145</sup> The impetus for such soft laws has been in large part to overcome the slow and time-consuming process of treaty making, particularly where circumstances change rapidly.<sup>146</sup> Notably, whereas treaty law only binds those states that ratify it, soft law norms can often be made more generally applicable without requiring ratification.<sup>147</sup>

### 3.2.4. Regional groups

As in the UN system more broadly, WIPO has a well-established custom of using regional groups and their coordinators as the focal point for informal consultations and consensus-building among Member States, as well as between Member States and the Secretariat. At the UN, regional voting blocs were formed in 1961 as an informal means for sharing the distribution of posts for General Assembly committees.<sup>148</sup> Subsequently, the importance of such groups has expanded significantly across the UN system, although their roles vary across different UN agencies. Regional groups can, for instance, control elections to UN-related positions; coordinate substantive policy; and form common fronts for negotiations and voting.

At present, there are seven informal 'regional' groups active in WIPO: the Asian group, the African group, the Latin American and Caribbean group (GRULAC), Central Europe and Baltic States group (CEBs), Central Asian and East European States group, Group B (comprising developed countries), and China.

Notably, Group B is not a 'geographic' group. Rather, the group's origin was a 1964 UN decision on the creation of the United Nations Conference on Trade and Development (UNCTAD),<sup>149</sup> where Group B represented Western European and other Organisation for Economic Co-operation and Development (OECD) countries. The composition of other groups is also somewhat confusing. For instance, there are members of the European Union that are included in the CEBs group rather than Group B. Further, China has its own 'regional' group. A further complication is that WIPO's regional group structure is not aligned with its own internal organisational structures, where there is one division charged with 'Cooperation with Certain

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<sup>143</sup> Sisule F Musungu and Graham Dutfield, *Multilateral Agreements and a TRIPS-Plus World: The World Intellectual Property Organization TRIPS Issues Paper 3* (Quaker United Nations Office (QUNO) and Quaker International Affairs Program (QIAP) 2003), 6–7.

<sup>144</sup> See WIPO, *Joint Resolution Concerning Provisions of Well-Known Marks A/34/13* (WIPO 1999).

<sup>145</sup> See WIPO, *Proposed Joint Recommendation Concerning Provisions on the Protection of Marks, and Other Industrial Property Rights in Signs, on the Internet A/36/8* (WIPO 2001).

<sup>146</sup> Edward Kwakwa, 'Some Comments on Rule Making at the World Intellectual Property Organization' (2002) 12(1) *Duke Journal of Comparative and International Law* 179–95, 181.

<sup>147</sup> Edward Kwakwa, 'Some Comments on Rule Making at the World Intellectual Property Organization' (2002) 12(1) *Duke Journal of Comparative and International Law* 179–95, 182.

<sup>148</sup> In the wider UN system, there are now five unofficial regional groups: the African Group, with 54 member states; the Asia-Pacific Group, with 53 member states; the Eastern European Group, with 23 member states; the Latin American and Caribbean Group (GRULAC), with 33 member states; and the Western European and Others Group (WEOG), with 28 member states, plus 1 member state as observer (the United States).

<sup>149</sup> These lists aimed to serve to balance geographical distribution of representation on the Trade Development Board and other UNCTAD structures. At UNCTAD, List A now consists mostly of countries in the African and Asia-Pacific Groups of the UN. List B consists of countries of the Western European and Others Group. List C consists of countries of the Group of Latin American and Caribbean States (GRULAC). List D consists of countries of Eastern Europe. For the original lists, see UNCTAD, *Proceedings of the United Nations Conference on Trade and Development (II)*, Report by the Secretary-General of the Conference, E/CONF.46/141 (UNCTAD 1964).

Countries in Europe and Asia' (Program 10), as well as a separate bureau for cooperation with Arab countries.

Despite the strong emphasis given to regional groups throughout WIPO decision-making processes, neither the WIPO Convention nor the WIPO General Rules of Procedure make any reference to them as part of WIPO's governance system. As such, the WIPO Secretariat does not make available the list of countries included in each group, nor are there guidelines on the composition of the groups, on the roles and responsibilities of their coordinators, or on the modalities for the Secretariat's interaction with them. There are no formal rules or working methods to guide the internal functioning of the groups, which is instead the responsibility of the members. Practices thus vary widely among groups in regard to the selection and rotation of leadership, development of policy positions, transparency, and information-sharing.

In practice, regional groups are key vehicles for interaction among delegates of WIPO Member States and also for liaison with the WIPO Secretariat. Regional groups provide the basis, for instance, for Member State representation in selection panels for WIPO's leadership and in WIPO working groups, for the election of committee chairs, and for many decisions related to the provision of WIPO's financial and technical assistance (such as the selection of Member States for attendance at meetings and participation in training activities).<sup>150</sup> Regional groups are also a vehicle used by the Secretariat and Chairs for consultations related to treaty negotiations and the development of the organisation's Program and Budget. In the formal proceedings of WIPO meetings, regional groups are generally given the floor before individual Member States, and individual countries will generally refer back to the group statement in their own statements. Coordinators designated by each group (referred to as 'regional coordinators') serve as a focal point for interaction within the group and also for liaison with other regional groups and the WIPO Secretariat. They generally convene internal meetings of their group members before and during sessions of WIPO bodies, and speak on behalf of the group in different WIPO discussions and negotiations.<sup>151</sup> Coordinators of regional groups also seek to resolve differences within their group and forge common positions. Regional coordinators are often summoned by Chairs of WIPO's inter-governmental meetings or convened by the Secretariat for informal meetings that occur between or alongside formal sessions of WIPO bodies.

Importantly, while accredited non-governmental organisations can observe some of WIPO's formal proceedings, they cannot participate in the many off-the-record 'informal' closed-door sessions that occur within and among regional groups of countries where much of the real consensus-building and deal-making at WIPO occurs (although non-governmental stakeholders are sometimes included by Member States as part of their government delegations).

### **3.2.5. Role of the Secretariat in Member State deliberations**

The WIPO Secretariat also has an important role in WIPO's intergovernmental deliberations. The day-to-day roles of the Secretariat vis-à-vis decision-making and debate among WIPO Member States include:<sup>152</sup>

(a) Drafting agendas and reports for meetings of the various Member State bodies. These documents set out what issues Member States will discuss at their meetings and convey

<sup>150</sup> See Permanent Mission of India to the United Nations Geneva, 'World Intellectual Property Organization (WIPO)' <[pmindiaun.org/pages.php?id=326](http://pmindiaun.org/pages.php?id=326)> accessed 1 May 2015.

<sup>151</sup> CIEL, *A Citizens' Guide to WIPO* (CIEL 2007), 32–3.

<sup>152</sup> The following paragraphs excerpt from and paraphrase analysis provided in CIEL, *A Citizens' Guide to WIPO* (CIEL 2007), 28–30.

information about the status and progress of work, as well as recommendations for consideration by Member States.

(b) Taking part in discussions (without the right to vote) and serving as the *ex officio* secretary of these bodies. The WIPO Convention establishes that the Director General and any staff member designated by the incumbent may participate, without the right to vote, in all meetings of the governing bodies and any other committee or working group. The elected chairs of WIPO meetings (a Member State delegate) often rely on the Secretariat for guidance on a range of substantive and procedural issues. The Secretariat can also provide opinions and statements on these issues directly to the meetings, and is regularly called upon to do so by meeting chairs or the Member States.

(c) Submitting its own documents and proposals, either at the request of Member States or at its own initiative.

(d) Organising consultative meetings. The Secretariat convenes consultations among Member States or other stakeholders at the request of Member States or at its own initiative to, for instance, 'gather comments and recommendations regarding a particular process; ...promote consideration of emerging issues; and...encourage progress in ongoing discussions and negotiations.'<sup>153</sup> These consultations include convening meetings of regional groups (see discussion above) and other informal interactions between the Secretariat and Member States (see section 3.2.6).

(e) Replying to Member State requests and questions on legal matters relevant to their deliberations, including clarification and interpretation of the WIPO Convention, WIPO's General Rules of Procedure, Special Rules of Procedure, working methods, and the mandates of various committees; the compliance of WIPO with its internal rules and applicable rules; and an array of constitutional, administrative, and contractual matters.

### 3.2.6. Practices for Member State representation

As depicted in Figure 2, Member States are a central part of WIPO's governance system. Although financial contributions by WIPO Member States are low compared to other international organisations, WIPO's legal foundation – the WIPO Convention – establishes that Member States are the stewards of the organisation and that the Secretariat is accountable to them. WIPO Member States have responsibility for developing and approving any new treaty or amendments as well as for approving a broad array of policies and proposals on issues ranging from WIPO's Work Program and Budget to human resources, as well as for oversight of its activities. As stewards of a 'member-driven' organisation, it is thus vital to have an overview of how Member States arrange for their own representation in WIPO deliberations and decision-making, as well as how they interact and organise among themselves, and their various modes of interaction with the Secretariat.

#### National representation

Member States are represented at WIPO by a combination of Geneva-based diplomats and officials from national capitals. The WIPO Secretariat's policy is to send official communications to Ministries of Foreign Affairs (usually charged with oversight of international organisations on behalf of national governments) and to the relevant national IP authorities.

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<sup>153</sup> CIEL, *A Citizens' Guide to WIPO* (CIEL 2007), 28–30.



Geneva-based WIPO delegates are usually diplomatic staff from Ministries of Foreign Affairs, although they sometimes also hail from Ministries of Trade or Commerce (the latter delegates usually also follow WTO deliberations on TRIPS). Where delegates travel from national capitals to Geneva for WIPO meetings, they predominantly represent national IP offices (such as in countries where governments have clustered all of their IP-related authorities in one IP agency), national patent and trademark offices (which are often combined in industrial property offices) or national copyright offices. A handful of countries also post officials employed by their national IP authorities within diplomatic missions in Geneva, who then represent their agency and country directly in WIPO meetings. Depending on the committee and matter under discussion, countries sometimes also include on their delegations representatives from ministries charged with health, agriculture, environment, indigenous affairs, consumer safety, and development. In addition, for some meetings and events, representatives are judges or other officials from national courts that address IP matters or staff of national collective management organisations. In some instances, Member States have included representatives of private sector organisations, academics, public interest NGOs or other non-government experts on their delegations. In the case of the IGC, some governments have also extended participation in their delegations to representatives of indigenous and local communities.

The size and composition of Member State delegations to WIPO, the seniority of delegates and the regularity of their attendance in particular WIPO bodies vary according to the human resources of Geneva-based embassies; budget decisions by national governments regarding travel to WIPO meetings; and the perceived importance of particular deliberations to Member State interests. While many countries send the head of their IP office to attend the WIPO Assemblies, and ambassadors attend the opening sessions of some WIPO Committees, the day-to-day work of the committees is generally conducted by senior or mid-level staff of Geneva-based missions or representatives of national IP offices. Behind the scenes, the degree of engagement by ambassadors and officials in national capitals with WIPO delegates varies widely, with some receiving extensive instruction and others very little.

For a range of WIPO committee meetings and the Assemblies, the Organization finances the participation of delegations from developing countries and of certain countries in Europe and Asia. Further, WIPO covers the travel expenses and daily subsistence allowance (DSA) of one delegate from each member of the PCT Union and/or Madrid Union upon request to attend the WIPO Assemblies. Notably, the financial support for participation is for all members of the PCT and Madrid Unions, not just developing countries (this practice follows a constitutional requirement in the case of the PCT, and a decision taken by the Madrid Union Assembly as well.) In addition, for some diplomatic conferences, the host government contributes financially to the costs of participation by Member States. For instance, in the case of the 2013 Diplomatic Conference for the conclusion of the Marrakesh Treaty, funding was offered to support delegates from 157 WIPO states that are developed or developing countries, 119 of which were financed by the Government of Morocco.<sup>154</sup>

Notably, whereas Ministers of Health, Commerce or Agriculture often attend at least the opening day of the highest governing bodies of other UN organisations such as WHO, UNCTAD and the FAO, the most senior capital-based officials attending the WIPO Assemblies are generally the heads of IP offices (which are very seldom ministerial appointments). The meetings of WIPO's

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<sup>154</sup> WIPO, *Report on the Outcome of the Marrakesh Diplomatic Conference to Conclude a Treaty to Facilitate Access to Published Works by Visually Impaired Persons and Persons with Print Disabilities* WO/GA/43/9 (WIPO 2013).

governing bodies are thus not ‘ministerial meetings’ (such as those that take place, for instance, at WTO Ministerial Conference), nor are there regular, informal ‘mini-ministerial’ meetings (such as are common at the WTO). However, on an ad hoc basis, there some ministers do attend WIPO meetings and diplomatic conferences. Further, in some years, for instance, a high-level segment has been added to the Assemblies to attract ministerial engagement.

At WIPO, limited ministerial involvement means that many governments delegate significant authority to national IP offices for representation and oversight of the Organization. While at the national level, IP offices report to relevant ministries or executive bodies, in a number of countries they are independent and/or largely self-financing regulatory bodies. Such offices are simultaneously responsible for a wide array of activities, from IP administration, promotion and outreach to devising a legislative agenda for compliance with international treaties as well as policy advice, adjudication of disputes, participation in international norm-setting negotiations, and securing external technical assistance and capacity-building. Indeed, national and regional IP authorities are the primary recipients of WIPO’s technical assistance and capacity-building.

Across the suite of WIPO’s regular calendar of formal and informal committee meetings and consultations throughout each year, Geneva-based delegates are generally more regularly present than staff of national IP offices. Whereas capital-based delegates, such as from IP offices, commonly attend meetings related to their specific area of expertise (such as committees on copyright, enforcement or patents), Geneva-based delegates attend a wider array of meetings both across IP issues and the substantive areas of WIPO’s work as well as those related to the Organization’s operations, financing and governance (such as the PBC). Nonetheless, the Secretariat’s main interlocutors for the day-to-day implementation its work programme are staff of national IP offices and regional IP offices, such as the European Patent Office (EPO), the Eurasian Patent Organization, and the African Regional Intellectual Property Organization (ARIPO).

With the growing scope of WIPO’s work and the growing reach of IP law and policy, interaction between the Secretariat and Member States is becoming increasingly complicated. Within Member States, different government agencies with distinct mandates and roles in policymaking sometimes have divergent views on appropriate responses to global policy issues and positions with respect to international negotiations. This sometimes leads to confusion about where the overarching policy leadership lies, or should lie. Further, many governments struggle to make and implement coherent policies and to coordinate the many parts of government relevant to knowledge governance – from courts and IP offices to regulatory bodies and expert networks on issues as diverse as health and safety, customs and competition.<sup>155</sup> In some cases, governments have established consultative bodies or processes that draw together the various government stakeholders. Depending on the WIPO activity at hand, the Secretariat may also be in direct communication with a range of different actors at the national level, from national universities and ministries charged with small business development to national research institutes.

With the growing scope and number of WIPO activities in Member States, the challenges of communication by the Secretariat with the appropriate focal point(s) for interaction have grown. Both national IP offices and Ministries of Foreign Affairs have complained to WIPO about inadequate consultation or information on proposed WIPO activities, sometimes each arguing that they should be the priority channels of communication.

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<sup>155</sup> Ahmed Abdel-Latif, ‘Developing Country Coordination in International Intellectual Property Standard-Setting,’ *TRADE Working Paper 24* (Geneva: South Centre 2005).

## Interaction among Member States

As described above, regional groups are core vehicles for interaction among WIPO Member States. Given that regional groupings do not always properly allow for the expression of the distinct needs and interests of all countries, and given the existence of other political alliances and shared interests, a number of cross-regional and issue-oriented groups have also expressed views at WIPO. A prominent example of an issue-oriented group or 'coalition of interest' was the Group of Friends of Development, which called for the WIPO Development Agenda and included countries from Latin America, Africa, Asia and the Group of Least Developed Countries (LDCs). That grouping subsequently evolved into what is now known as the Development Agenda Group (DAG), which continues to attract a cross-regional group of countries, although its composition has evolved with time, and to call for a greater role in WIPO consultation processes. In addition, although not regularly active at WIPO, the Group of 77 and China have at key political moments intervened in WIPO debates, such as during discussions in 2005 on the future of the WIPO Development Agenda.<sup>156</sup>

Examples of other groups that work together in regard to WIPO include the Association of South East Asian Nations (ASEAN) (which has, for instance, been a recipient of WIPO technical assistance) and the European Union. The European Union participates in WIPO meetings as a member with no voting rights, and also in the assemblies of certain treaties adopted in 1996 and later, with the possibility to take over and exercise the votes of its member states. Further, informal coalitions of interest or caucuses sometimes arise in the context of issue-specific negotiations within particular committees or are active across a range of committees.

In addition to their interaction through regional groups, delegations also exchange views and collaborate informally through informal working meetings and lunchtime discussions, or by attending brainstorming meetings convened by NGOs or others. Ambassadors sometimes interact among each other and direct their delegations from behind the scenes, through informal deal-making across issues at stake within WIPO (and sometimes on issues under discussion in other international organisations). For instance, some WIPO members work together through the Geneva Group, an informal body of 16 countries (permanently co-chaired by the US and UK) that possess 'like-mindedness' on administrative and financial matters at the UN.<sup>157</sup> At the Ambassadorial and delegate level, the Group regularly meets before governing body meetings of UN agencies to share information and ensure statements at the various meetings assist in generating action and change in the agencies. In some instances, a sub-group of Geneva Group members has undertaken joint lobbying of the WIPO Secretariat and of non-Geneva Group members on particular WIPO governance and management issues.

## Interaction with the Secretariat

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<sup>156</sup> The Group of 77 (G-77) was established on 15 June 1964, by 77 developing countries signatories of the 'Joint Declaration of the Seventy-Seven Countries' issued at the end of the first session of the United Nations Conference on Trade and Development (UNCTAD) in Geneva. In 2014, the G-77 had 134 members.

<sup>157</sup> The Geneva Group functions at three levels: (i) UN Directors; (ii) Mission personnel who focus on governance and management issues or otherwise work directly with the UN and its affiliated agencies and funds and programs; and (iii) Ambassadors, who meet periodically to take a strategic overview of the progress being made at expert level. Convened by the Geneva Group, the UN Directors meet twice a year in a Consultative Level Meeting (CLM). The current members are OECD (including Mexico and the Republic of Korea) as well as Russia. The Geneva Group has focal groups on specific thematic issues such as budgets, human resources policy, buildings and oversight (including audit committees, external and internal audit, and evaluation). See Geneva Group, 'About the Geneva Group' <<http://www.thegenevagroup.net/cms/home/about-the-geneva-group.html>> accessed 15 October 2014.

Interaction between WIPO Member States and the WIPO Secretariat occurs through a number of channels, including: participation in WIPO meetings; Secretariat-convened informal consultations with regional groups; bilateral meetings between senior national officials and WIPO senior management; bilateral meetings between mid-level officials and mid-level WIPO staff; negotiations of bilateral extra-budgetary contributions to WIPO; negotiations for packages of national technical assistance and capacity-building; the implementation of capacity-building programs; participation in WIPO training activities; and interaction in the course of the day-to-day administration of WIPO's global protection system treaties. The Secretariat also interacts directly with the heads of a number of regional IP authorities, as noted above, on matters of training, technical assistance and cooperation under certain WIPO treaties, such as the PCT.

The senior management of WIPO, and particularly the Director General, also meets on a routine basis with senior officials and ministers from WIPO Member States, bilaterally or in small groups, either in Geneva or in national capitals. In addition, the Director General hosts breakfast meetings with ambassadors for the purposes of consultation and briefing them on activities.

As noted above, the Director General convenes informal high-level meetings with individual countries or groups of countries from time to time. To attract political engagement in WIPO, the Secretariat has organised 'high level segments' at some WIPO Assemblies and hosted other ministerial-level events. There have also been instances where the Secretariat has convened informal meetings with a sub-set of Member States to help promote consensus on the work program of the organisation. A controversial example occurred in 2005, when the Director General convened an invitation-only consultation in Morocco to break a political deadlock on proposals for substantive patent harmonisation.<sup>158</sup>

The World Intellectual Property Organization's senior management also interacts with the Geneva Group (mentioned above), providing briefings on key WIPO documents and strategies prior to their formal release. Such briefings provide opportunities for members of the Group to provide input to WIPO and to influence its direction and policies.

Formal written communications between WIPO Member States and the Secretariat can take a number of the forms. The Secretariat may write a letter in the name of a specific Secretariat official to a permanent representative or Ambassador. Alternatively, a '*note verbale*' is a diplomatic communication usually written in the third person and unsigned on the part of the Secretariat to a diplomatic mission of a Member State/IP office (or vice versa), and which usually serves a similar purpose as a memorandum. A further option is a 'circular' that may be written in the third or first person, and is generally signed.<sup>159</sup> Issued by relevant staff of the WIPO Secretariat (such as Assistant Directors General charged with the various WIPO sectors), circulars often provide information to national governments on forthcoming WIPO meetings, or extend invitations to them.

### 3.3. WIPO's financial arrangements and budget process

The World Intellectual Property Organization is unique among UN organisations as it is almost entirely self-financing, rather than relying on assessed contributions from Member States. For the 2014/15 biennium, WIPO Members approved a regular budget of 674 million CHF for the

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<sup>158</sup> William New, 'India Joins Opposition to Casablanca Meeting Outcome' *Intellectual Property Watch* (4 October 2005).

<sup>159</sup> Each '*note verbale*' issued by the WIPO Secretariat has the document code NN, whereas circulars have the code CN, each followed by a document number.

organisation (up from 470 million CHF in 2002/03).<sup>160</sup> WIPO is unique among UN organisations as it is almost entirely self-financing, rather than relying on assessed contributions from Member States (see Table 3). Within the UN system, WIPO is also notable for the fact that its income streams in 2012/14 exceeded budgeted amounts; the organisation generated a surplus of 34.6 million CHF,<sup>161</sup> thereby starting the 2014/15 biennium with around 200 million CHF in reserves.

### 3.3.1. Income and Arrears

#### Income sources for the Regular Budget: Fees

WIPO generates the majority of its revenue through fee-paid services that the Secretariat provides to users of registration systems created by the Patent Cooperation Treaty (PCT) and the Madrid and Hague treaties. In both absolute terms and as a proportion of WIPO's total income, the revenue from these registration system fees has been growing steadily over time – from 81.44 percent in 1998 to an estimated 93.8 percent of WIPO's income for the 2014/15 biennium (see Table 6).<sup>162</sup> The origins of WIPO's self-financing business model lie in the income streams from the PCT, which began in June 1978 when the filing of PCT applications commenced. In the 2014/15 biennium, over 75 percent of WIPO's income will come from PCT revenues (see Table 7).

The level of the fees payable to the Organization for services rendered under the PCT, Madrid, Hague and Lisbon systems is determined by the Assembly of the corresponding Union, which update their respective fee schedules as needed (see Regulation 3.10 of the WIPO Financial Regulations and Rules discussed in section 3.3.2 below). In some instances, the Unions provide for reductions in certain fees for applicants from eligible countries. For instance, the PCT Schedule of Fees sets out criteria upon which a state is deemed eligible for 90 per cent reductions in certain PCT fees for its applicants.<sup>163</sup>

The income from each Union is allocated to the activities of the respective Union and also to finance a range of the organisation's Programs (see section 3.3.8 on the financial arrangements for the Unions and their income, as well as the methodology for allocating Union income among WIPO's various Programs). Notably, since 1993, the WIPO Secretariat has produced a single unified presentation of the budget for the organisation as a whole (see section 3.3.7).

**Table 6. Evolution of WIPO income from 2002/03 to 2014/15 (in millions of Swiss Francs)**

Actual Budget	2002/03	2004/05	2006/07	2008/09	2010/11	2012/13	2014/15 Estimates
Member State Contributions	34.4	34.4	34.7	34.8	34.8	35,1	35.2
Fees							
PCT System	348	400.6	451.1	443.6	434.6	514,9	546.6

<sup>160</sup> See WIPO (2013) *Program and Budget 2014/15*. WIPO: Geneva.

<sup>161</sup> See WIPO (2014) *Financial Management Report for the 2012/13 Biennium*, WO/PBC/22/6. WIPO: Geneva, p. ii.

<sup>162</sup> See WIPO (2013) *Program and Budget 2014/15*. WIPO: Geneva.

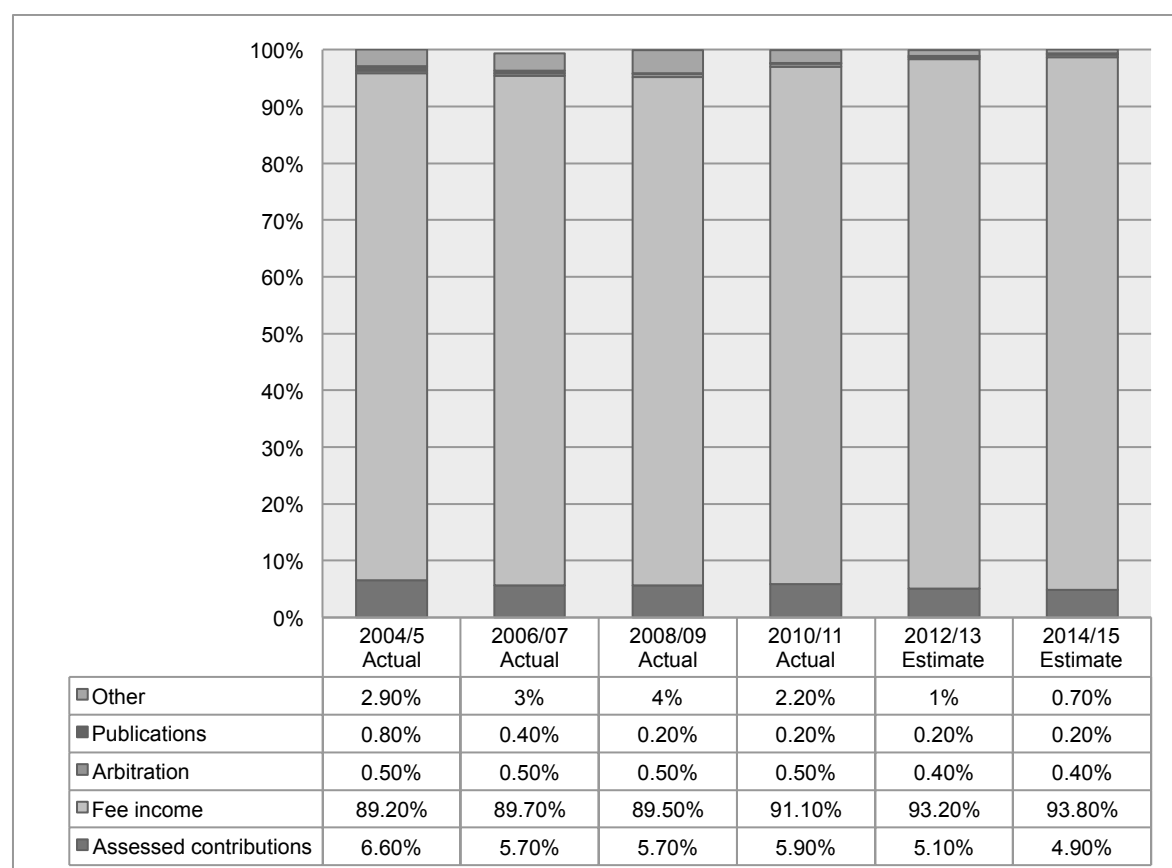
<sup>163</sup> For the text of the PCT Regulations in force as of 1 May 2015, see PCT, 'PCT Regulations' (WIPO 2015) <[http://www.wipo.int/export/sites/www/pct/en/texts/pdf/pct\\_regs.pdf](http://www.wipo.int/export/sites/www/pct/en/texts/pdf/pct_regs.pdf)> accessed 1 May 2015. For the countries eligible for PCT fee reductions, see PCT, 'Schedule of Fees' (WIPO 2015) <<http://www.wipo.int/pct/en/texts/rules/rfax.htm>> accessed 1 May 2015, and PCT, 'Applicability of 90% Reduction in Certain PCT Fees' (WIPO 2015) <[http://www.wipo.int/export/sites/www/pct/en/fees/fee\\_reduction.pdf](http://www.wipo.int/export/sites/www/pct/en/fees/fee_reduction.pdf)> accessed 1 May 2015.



Madrid System	49.7	60.8	90.3	94.8	99.6	108	114.6
Hague System	8.4	5	5	5.4	5.9	6,3	8.6
<b>Sub-Total Fees</b>	<b>406.1</b>	<b>466.5</b>	<b>546.5</b>	<b>543.8</b>	<b>540.3</b>	<b>629,2</b>	<b>668.6</b>
Arbitration	3.2	2.5	3.2	3.3	3.3	3,3	2.8
Publications	7.1	4.4	2.7	1.1	1.1	1,0	1.2
Interest	13.1	8.9	15.8	17.8	9.4	3,4	1.5
Miscellaneous	6.4	6	6.4	6.5	3.9	8.9	3.8
<b>TOTAL</b>	<b>470.3</b>	<b>522.7</b>	<b>609.3</b>	<b>592.8</b>	<b>647.4</b>	<b>680,7</b>	<b>713.3</b>

Source: WIPO (2014) *WIPO Financial Management Report 2012/2013*, WO/PBC/22/6, WIPO: Geneva, and WIPO (2013) *Program and Budget 2014/15*, WIPO: Geneva.

Table 7. Evolution of Share of WIPO's Income by Income Type: 2004/05 – 2014/15



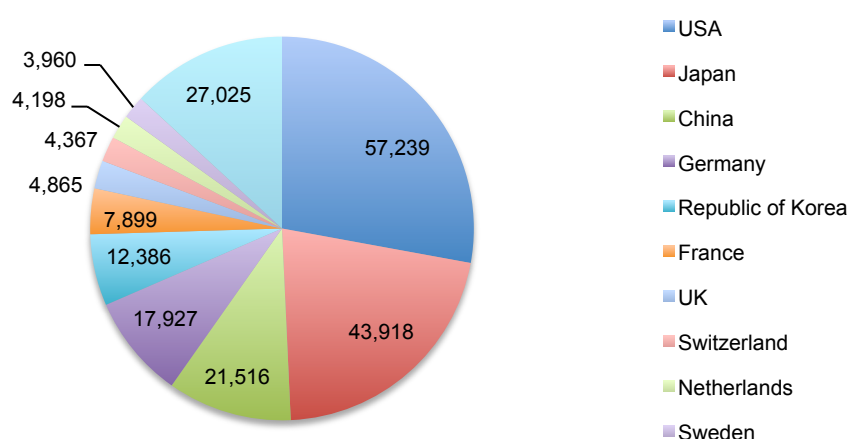
Source: WIPO (2013) *Program and Budget 2014/15*, WIPO: Geneva.

Given the importance of WIPO's global protection systems as the source of most of the Organization's income, it is important from a governance perspective to consider whether and how such users impact decision-making by the Secretariat and/or Member States. As a first step, a profile or breakdown of users underscores a concentration of users from a subset of Member States. Since 1978, the profile of PCT users has changed progressively, featuring applicants from a growing number of the PCT's Contracting States and more intense use by applicants from a core group of emerging economies, such as China and the Republic of Korea. Nonetheless, the core users of the PCT system, which represent the source of WIPO's main income stream, hail from a small number of that Union's 148 Member States. Between 1978 and 2011, applicants

from the United States and Japan together have accounted for more than half of all PCT applications, and the top eight countries of origin (which include China and the Republic of Korea) combined filed 80 per cent of all PCT applications (see Figure 3).<sup>164</sup>

The top ten users of the PCT system represent some of the world's largest manufacturing and R&D corporations, just as the top ten users of the Hague System are leading corporations in their fields (see Tables 8 and 9). In 2011, the top 100 applicants listed in Table 5 accounted for 28 percent of total PCT applicants.<sup>165</sup> Overall, the medical technology field has had the highest number of PCT applications since 1978, but in 2011 ranked third behind the fields of digital communication and electronic machinery.<sup>166</sup>

Figure 3. Distribution of top 10 origins of PCT applications (1978 – 2011)



Source: WIPO (2012) *2012 PCT Yearly Review: The International Patent System*, Publication No. 901E/2012, WIPO: Geneva, p. 17.

Table 8. Top 50 PCT applicants, 1978- 2011

Rank	Applicant's Name	Country of Origin	PCT applications
1.	Koninklijke Philips Electronics N.V.	Netherlands	24,966
2.	Panasonic Corporation	Japan	20,621
3.	Seimens Aktiengesellschaft	Germany	19,719
4.	Robert Bosch Corporation	Germany	17,179
5.	Telefonaktiebolaget LM Ericsson (Publ)	Sweden	11,937
6.	Procter & Gamble Company	USA	10,133
7.	BASF SE	Germany	9,985
8.	Qualcomm Incorporated	USA	9,417
9.	Huawei Technologies, Co., Ltd.	China	9,272
10.	Motorola, Inc.	USA	9,124
11.	Nokia Corporation	Finland	8,609
12.	E.I. Dupont de Nemours and Company	USA	7,871
13.	Toyota Jidosha Kabushiki Kaisha	Japan	7,238
14.	3M Innovative Properties Company	USA	7,051
15.	Sharp Kabushiki Kaisha	Japan	6,922

<sup>164</sup> WIPO (2012) *2012 PCT Yearly Review: The International Patent System*, Publication No. 901E/2012, WIPO: Geneva, pp. 16-17.

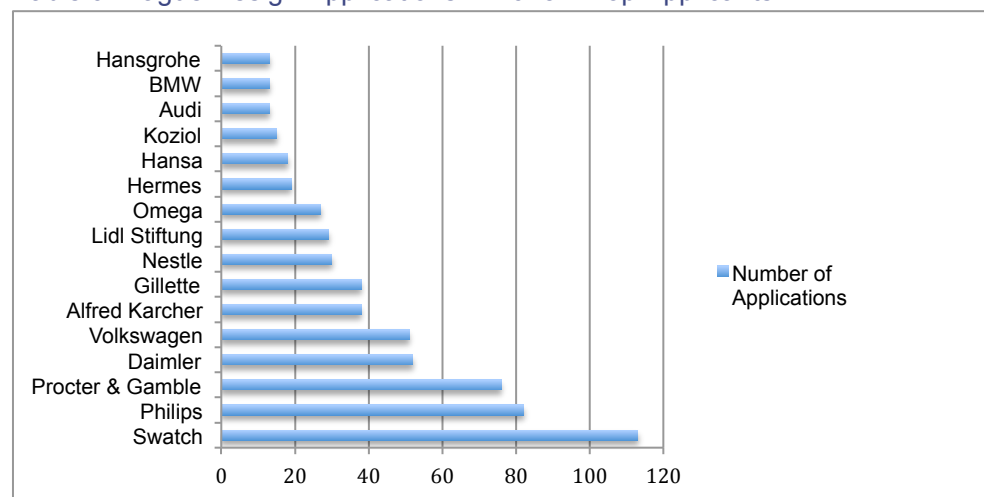
<sup>165</sup> Op cit, p. 19.

<sup>166</sup> Op cit, p. 20.

16.	LG Electronics	Republic of Korea	6,792
17.	Fujitsu Limited	Japan	6,668
18.	Mitsubishi Electric Corporation	Japan	6,345
19.	Sony Corporation	Japan	6,117
20.	ZTE Corporation	China	5,910
21.	NEC Corporation	Japan	5,883
22.	Intel Corporation	USA	5,589
23.	University of California	USA	5,147
24.	International Business Machines Corporation	USA	5,088
25.	Henkel Kommanditgesellschaft Auf Aktien	Germany	5,073
26.	Samsung Electronics Co., Ltd	Republic of Korea	4,970
27.	Eastman Kodak Company	USA	4,233
28.	Honeywell International Inc.	USA	4,232
29.	General Electric Company	USA	4,075
30.	Microsoft Corporation	USA	4,066
31.	Hewlett-Packard Development Company, L. P.	USA	4,032
32.	Thomson Licensing	France	3,911
33.	Kimberly-Clark Worldwide, Inc.	USA	3,555
34.	Fraunhofer-Gesellschaft Zur Forderung der Angewandten Forschung E.V.	Germany	3,338
35.	Daimler AG	Germany	3,259
36.	Infineon Technologies AG	Germany	3,138
37.	Novartis AG	Switzerland	3,072
38.	Minnesota Mining and Manufacturing Company	USA	3,064
39.	Daikin Industries, Ltd.	Japan	3,008
40.	Bosch-Siemens Hascerate GMBH	Germany	2,987
41.	Medtronic, Inc.	USA	2,883
42.	Hitachi, Ltd.	Japan	2,753
43.	Commissariat a l'energie atomique et aux energies alternatives	France	2,708
44.	AstraZeneca AB	Sweden	2,663
45.	Applied Materials, Inc.	USA	2,582
46.	Canon Kabushiki Kaisha	Japan	2,580
47.	Kabushiki Kaisha Toshiba	Japan	2,518
48.	Merck & Co., Inc	USA	2,499
49.	Pioneer Corporation	Japan	2,414
50.	Bayer Aktiengesellschaft	Germany	2,371

Source : WIPO (2012) *2012 PCT Yearly Review: The International Patent System*, Pub. No. 901E/2012, WIPO: Geneva, p. 18.

Table 9. Hague Design Applications in 2013 – Top Applicants



Source: WIPO (2014) Report of the Director General to the WIPO Assemblies 2014, WIPO: Geneva, p. 2.

### Income sources for the regular budget: Member State contributions, the Unitary Contribution System and arrears

Membership of WIPO requires both developed and developing country Member States to make contributions, albeit on a modest and sliding scale.<sup>167</sup> In 2014, the smallest annual assessed Member State contribution to WIPO was around 1,400 CHF while the highest contribution was 1.14 million CHF.<sup>168</sup> Less than five per cent of WIPO's regular budget comes from assessed contributions from Member States. Indeed, the overall proportion of WIPO's income derived from Member State contributions has decreased from 6.6 percent in 2004/5 to an estimated 4.9 percent for the 2014/15 biennium (see Table 7). Since 2002, the total income from Member State contributions has increased by less than 1 million CHF since 2002, see Table 6.<sup>169</sup>

Notably, during his tenure, former Director General Bogsch proposed that in light of WIPO's growing revenue from fees, Member States should consider terminating the system for their contributions. However, at that time and again during discussions of a Working Group on Constitutional Reform (which met from 1999 to 2002), Member States rejected proposals to end their contributions, characterising them as an important affirmation, albeit admittedly somewhat symbolic, of the member-driven character of the organisation, the need for the control and oversight of the Secretariat by Member States, and its accountability to them.<sup>170</sup>

In 1993, WIPO Member States adopted a Unitary Contribution System<sup>171</sup> to support the general expenses of WIPO and the six Contribution-financed Unions (i.e., the Paris, Berne, IPC, Nice, Locarno and Vienna Unions).<sup>172</sup> The Unitary Contribution System was intended to encourage wider membership of WIPO and its treaties. Under the system, any country that adheres to the WIPO Convention and any of the Contribution-financed Unions pays a single contribution irrespective of whether it is a member of WIPO, or only of one or more of WIPO's six treaties with Contribution-financed Unions. (That is, Member States replaced the prior system of separate payments for each of the six Contribution-financed Unions and for WIPO for those states that are members of WIPO but not of the Unions). The Hague, Lisbon, Madrid and PCT Unions were not included in the Unitary Contribution System because it was intended that these systems would be

<sup>167</sup> Most UN organisations similarly determine assessed contributions on a sliding scale based on the country's capacity to pay with a minimum rate for the poorest countries, but all countries formally return one vote. By contrast, for some non-UN international organisations such as the World Bank and IMF voting power is linked to the size of financial contributions: as the majority of member state contributions are made by developed countries and larger developing countries they in turn have more formal voting power and thus influence on decision-making and rules.

<sup>168</sup> WIPO, *Financial Management Report for the 2012/13 Biennium* WO/PBC/22/6 (WIPO 2014) 46.

<sup>169</sup> WIPO (2013) *WIPO Program and Budget 2014/15*, WO/PBC/21/8. WIPO: Geneva.

<sup>170</sup> The reports of the Working Group include the following: WIPO, *Constitutional Reform, First Session of the Working Group, 22 to 24 March* WO/GA/WG-CR/2 (WIPO 2000); WIPO, *Report of the First Session of the Working Group, 22 to 24 March* WO/GA/WG-CR/3 (WIPO 2000); WIPO, *Report of the Second Session of the Working Group* WO/GA/WG-CR/2/8 (WIPO 2000); WIPO, *Report of the Third Session of the Working Group, 3 to 6 March 2001* WO/GA/WG-CR/3/6 (WIPO 2001); WIPO, *Report of the Fourth Session of the Working Group, 11 to 14 September* WO/GA/WG-CR/4/4 (WIPO 2001); WIPO, *Report of the Fifth Session of the Working Group, 18 to 22 February* WO/GA/WG-CR/5/4 (WIPO 2002); and WIPO, *Report of the Sixth Session of the Working Group, 24 to 28 June* WO/GA/WG-GCR/6/3 (WIPO 2002). The Group also made a report to the General Assembly in 2001. The final report of the Group is WIPO, *Final Recommendations of the WIPO General Assembly Working Group on Constitutional Reform* A/37/5 (WIPO 2002).

<sup>171</sup> This 1993 decision was made by the WIPO Conference and the Assemblies of the Paris and Berne Unions. See WIPO, *WIPO Intellectual Property Handbook: Policy, Law and Use* (WIPO 2004) 9. Also see, for example, WIPO, *Unitary Contribution System for the Six Contribution-Financed Unions and Alignment of the Contributions of Non-Union States* AB/XXIV/5, 31 May 1993 (WIPO 2015), and WIPO, *Constitutional Reform: Memorandum of the Secretariat, Assemblies of the Member States of WIPO, Thirty-Fourth Series of Meetings, 20 to 29 September 1999* A/34/9 (WIPO 1999) para. 19.

<sup>172</sup> Each of these six WIPO treaties provide for Member State financing of the operation of the Unions they form and related activities.

financed through fees from their respective global protection system (although each treaty also does provide the possibility for Member State contributions). Notably, the 1993 decision did not result in a formal amendment of the WIPO Convention. Rather, a note regarding the adoption of the new contribution was added to the end of the Convention under a sub-heading 'New Contribution System.'<sup>173</sup> In 2003, the WIPO Assemblies adopted amendments to various treaties including the WIPO Convention to implement the Unitary Contribution System, but these have not yet entered into force (also see discussion in sections 3.3).

Each WIPO Member State chooses which of 14 contribution classes it will belong to (3 of which are reserved for developing countries only), which in turn determines the amount of its contribution.<sup>174</sup> The amount of the annual contribution payable by each State in each class is calculated by multiplying the number of units of that class by the value, in Swiss Francs, of one contribution unit. That value is fixed by the General Assembly meeting in joint session with the Assemblies of the Contribution-financed Unions (see Regulation 3.3 of the WIPO Financial Regulations and Rules).

The formal rights and obligations of Member States are the same regardless of the contribution class to which they belong.<sup>175</sup> The countries in the highest contribution class are France, Germany, Japan, the United Kingdom and the United States (each are required to contribute 25 'units'). Most developing countries have selected classes that require a contribution of between 1 and 1/32 of a unit. The exceptions are countries such as Brazil, India and China, which have opted for higher contribution classes. The contribution amounts designated for each class have been the same for over a decade; that is, there has been no increase or decrease in amounts for each class. Some countries have, however, shifted their contribution class (in 2014, for instance, Belgium shifted class to reduce its annual contribution to WIPO).

Although Member State financial contributions to WIPO are low compared to many other international organisations (and the sums of money at stake are relatively small), if a government is late (in arrears) with their contribution, the political implications can be significant. For instance, WIPO Member States in arrears can be deemed ineligible to vote when key budgetary or governance matters are brought to a vote. At the time of the 2014 WIPO annual Assemblies some 51 Member States (27 per cent of the WIPO membership) were in arrears in the payment of their annual contributions, and 23 Member States, mostly developing countries, had been in arrears for a number of years.<sup>176</sup> In 1991, Member States took a decision to waive a portion of the

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<sup>173</sup> The note reads as follows: 'The Governing Bodies of WIPO and the Unions administered by WIPO adopted with effect from January 1, 1994, a new contribution system that replaces the contribution system set forth in Article 11(4)(a), (b) and (c) of the WIPO Convention.' The paragraph continues detailing that it also replaces provisions set forth in 'Article 16(4)(a), (b) and (c) of the Paris Convention, Article 25(4)(a), (b) and (c) of the Berne Convention and the corresponding provisions of the Strasbourg (IPC), Nice, Locarno and Vienna Agreements.'

<sup>174</sup> Class I, with the highest contribution, involves the payment of 25 contribution units, whereas Class Ster, with the lowest contribution, involves the payment of 1/32 of one contribution unit. The amount of each state's contribution is the same whether that state is a member only of WIPO, or only of one or more Unions, or of both WIPO and one or more Unions. See WIPO, *Financial Management Report for the 2012/13 Biennium* WO/PBC/22/6 (WIPO 2014) 46–9.

<sup>175</sup> WIPO, *WIPO Overview* WIPO Publication No. 1007/E/11 (WIPO 2011).

<sup>176</sup> Arrears in contributions are noted in PBC documents each year. See, for instance, WIPO, *Status of the Payment of Contributions as at June 30, 2014: Document Prepared by the Secretariat* WO/PBC/22/7 (WIPO 2014). Countries in arrears for many years include Bolivia (since 2005), Burundi (since 1994), Central African Republic (since 1994), Chad (since 1994), Comoros (since 2006), Côte d'Ivoire (since 1994), Democratic Republic of Congo (since 1994), the Dominican Republic (since 1994) and (from 1970 to 1993) under the Paris Convention, Guinea (since 1994), Guinea-Bissau (since 1994), Honduras (since 2011), Lebanon (has agreed to an instalment plan for payment of arrears from 1994 to 2006), Mauritania (since 1994), Niger (since 1994),



arrears of least-developed countries (that is, for the period prior to 1990).<sup>177</sup> Since 1994, when the unitary contribution system came into effect and more equitable contribution classes for the developing countries were established, arrears in contributions have declined significantly. For instance, the total sum of arrears in unitary contributions decreased from 4.37 million CHF in 2003 to 2.26 million CHF in 2013 (and also represents a declining proportion of the organisation's growing overall budget).<sup>178</sup>

#### Other income sources for WIPO's Regular Budget

Beyond these two sources of income, WIPO earns a small portion of its regular budget from fees paid for arbitration services, interest and some miscellaneous sources, such as income from WIPO publications and rental income derived from WIPO buildings.

#### Extra-budgetary income and Funds-in-Trust

As a complement to its regular budget, WIPO also receives some voluntary, extra-budgetary income from Member States and IGOs, usually held as Funds-in-Trust (FITs), most of which is dedicated to development cooperation purposes. Like other international organisations, WIPO is seeking to boost extra-budgetary financial and in-kind contributions from governments as well as philanthropic and other non-governmental sources.

The contributions made through Funds-in-Trust have grown from an estimated 14.9 million CHF available for programming in 2010/11 to an estimated 23.6 million CHF available in 2014/15 (representing an increase from 11 percent to 14 percent of the total estimated resources available for WIPO's development programming in the respective biennia).<sup>179</sup> The sums noted as available for each biennium do not necessarily, however, represent new contributions as there is often a balance remaining unspent from prior years and the contributions may provide for activities spanning more than a single biennium. The financial management, reporting and accounting for all FITs are subject to WIPO's Financial Regulations and Rules (see section 3.3.2). (For the interaction between decision-making on the use and allocation of FITs and WIPO's wider Program and Budget Process, see section 3.3.6.)

#### **3.3.2. Financial Rules and Regulations**

The WIPO Financial Regulations and Rules govern the financial activities of the organisation and the Unions administered by it, and are approved by the General Assembly. WIPO's Financial Regulations and its Annexes are regularly amended by Member States.<sup>180</sup>

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Nigeria (since 1994), Somalia (since 1994), Togo (since 2002). The total amount of arrears in 2014 was 5.6 million CHF (including the unitary contributions and pre-1994 Contribution-financed Unions), representing around 32 per cent of the total amount invoiced for contributions payable for 2014. Some of these amounts, however, relate to 2013/14, and the WIPO Secretariat expects these to be cleared.

<sup>177</sup> Notably, according to a 1991 decision taken by the WIPO Conference and the Assemblies of the Paris and Berne Unions, the amount of the arrears in contributions of any least developed country (LDC) relating to years preceding 1990 was placed in a special account, the amount of which was frozen as of 31 December 1989. See WIPO, *Arrears of Contributions of the Least Developed Countries AB/XXII/20* (WIPO 1991) and WIPO, *General Report: Adopted by the Governing Bodies AB/XXII/22* (WIPO 1991) para. 127.

<sup>178</sup> See WO/PBC/22/7, p. 9. This reduction is partly explained by the total amount of contributions invoiced, which declined considerably between the years 1997 and 2012.

<sup>179</sup> See WIPO (2009) *Program and Budget 2010/11*, WIPO: Geneva and WIPO (2013) *Program and Budget 2014/15*, WIPO: Geneva. Note that these sums do not necessarily represent new contributions for each biennium as there is often a balance remaining unspent from prior years.

<sup>180</sup> See WIPO, *Financial Regulations and Rules (FRR)* (WIPO last amended 30 September 2014)

<[www.wipo.int/about-wipo/en/pdf/wipo\\_financial\\_regulations.pdf](http://www.wipo.int/about-wipo/en/pdf/wipo_financial_regulations.pdf)> accessed 1 October 2014. These regulations

New draft Regulations are proposed in some instances by the Secretariat to address new challenges or changed circumstances, and also in response to requests from Member States, such as through the PBC or General Assembly. Within the Secretariat, responsibility for working with Member States to draft and propose new Regulations rests with the Controller's Office.

The Financial Rules are established by the Director General in accordance with the provisions of the Financial Regulations and are regularly updated through the Controller's Office. The Director General informs the PBC and General Assembly of any modification in the Rules.<sup>181</sup>

The Financial Regulations and Rules cover a full suite of matters related to purchases and payments for goods and services by the Secretariat. The Regulations and Rules include chapters on matters ranging from the program and budget process, financing (including assessed contributions, fees and voluntary contributions), custody of funds, investments and external borrowing to the use of funds (appropriations, expenditures and procurement), accounting, internal oversight, external audit arrangements, and the role of the Independent Advisory Oversight Committee (IAOC).

All WIPO employees are required to comply with the Financial Regulations and Rules and with Office Instructions issued in connection with them (Rule 101.2). The Rules further specify that any employee who contravenes the Financial Regulations and Rules or corresponding Office Instructions may be held personally accountable and financially liable for his or her actions. A number of regulations and rules have a clear governance dimension. Chapter 2 of the Financial Regulations and Rules, for instance, addresses the Program and Budget, specifying the authority and responsibility of Member States and the Director General in its preparation, review and approval, as well as its presentation, content and methodology. Chapter 2 also sets out regulations related to supplementary and revised program and budget documents, program and budget performance and evaluation as well as unforeseen and extraordinary expenses. Also relevant from a governance perspective are those regulations and rules related to oversight, external audit and the independent advisory oversight committee, which are discussed in section 3.3.2 below.

The Financial Regulations and Rules include numerous provisions that clarify the authority, responsibility and role of the Director General. For instance, in Chapter 5 on the Utilization of Funds, Regulation 5.5 sets out the scope and limitations on the ability of the Director General to transfer funds among programs between appropriations. It states that:

...The Director General may make transfers from one program of the program and budget to another for any given financial period, up to the limit of five per cent of the amount corresponding to the biennial appropriation of the receiving program, or to one per cent of the total budget, whichever is higher, when such transfers are necessary to ensure the proper functioning of the services.

In Regulation 5.6, the Director General is given flexibility to make upward or downward adjustments to the resources appropriated for the operations of the PCT, Madrid and Hague systems, and for WIPO programs providing administrative support to these operations, in accordance with the methodology and formula(e) approved by the respective Assemblies of the PCT, Madrid and Hague Unions. Further, in Regulation 5.7, the Director General is given the authority to enter into commitments for future financial periods, provided that such commitments: (i) are for activities which have been approved by the General Assembly and are expected to

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have been applicable since 1 January 2008. Member States amended the Financial Regulations and Rules on 1 October 2009; 1 January 2010; 1 October 2010; 5 October 2011; 9 October 2012; and 30 September 2014..

<sup>181</sup> See WIPO, *Draft Report, 46<sup>th</sup> Session of the WIPO General Assembly* WO/GA/46/12 Prov. (WIPO 2014).

continue beyond the end of the current financial period; or (ii) are authorised by specific decisions of the General Assembly.

In accordance with these Regulations and Rules, the Director General submits annual financial statements for each calendar year to the External Auditor and the IAOC no later than 31 March (in the year following the end of the year to which they relate) (Regulation 6.5).<sup>182</sup> Rule 106.11 adds that these shall also be transmitted to the PBC. After the annual audit, the Secretariat submits annual financial statements and the report of the External Auditor to the Assemblies of the Member States (Regulation 6.7), prepared in accordance with the International Public Sector Accounting Standards (IPSAS).<sup>183</sup>

Every 2 years, following the end of the biennium, the Director General prepares a Financial Management Report for that financial period (Regulation 6.6).<sup>184</sup> The Secretariat submits the financial management reports to the Assemblies for review by all interested Member States (Regulation 6.7).

### 3.3.3. Custody of WIPO funds

WIPO has four types of internal accounts: (i) a general fund; (ii) working capital funds; (iii) reserve accounts; and (iv) trust funds and special accounts.

The general fund is WIPO's main fund for the purpose of accounting for the Organization's expenditures (Regulation 4.1). It is the repository of all assessed contributions paid by Member States; all fees derived from services provided by the Organization under the PCT, Madrid, Hague and Lisbon systems; and miscellaneous income as well as any advances made from the working capital funds or reserve funds to finance general expenditure.

The WIPO Financial Regulations and Rules provide for the establishment of working capital funds for the Organization as well as for the Paris, Berne, Madrid, Hague, IPC, Nice, PCT, Lisbon, Locarno and Vienna Unions in amounts determined by the Assemblies of the Member States and of the respective Unions (Regulation 4.2). The purpose of such working capital funds is to finance budgetary appropriations that are not yet covered by available liquidity (which was particularly important in the early days of the fee-financed Unions where the future use of their systems was

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<sup>182</sup> The financial statements include: (i) a statement of financial position; (ii) a statement of financial performance; (iii) a statement of changes in net assets; (iv) a statement of cash flow; (v) a statement of comparison of budget and actual amounts; and (vi) notes, comprising a summary of significant accounting policies and other explanatory notes.

<sup>183</sup> WIPO Member States adopted the IPSAS in 2007, effective 1 January 2010. The IPSAS were developed by the International Public Sector Accounting Standards Board (IPSASB), which is part of the International Federation of Accountants (IFAC). This move was in line with the UN High-Level Committee on Management (HLCM) decision of 30 November 2005. In December 2008, the Member States approved the implementation of a number of further changes to achieve full compliance with the WIPO Financial Regulations and Rules (FRR) and IPSAS, and to achieve a more streamlined, efficient and automated means of requesting, purchasing and paying for goods and services. See WIPO, *Program and Budget 2010/11* (WIPO 2009) Annex VIII; WIPO, *Report by the WIPO Independent Advisory Oversight Committee (IAOC), Prepared by the Secretariat A/43/5* (WIPO 2013).

<sup>184</sup> Regulation 6.6 in the FRR states that the financial management report shall include: (b) A statement of budget and actual income and expenditure for the financial period reported on the same accounting basis as the adopted budget; (c) The income and expenditures of all funds; (d) The status of appropriations, including: (i) the original budget appropriation; (ii) the appropriation as modified by any transfers made by the Director General under Regulation 5.5; (iii) increases or decreases arising from the flexibility adjustments under Regulation 5.6; (iv) credits, if any, other than the appropriations approved by the General Assembly; and (v) the amounts charged against those appropriations and/or other credits; (e) Primary financial statements for the financial period prepared on the same accounting basis as the annual financial statements; (f) A report on investments; and (g) A statement on the status of contributions of the Member States. (Note: there was no point numbered (a) in the original Regulation.)

uncertain) and for such other purposes as may be determined by the relevant Assemblies (Regulation 4.3; also see Financial Rule 101.3(q)).

Reserve accounts are used for any surplus of income remaining after the close of a financial period (unless otherwise decided by the General Assembly or the Assembly of the Union concerned) (Regulation 4.7). The use of the reserve funds for purposes other than the covering of any deficits is decided upon by the General Assembly of WIPO or the Assembly of the Union concerned (Regulation 4.6).

Finally, trust funds and special accounts can be established by the Director General, who defines their purposes and limits, and all such funds and accounts must be administered in accordance with the Financial Regulations and Rules (Regulation 4.5). According to Rule 104.1:

...the Controller is authorized to levy a charge on trust funds and special accounts. This charge shall be used to reimburse all, or part of, the indirect costs incurred by the Organization in respect of the generation and administration of trust funds and special accounts. All direct costs of the implementation of programs that are financed by trust funds and special accounts shall be charged against the relevant trust fund and special account.

### 3.3.4. The WIPO Controller

Across WIPO's Financial Regulations and Rules, there are numerous references to the role and responsibilities of the WIPO Controller, who reports to the WIPO Director General. According to Rule 101.1, the Director General delegates authority and assigns responsibility to the Controller for the implementation of the Financial Regulations and Rules. The Controller may in turn delegate aspects of his/her authority to other officers unless the Director General indicates otherwise. The Controller is also responsible for the organisation and proper working of all WIPO accounting systems, for designating the officers responsible for performing accounting functions (Rule 106.2) and for preparing the Financial Management Report (Rule 106.12). The use of all WIPO funds requires the prior authorization of the Controller, who is also responsible for approving commitments against all future financial periods (Rule 105.1) and all *ex gratia* payments (Rule 105.11). The Controller prepares all proposals for external borrowing (which are then submitted by the Director General, through the Program and Budget Committee, to the General Assembly for approval) (Rule 104.14) and is delegated the authority to make and prudently manage investments in accordance with the investment policy approved by Member States (Rule 104.10). The Controller may determine the maximum amount of the appropriations that it would be prudent to make available for allocation, taking into account the prospects of payment of assessed contributions, the likely level of income from fees, or any other relevant factors (Rule 105.2).<sup>185</sup> Together with the External Auditor, the Controller is also granted important authority with respect to the retention of accounting records. In this respect, Rule 106.13 states that: 'The accounting records shall be supported by financial and property records and other documents which are to be retained in appropriate files and for such periods as may be agreed with the External Auditor, after which, on the authority of the Controller, they may be destroyed.'

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<sup>185</sup> According to Rule 105.3, authorisations from the Controller may take the form of: (i) an allocation of funds or other authorisation issued to a program manager to plan activities and to initiate action to commit, obligate and expend specified funds for specified purposes during a specified period; and (ii) a staffing table authorisation issued jointly to a program manager and the Director of the Human Resources Management Department (HRMD) to enable the Director of HRMD to fill authorised posts based on requests initiated by the program manager.

### 3.3.5. Policies on Reserves and Investments

The World Intellectual Property Organization is in an extraordinary position compared to other UN organisations in that it has considerable financial reserves. At the end of 2013, WIPO's net assets were over 208 million CHF, which placed the reserves above even the target level set by Member States.<sup>186</sup>

In 2011, WIPO adopted an investment policy for its budget and reserves.<sup>187</sup> In 2014, the WIPO Assemblies agreed this should be reviewed in 2015, with an eye to possible revision in 2015.<sup>188</sup> The WIPO Financial Regulations and Rules are also relevant to the management of WIPO's reserves and investments.

The Director General may make short-term investments of money not needed for immediate requirements in accordance with the Organization's investment policy, as approved by the Member States, and shall inform the Program and Budget Committee regularly of any such investments (WIPO Financial Regulation 4.10). The Director General may also make long-term investments of monies standing to the credit of the Organization in accordance with the investment policy and must inform the Program and Budget Committee regularly of any such investments (Regulation 4.11). In this regard, the Regulation states that the Director General may seek the advice of an Advisory Committee on Investments composed of members he or she has appointed, including persons outside the Organization having substantial experience in the financial sector.

The size of WIPO's accumulated surplus/reserves (net assets) has generated ongoing debate among Member States on transparency and clarity regarding the use and amount of these reserves, as well as the conditions under which reserves should be used to finance cash-flow shortages or specific projects, and when this can be done without seeking explicit Member State approval.<sup>189</sup> At present, the planning, utilisation and reporting of WIPO reserves are governed by a combination of the WIPO treaties, WIPO reserves policies (created in 2000, then revised in 2010 and under review in 2015),<sup>190</sup> and IPSAS accounting standards. In 2014, WIPO Members agreed to re-visit the target level set by the Member States for the Organisation's reserves, as well as the future of WIPO's working capital funds (which established during the infancies of our Global IP Systems, when the extent of future use of the Systems was uncertain).

### 3.3.6. Setting and Reviewing WIPO's Program and Budget

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<sup>186</sup> WIPO (2014) Review of WIPO's Financial Situation and its Policies Related to Reserves: Document prepared by the Secretariat, WO/PBC/22/28, WIPO: Geneva, p. 8.

<sup>187</sup> This policy was submitted in accordance with Financial Regulation 4.10, and was approved by the 2011 Assemblies. The 2011 Policy is reproduced in WIPO (2014) *Proposal to Amend the Policy on Investments: Document Prepared by the Secretariat*, Annex 1, WO/PBC/22/19, WIPO: Geneva.

<sup>188</sup> WIPO (2014) *Proposal to Amend the Policy on Investments: Document Prepared by the Secretariat*, WO/PBC/22/19, WIPO: Geneva.

<sup>189</sup> In 2014, for instance, WIPO Member States agreed to revisit the target level set by the Member States for the Organization's reserves, as well as the future of WIPO's working capital funds (established with the exception of the Lisbon Union's during the infancies of the various Unions). See WIPO, *Review of WIPO's Financial Situation and its Policies Related to Reserves: Document Prepared by the Secretariat* WO/PBC/22/28 (WIPO 2014) 8; WIPO, *Draft Report, 46<sup>th</sup> Session of the WIPO General Assembly* WO/GA/46/12 Prov. (WIPO 2014); and WIPO, *General Report: Adopted by the Assemblies, 54th Series of Meetings of the Member States of WIPO, 22 to 30 September 2014 A/54/13* (WIPO 2014) 90–3.

<sup>190</sup> See, for instance, 'Policy on Reserves and Principles Applied in Respect of the Use of the Reserves' in WIPO, *General Report: WIPO Assemblies of Member States, 48th Series of Meetings A/48/15* (WIPO 2010) and in WIPO, *General Report: WIPO Assemblies of Member States, 35th Series of Meetings A/35/15* (WIPO 2000).



The development of WIPO's biennial Program and Budget is the key political and management process that establishes the direction, priorities, and resource allocation framework for all WIPO's programs and their content. Member State engagement in the Program and Budget process is a key component of their oversight role; it follows then that arrangements for Member State involvement in the process are an important component of WIPO's governance. In addition, decisions on WIPO's Program and Budget can also directly impact the organisation's governance system. In 1998, for instance, the approval of the 1998/99 Program and Budget was the vehicle through which Member States agreed to a number of proposals for the simplification and rationalisation of WIPO's governance structure with regard to the committees constituted by the WIPO Assemblies.<sup>191</sup> Decisions on Program and Budget are also important tools for giving practical effect to the mandates that Member States establish for the WIPO committees because they make resources available for their work.

#### Organisational priorities: the Program and Budget

As called for in Regulation 2.3 of the WIPO Financial Regulations and Rules, the Secretariat prepares a proposed program and budget document that includes estimates for income and expenditure for the financial period in consolidated form for the Organization as a whole, as well as separately for each Union.

The presentation of WIPO's Program and Budget is organised around the achievement of nine Strategic Goals approved by Member States in December 2009.<sup>192</sup> In keeping with the Secretariat's bolstered commitment to results-based management (RBM) in its 2009–12 Strategic Realignment Program, the Program and Budget identifies objectives, expected results, and performance measures related to the achievement of these Strategic Goals. The Program and Budget has also been informed by the Secretariat's *Medium Term Strategic Plan for WIPO, 2010–15* (MTSP).<sup>193</sup> The development of the MTSP followed a 2006 Member State decision in favour of a new mechanism to increase the involvement of Member States in the preparation and follow-up of the program and budget; it aimed to provide a high-level strategic framework to guide the preparation of budget documents in 2012/13 and 2014/15.

Following a general overview of the Organization's proposed goals, expected results, income and expenditures for the biennium, the core of the program and budget document is divided into separate sections for each WIPO Program. Each of these sections presents a narrative that sets out the content of the Program as well as objectives and expected results during the biennium. They also include tables that summarise the financial and human resources required to achieve the objectives and expected results as well as benchmarks and indicators of achievement, and a table documenting any extra-budgetary resources available to the Program. A number of annexes are included in the Program and Budget document to offer more detailed information, such as on the Organization's finances.<sup>194</sup>

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<sup>191</sup> WIPO, *Draft Program and Budget 1998/99 A/32/2* (WIPO 1998).

<sup>192</sup> The Strategic Goals set the framework for WIPO's Strategic Realignment Program, undertaken by the Secretariat between 2010–12, which aimed to 'make WIPO a responsive, efficient Organization equipped to achieve its Strategic Goals and to provide global leadership on IP issues.' The Strategic Goals are listed in WIPO, *Medium Term Strategic Plan for WIPO, 2010–15 A/48/3* (WIPO 2010), which was developed through interactive consultations between the Secretariat and Member States. Also see WIPO, *WIPO Strategic Realignment Program Roadmap* (WIPO 2011); WIPO, *Taking the Initiative: WIPO Strategic Realignment Program* (WIPO 2012). Both documents are available at: <[http://www.wipo.int/about-wipo/en/strategic\\_realignment/](http://www.wipo.int/about-wipo/en/strategic_realignment/)> accessed 1 September 2014.

<sup>193</sup> WIPO, *Medium Term Strategic Plan for WIPO, 2010–15 A/48/3* (WIPO 2010).

<sup>194</sup> In accordance with Rule 102.2, the proposed program and budget contains: (i) A statement of financial and human resources requirements by proposed program and by nature of expenditure in a consolidated form for the organisation, as well as separately for each Union; for purposes of comparison, the expenditures for the previous

Whereas WIPO was created primarily to serve as the secretariat of intergovernmental treaties, the 2014/15 Program and Budget illustrates how greatly WIPO's workload has grown over the past forty years (such as through the increasing use of its global protection system treaties) as well as the diversification of the Organization's functions and activities in development cooperation, dispute resolution, research and on IP policy issues.<sup>195</sup> Annex 1 of this paper provides an overview of WIPO's Program and Budget from 2010/11 to 2014/15, including the share of resources by Program that the Secretariat estimates that it devotes to development activities.

From a planning and budgetary stand-point, most of WIPO's activities are part of its regular Program and Budget. The exceptions are activities financed through extra-budgetary sources of income, such as through voluntary contributions to Funds-in-Trust (FITs) for development cooperation (discussed below).

#### Box 1. WIPO's Nine Strategic Goals

- Balanced Evolution of the International Normative Framework for IP
- Provision of Premier Global IP Services
- Facilitating the Use of IP for Development
- Coordination and Development of Global IP Infrastructure
- World Reference Source for IP Information and Analysis
- International Cooperation on Building Respect for IP
- Addressing IP in Relation to Global Policy Issues
- A Responsive Communications Interface between WIPO, its Member States and All Stakeholders
- An Efficient Administrative and Financial Support Structure to Enable WIPO to Deliver its Programs

Source: WIPO (2009) *Medium Term Strategic Plan for WIPO, 2010-2015*, A/48/3, 10 September 2010, WIPO: Geneva.

#### The Program and Budget process

The World Intellectual Property Organization's Program and Budget is discussed, revised and approved by the PBC and then the General Assembly on a biennial basis. The preparation of WIPO's Program and Budget is guided by the WIPO Financial Regulations and Rules (see Chapter 2 of the FFR) and by a Program and Budget Mechanism, which Member States approved in 2006 (see Annex 2). The Mechanism includes several elements, namely that the Director General must submit the draft program and budget to the PBC for discussion, comments, amendment and recommendation by 1 July of the year preceding the financial

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financial period, the adopted initial budget and the proposed revised budget for the current financial period indicated alongside the resource requirements estimates for the forthcoming financial period; (ii) A statement of estimated income including income from contributions, fees for services rendered under the PCT, Madrid, Hague and Lisbon systems and income classified as miscellaneous in accordance with Regulation 3.13; (iii) A statement of estimated demand for services under the PCT, Madrid, Hague and Lisbon systems, respectively; and (iv) A detailed organigram of the International Bureau including names of directors and program managers.

<sup>195</sup> See *WIPO Handbook* (2003), p. 5.

period,<sup>196</sup> as well as a process and timeline for the preparation and follow-up of the Program and Budget.<sup>197</sup>

In practice, the development of WIPO's Program and Budget occurs through an iterative process – each WIPO Program proposes to the Director General a workplan and corresponding budget based a combination of the following: recommendations of relevant Member State committees; activities and initiatives proposed by Program managers; needs expressed by Member States; and feedback from the Secretariat's senior management. The Secretariat then presents a draft program and budget to the PBC for discussion, comments and recommendations, including possible amendments, which is discussed both informally and formally. After review, the PBC then transmits the proposed program and budget, along with its recommendations, to the Assemblies of the Member States. The document and the PBC recommendations are then forwarded for Member State consideration and adoption at the annual Assemblies of WIPO Member States.

At the Assemblies, the adoption of the Program and Budget requires action from all of the Assemblies of Member States and Unions, and is thus an agenda item for all such bodies. On this point, Regulation 2.8 of the Financial Regulations and Rules specifies that the Assemblies of the Member States and of the Unions as, 'each as far as it is concerned,' adopts the Program and Budget for the following financial period. For such agenda items common to a number of governing bodies, WIPO's General Rules of Procedure call for joint meetings of the relevant bodies, such as routinely occurs in the 'consolidated agenda' for the annual Assemblies. As such, the General Assembly does indeed make a decision to adopt the Program and Budget, but the other Assemblies also simultaneously adopt it in a joint session, resulting in what is usually reported as a unanimous decision of all of the Assemblies of Member States and of the Unions administered by it.<sup>198</sup> As the Program and Budget requires adoption by the Member States of WIPO and all of the Unions, the plenary session that adopts the Program and Budget has in practice been the Conference not the General Assembly (recalling that the Conference includes all members of WIPO, including those that are not members of Unions, where as the slightly smaller General Assembly includes only those States that are party to both the WIPO Convention and any of the treaties that establish a Union). The quorum for the Conference is one third of the membership, the quorum for the General Assembly is one half. Although the membership is in session as the WIPO Conference, not the General Assembly, the Chair of the General Assembly (not the Chair of the Conference) presides in accordance with the WIPO General Rules of Procedure. Rule 42(2)(i) states that in the case of joint meetings, the presiding Chair will be the Chair of the body that has precedence over the others, with the highest being the General Assembly, followed by the Conference, and then the Coordination Committee.

If the Program and Budget is not adopted before the beginning of the following financial period, Regulation 2.8 further states that: 'the authorization to the Director General to incur obligations and make payments remains at the level of appropriations of the previous financial period.' In several instances, an extraordinary meeting of the relevant Assemblies has been convened to

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<sup>196</sup> This was achieved through a revision of WIPO's Financial Regulations, which had previously called for the submission of only the budget for observations and possible recommendations. See WIPO, *Report on, and Recommendations Adopted by, the Ninth and Tenth Sessions of the Program and Budget Committee A/42/9* (WIPO 2006) 3. These two mechanisms were set out in Annex III and Annex IV respectively of WIPO, *Proposals on a New Mechanism to Further Involve Member States in the Preparation and Follow Up of the Program and Budget: Document Prepared by the Secretariat WO/PBC/10/5* (WIPO 2006).

<sup>197</sup> See WIPO, *Report on, and Recommendations Adopted by, the Ninth and Tenth Sessions of the Program and Budget Committee A/42/9* (WIPO 2006) Annex II, para. 25.

<sup>198</sup> WIPO, *General Report: adopted by the Assemblies A/51/20* (Geneva: WIPO 2013) 108-11.

adopt the Program and Budget when consensus was not reached at the annual Assemblies (this occurred most recently in December 2013 with regard to the 2014/15 Program and Budget).

If necessary, the Director General may submit supplementary and revised program and budget proposals. As noted above, the Director General may take some budgetary action without making such proposals, such as transfers among Programs within the limits set in Regulation 5.5 of the Financial Regulations and Rules, as well as flexibility adjustments made in accordance with Regulation 5.6. For purposes of disclosure to Member States, however, all such transfers and/or adjustments must be reflected in supplementary and/or revised program and budget proposals, if and when the Director General submits these proposals (Regulation 2.9). According to Regulation 2.10, supplementary and revised budget proposals are to reflect changes in the financial and human resources requirements, such as, for example, those associated with activities which the Director General considers to be of the highest urgency and which could not have been foreseen at the time the initial program and budget proposals were prepared. Further, according to Regulation 2.13, the General Assembly and the Assemblies of the Unions, each as far as it is concerned, may 'adopt a decision to authorize the Director General to incur unforeseen and extraordinary expenses which cannot be met from existing appropriations up to such amounts and subject to such limits as included in the authorizing decision.'

#### Program and Budget reporting requirements

Reporting requirements are an integral part of WIPO's governance system and the Secretariat's management activities. On an annual basis, the Secretariat presents Program Performance Reports to WIPO Member States, which are supplemented by Validation Reports compiled by WIPO's Internal Oversight Division. According to Regulation 2.13 of the FFR, the Program and Performance Report should be based on the program structure, results frameworks, benchmarks and performance indicators contained in the Program and Budget.

As noted above, other reporting activities on the part of the Secretariat include annual financial statements for Member States as well as 2-yearly financial management reports. In addition, WIPO has an online 'Observatory,' which is a Member State-only facility that enables governments to review the organisation's financial activities on an ongoing basis.

The WIPO Financial Regulations and Rules call on the Director General to establish a system for planning, conducting and using evaluative information for decision-making (see Regulation 2.15).

#### Extra-budgetary contributions, gifts and donations in the Program and Budget process

The WIPO Financial Regulations and Rules provide that the Director General may accept voluntary contributions, gifts and donations to the Organization, whether or not in cash, provided that: a) the purposes for which the contributions are made are consistent with the policies, aims and activities of the Organization; and b) the acceptance of contributions that directly or indirectly involve significant additional financial liability for the Organization obtain the consent of the General Assembly (Regulation 3.11). Rule 103.1(b) further specifies that voluntary contributions, gifts or donations directly or indirectly involve additional financial liability for the Organization, these may be accepted only with the approval of the General Assembly (Rule 103.1(b)).

Voluntary contributions, gifts and donations in cash are accounted for in special accounts, which are commonly referred to as 'Funds-in-Trust' (FITs), for the purposes specified by the donor (see Regulation 3.12). The financial management, accounting and reporting of FITs are subject to WIPO's Financial Regulations and Rules. However, individual donors may also request specific

financial accounting and reporting arrangements in the MOU establishing the FIT. The Secretariat and donor bilaterally establish the consultation mechanisms set out in each FIT agreement, and in turn determine arrangements for planning, monitoring, financial reporting and review of FIT activities.

In principle, FIT-financed activities are supposed to be guided by WIPO's Strategic Goals and also by the priorities and results-based management (RBM) framework established in its Program and Budget. Activities financed through Funds-in-Trust are now incorporated into the description of Programs in WIPO's Program and Budget documents, and the extra-budgetary resources available to each Program are provided in a table at the end of each Program description. In addition, a summary table of FITs resources potentially available for programming is presented in an Annex to the Program and Budget document. However, WIPO does not have a specific policy or framework to guide priority setting, allocation and use of FITs and other voluntary contributions, or on matters such as conflicts of interest that may arise in regard to FITs. As noted above, the specific workplans and budget for activities financed by FITs are decided bilaterally between the Secretariat and the donor, and neither reports or evaluations of these activities are not routinely made available to Member States or the public.

To date, WIPO's extra-budgetary donors have largely been developed country Member States (most prominently Japan followed by France and Italy, as well as Australia, Finland, Portugal and Spain), for the purpose of technical assistance and capacity building activities in third countries. There have also been significant contributions from emerging countries such as Korea, as well as some IGOs and more recently from countries such as Brazil and Mexico, among others. The first Japanese FIT was established in 1987, for instance, and the scale and scope of its activities has expanded since that time, with a total contribution over the period from 1987 to 2015 amounting to over 45 million Swiss Francs.<sup>199</sup> Some countries also maintain national Funds-in-Trust, whereby governments have set aside resources for WIPO activities in their own country, which are noted in an Annex to WIPO's Annual Financial Management Report and Financial Statements.

### 3.3.7. The unitary presentation of WIPO's budget

In the WIPO Program and Budget process, the WIPO Secretariat prepares a unitary presentation of the budget of the Organization as a whole, and all of the Unions, both Contribution-financed and fee-financed. The origin of this unitary presentation of the budget was the 1993 General Assembly decision by Member States, noted above, in favour of a Unitary Contribution System for the Contribution-financed Unions, which created a unified budget for those Unions.<sup>200</sup> In 2003, WIPO Member States agreed to amend the WIPO Convention and all WIPO treaties to formalise this practice, which had already been in effect since 1994. To aid in the implementation of the Unitary Contribution System, the WIPO Assemblies also agreed as part of their 2003 amendments to delete a provision referring to a 'separate budget' for 'the expenses common to

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<sup>199</sup> Author's calculations based on review of Annexes on FITs in consecutive Program and Budget reports. On Japan's FITs, see WIPO, *The First Twenty Years of the Japan Funds-in-Trust for Industrial Property at WIPO (1987–2007)* (WIPO 2009) 3 (which estimated a contribution of over 25 million Swiss Francs from 1987 to 2007); and WIPO, 'Japan Funds-in-Trust for Industrial Property: Africa & LDCS' <[http://www.wipo.int/cooperation/en/funds\\_in\\_trust/japan\\_fitip/](http://www.wipo.int/cooperation/en/funds_in_trust/japan_fitip/)> accessed 1 January 2015.

<sup>200</sup> See, for instance, Note 16.03 on changes to Article 16 of the Paris Convention to implement the 2003 amendments: 'Since the introduction of the unitary contribution system, the budget of the Paris Union is part of the budget of the contribution-financed Unions in the Program and Budget of the Organization and the Unions administered by WIPO.' See WIPO, *Final Texts of Proposed Amendments to the Paris Convention and Other WIPO-Administered Treaties, 39th Assemblies of the Member States of WIPO, 22 September to 1 October 2003 A/39/3* (WIPO 2003) 8.



the Unions, and the budget of the Conference,’ replacing it with the text ‘the income and expenses of the Union[s] shall be reflected in the budget of the Organization in a fair and transparent manner.’<sup>201</sup> Although the amendments are not yet in force, in keeping with that decision,<sup>202</sup> the WIPO Secretariat prepares ‘a unitary presentation’ of the budget of the Organization and all of the Unions administered by WIPO (with both the Contribution-financed and fee-financed Unions’ budgets included) within a single document. This ‘unitary presentation’ is the overarching version of the budget referred to throughout the Program and Budget document: a unitary presentation of the budget is provided both by reference to Program and also by reference to the Strategic Goals and expected results in WIPO’s results framework. In addition, the Secretariat provides a separate presentation of the unified budget of the Contribution-financed Unions and of each of the fee-financed Unions, as well as a view of how the Union income is allocated by Program (discussed below).

### **3.3.8. Financial arrangements for the Unions and allocation of their income**

The financial arrangements for WIPO’s Contribution-financed Unions and its fee-financed Unions differ. As noted above, following the 1993 decision on the Unitary Contribution System, the Contribution-financed Unions have a unified budget. However, as required by their respective treaties, each of the fee-financed Unions (Hague, Lisbon, Madrid and PCT) has a separate budget.

The finances of the fee-funded Unions are governed by their respective agreements. Each of these treaties has similar provisions requiring fees and, if receipts from other sources (such as fees, publications, gifts, rents and interest) do not suffice to cover the expenses of the Unions, contributions from their respective members. Each treaty also provides for the possibility of a working capital fund for the Unions (see section 3.3.3 on custody of funds), as well as for advances by the Host State (i.e., the country in which the Union is administered, namely Switzerland) whenever the working capital is insufficient. The growing income of the PCT Union and Madrid Union has also enabled each to generate considerable reserves, which are kept in separate reserves accounts, as in the case of the Hague Union. (As of early 2015, the work of the Lisbon and Madrid Unions was combined in one Program. Notably, the Lisbon Union’s operations have long been subsidised as the Union has not generated adequate income from fees to cover its expenses.<sup>203</sup>)

#### Allocation of income and budgeted expenditure by Union

Any income generated by the Unions (through fees or Member State contributions) flows into

<sup>201</sup> In 2003, the Secretariat explained ‘Article 11(1) proposes a new enabling provision for the budget consequent upon the adoption of the unitary contribution system. The proposed provision seeks to implement the desire expressed by many delegations in the Working Group on Constitutional Reform that, while the Organization has a unitary contribution system, it should not have a unitary budget in the sense that all income and expenses, regardless of their source or purpose, are mixed without identification. Accordingly, Article 11(1) would require that the budget of the Organization be presented so that the income and expenses of the Organization and of the various Unions be indicated ‘in a fair and transparent manner.’ See WIPO, *Final Texts of Proposed Amendments to the Convention Establishing the World Intellectual Property Organization: Document Prepared by the Secretariat, 39th Assemblies of the Member States of WIPO, 22 September to 1 October 2003 A/39/2* (WIPO 2003) 24.

<sup>202</sup> The practice of the Unitary Contribution System follows a Member State decision, but is not a treaty requirement, as the amendment is not yet in force. As of 2015, 15 WIPO Member States had formally accepted the proposed amendments, which will enter into force 1 month after written notifications of acceptance have been received by the Director General from three-fourths of the Member States of WIPO.

<sup>203</sup> In 2012/13, the Lisbon Union’s income was composed of Lisbon fee income, a share of income from the WIPO Arbitration and Mediation Centre and a share of ‘other income.’ The vast majority of the income was from this latter category, and mostly derived from rental income from various WIPO buildings.

custody accounts for that Union (see Regulation 4.1 of the WIPO Financial Regulations and Rules, discussed in section 3.3.2). Contributions income is allocated entirely to the Contribution-financed Unions.<sup>204</sup> Fee income from the PCT, Madrid, Hague and Lisbon registration Systems is allocated entirely to the respective Unions. Income from publications is allocated to the Contribution-financed PCT, Madrid, Hague and Lisbon Unions on the basis of the estimated publications revenue for each of the Unions. Income from the Arbitration and Mediation Center is allocated to all Unions based on the assessment of the relative share by Unions. Other income is allocated to all Unions as follows: (i) a share is directly attributable to the Madrid Union on the account of rental income from the Madrid Union building; and (ii) the remaining share is allocated equally across all Unions.

In addition to the unitary presentation of the budget by references to Program and expected results, the biennial budget for the Organization is also presented separately for each Union in an Annex to the Program and Budget (in accordance with Rule 102.3 of the WIPO Financial Regulations and Rules). This 'union view' presentation includes an overview of how the Union income is allocated by Program, as well as an overall scenario by Union. The authority for allocations comes from the Member States' approval of the Program and Budget. At present, the methodology on the allocation of the expenditure by Unions among WIPO's various Programs is based on the identification of Union direct and Union indirect expenses. Union direct expenses are the expenses incurred under Union-specific Program activities and budgeted expenditures, as well as the attributable share of related administrative and other budgeted expenses. Union indirect expenses are each Union's allocated share of budgeted expenses for Programs not directly related to the activities of the respective Union, together with the share of related administrative and other budgeted expenses.

### 3.4. Mechanisms for Control and Accountability of the Secretariat

The World Intellectual Property Organization is the subject of several internal, external and independent oversight mechanisms.

#### 3.4.1. Audit and oversight mechanisms

The WIPO Independent Advisory Oversight Committee (IAOC) (formerly known as the Audit Committee) is an independent, expert advisory and external oversight body charged with providing 'assurance to Member States on the adequate and effectiveness of internal controls and of internal and external oversight at WIPO.'<sup>205</sup> It also aims to 'assist Member States in their role of oversight and in exercising their governance responsibilities' with respect to WIPO's various operations. Its mandate includes promoting internal controls (including review of WIPO's Financial Regulations, arrangements for risk management, ethics and misconduct); providing assurance to the General Assembly (such as by reviewing the internal audit function, promoting effective coordination between the internal and audit function, and the collective coverage of

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<sup>204</sup> This paragraph draws directly from Annex III of WIPO, *Proposed Program and Budget for the 2014/15 Biennium* (WIPO 2013).

<sup>205</sup> In September 2005, the WIPO General Assembly approved the proposal of the Working Group of the Program and Budget Committee on the establishment of a WIPO Audit Committee. The WIPO Audit Committee was formed in 2007. In September 2010, the WIPO General Assembly approved proposals to change the title of the Committee into the Independent Advisory Oversight Committee and amend its composition and rotation procedures. See, for instance, WIPO, *Revised Terms of Reference of the WIPO Audit Committee: Revised WIPO Internal Audit Charter* WO/GA/34/15 (WIPO 2007); WIPO, *Report Adopted by the WIPO General Assembly, 34th Session* WO/GA/34/16 (WIPO 2007); WIPO, *Proposed Revisions to the WIPO Internal Oversight Charter: The Terms of Reference Governing External Audit and the Terms of Reference of the WIPO IAOC* WO/GA/41/10 Rev. Annex II (WIPO 2012).

WIPO's various internal oversight functions); overseeing compliance with internal and external oversight recommendations; monitoring the delivery and content of financial statements; and overseeing and supporting investigations. The IAOC makes recommendations to the PBC, as it considers appropriate. The Committee members serve in their personal capacity, without remuneration and independent of the Member States that appoint them.<sup>206</sup>

An External Auditor, appointed by the General Assembly, is responsible for auditing WIPO's accounts and 'may make observations with respect to the efficiency of the financial procedures, the accounting system, the internal financial controls and, in general, the administration and management of the Organization.'<sup>207</sup> The Financial Regulations and Rules state that the External Auditor shall be the Auditor General (or officer holding the equivalent title) of a Member State, and shall be appointed for a term of office of 6 years non-renewable consecutively. Appointed in 2012 for a six-year period, WIPO's External Auditor at the time of publication was the Comptroller and Auditor General of India. The terms of reference governing external audit are contained in Chapter 8 of WIPO's Financial Regulations and Rules

The WIPO Internal Oversight Charter, which is contained in an Annex 1 of WIPO's Financial Regulations and Rules, provides the framework for the internal oversight function at WIPO,<sup>208</sup> which comprises internal audit, evaluation and investigation. The Charter establishes the mission for WIPO's Internal Oversight Division (IOD), namely: 'to examine and evaluate, in an independent manner, WIPO's control and business systems and processes in order to identify good practices and to provide recommendations for improvement.'<sup>209</sup> The Division reports directly to the Director General.<sup>210</sup> The Charter further states that IOD's purpose is to 'help strengthen accountability, value for money, stewardship, internal control and corporate governance in WIPO.' To this end, the IOD conducts internal audits (assessing management controls to ensure cost-efficient and accountable operations), investigation (examining possible wrong-doing and identifying areas where fraudulent activity might occur) and evaluation of WIPO's programs (to improve implementation, performance and planning). The Internal Oversight Charter requires that final internal audit and evaluation reports be submitted to the Director General, with a copy to the IAOC and the External Auditor (paragraph 30). The annual reports of IOD summarise its activities, and include general information on its audit, investigation and evaluation activities, and the WIPO website lists the titles of the latest internal audit reports.

Until recently, neither IOD audit nor investigation reports were publicly available or distributed to Member States, although they were available to Member States upon request. However, according to the 2014 revision of the Internal Oversight Charter, final internal audit and evaluation reports, as well as reports on management implications resulting from investigations, should be published on the WIPO website within 30 days of their issuances (paragraph 31). The Charter

<sup>206</sup> IAOC Members are, however, "provided with the standard UN travel and subsistence expenses to attend quarterly meetings in Geneva," which generally last four days. See 2013 WIPO vacancy notice for IAOC members, available at [https://erecruit.wipo.int/public/hrd-cl-vac-view.asp?jobinfo\\_uid\\_c=27167&vaclng=en](https://erecruit.wipo.int/public/hrd-cl-vac-view.asp?jobinfo_uid_c=27167&vaclng=en) (last viewed on 8 August 2014). In 2014, the IAOC members were from Uruguay (Chair); Zambia (Vice-Chair); Hungary; India; Germany; the Russian Federation; and China. See <http://www.wipo.int/about-wipo/en/oversight/iaoc/> (last viewed 8 August, 2014).

<sup>207</sup> See Article 11(10) of the WIPO Convention and Regulation 8.5 of the WIPO Financial Regulations and Rules. In 2014, the External Auditor was the Comptroller and Auditor General of India.

<sup>208</sup> The latest version of the Regulations and Rules is available at: [http://www.wipo.int/export/sites/www/about-wipo/en/pdf/wipo\\_financial\\_regulations.pdf#page=36](http://www.wipo.int/export/sites/www/about-wipo/en/pdf/wipo_financial_regulations.pdf#page=36), (last viewed 1 October 2014).

<sup>209</sup> In 2014, WIPO Member States changed the division's name from the Internal Audit and Oversight Division to the Internal Oversight Division (IOD). The division has an Internal Audit Strategy (2012–15), which defines priorities for internal audits; an evaluation policy (established in 2007 and revised in 2010); and an investigation policy and guidelines. See WIPO, 'Evaluations' <<http://www.wipo.int/about-wipo/en/oversight/iaod/evaluation>> accessed 1 March 2015.

<sup>210</sup> The evaluation policy includes plans to conduct independent evaluation at the country level. See WIPO, 'Evaluations' <<http://www.wipo.int/about-wipo/en/oversight/iaod/evaluation>> accessed 1 October 2014.

further provides that the IOD Director may at his/her discretion withhold a report in its entirety or redact parts of it, if required to protect security, safety or privacy (paragraph 31). Preliminary evaluation reports and final investigation reports are, however, fully confidential.

Further, the UN's Joint Inspection Unit provides independent oversight of agencies in the UN system, such as WIPO, which have accepted the JIU statute. The JIU is mandated to conduct evaluations, inspections and investigations system-wide to:

...(a) assist the legislative organs of the participating organisations in meeting their governance responsibilities in respect of their oversight function concerning management of human, financial and other resources by the secretariats; (b) help improve the efficiency and effectiveness of the respective secretariats in achieving the legislative mandates and the mission objectives established for the organisations; (c) promote greater coordination between the organisations of the United Nations system; and (d) identify best practices, propose benchmarks and facilitate information-sharing throughout the system.<sup>211</sup>

During the JIU evaluation process, participating UN organisations have opportunities to provide input on JIU reports, review draft reports and recommendations, provide feedback and input to these as appropriate, correct factual errors and provide substantive comments. They may also give overall comments, including on recommendations, once a report has been finalised. Some JIU reports can be specific to a particular UN agency, such as a 2014 JIU report on the management and administration of WIPO, which was preceded by a report on the same topic in 2005.<sup>212</sup> JIU reports may also address the UN system more widely, and are applicable to the suite of UN agencies such as WIPO that comprise that system. JIU reports may include recommendations for the attention of the executive head of a UN agency (such as the Director General of the WIPO Secretariat) and/or recommendations for the attention of legislative bodies (i.e., Member State bodies) of UN system organisations (such as WIPO's General Assembly).

The organisation then implements JIU recommendations as appropriate. The JIU has no formal mechanism to require action on the part of the UN agency or its Member States to implement a given recommendation. Staff of the JIU may discuss their findings and recommendations with the agency and its membership, but the JIU relies on Member States to monitor and assess how effectively its recommendations have been implemented. In some instances, the UN agency or Member States may disagree with some JIU findings and their related recommendations. Implementation of recommendations addressed to the Executive Head rely on action taken by the Secretariat, and also sometimes interest and pressure from Member States to spur such action. In the case of recommendations to legislative bodies, the Secretariat is responsible for drawing the attention of Member States to the recommendation, but implementation relies on guidance and/or decisions by Member States through the relevant legislative body. When the relevant legislative body accepts a particular recommendation addressed to it by the JIU, it may also call for specific action to implement the recommendation by the WIPO Secretariat.

Between 2010 and 2015, the JIU issued 30 reports that were applicable to WIPO. Whereas the 2014 JIU review of WIPO's Management and Administration addressed a broad range of management, governance and administrative matters, the other 29 reports over this period addressed a broad range of matters relevant to the UN system as a whole – from contract management and resource mobilisation to strategic planning and refurbishment/construction

<sup>211</sup> See JIU, 'About Us' <<https://www.unjiu.org/en/about-us/Pages/default.aspx>> accessed 1 October 2014.

<sup>212</sup> JIU, *Review of Management and Administration in the World Intellectual Property Organization*, JIU/REP/2014/2 (UN Joint Inspection Unit 2014) and JIU, *Review of Management and Administration in the World Intellectual Property Organization (WIPO): budget, oversight and related issues*, JIU/REP/2005/1 (UN Joint Inspection Unit 2005).

projects.<sup>213</sup> WIPO reports to Member States on its implementation of UN JIU recommendations addressed to WIPO specifically and to the UN system and its various agencies in general.

### 3.4.2. Evaluation

According to the WIPO Financial Rules and Regulations, the Director General is responsible for establishing a system for planning, conducting and using evaluative information for decision-making (see Regulation 2.15). In practice, however, the evaluation culture at WIPO is nascent, particularly in regard to WIPO's development cooperation activities. This shortcoming has in turn constrained the capacity for Member States to closely monitor, assess and guide WIPO's activities.<sup>214</sup> IOD has only recently begun, for instance, to conduct evaluations of a number of WIPO's programs and activities, such as through publication of its first ever country portfolio evaluations (which covered Kenya in 2012 and Thailand in 2014) and its forthcoming, first of its kind, evaluation of WIPO's work related to achieving one of the organisation's strategic goals (the evaluation related to Strategic Goal VI – International Cooperation on Building Respect for intellectual Property).<sup>215</sup>

For information on the performance of particular WIPO programs, WIPO Member States and stakeholders can also refer to annual Program and Performance Reports prepared by the Secretariat (as well as the validation reports produced by the IOD), which incorporate reports on WIPO's progress on a range of expected results and indicators established by WIPO's results-based management (RBM) framework. In addition, some individual WIPO units and divisions conduct more specific, activity-related evaluations (such as satisfaction surveys of training participants and project evaluations of WIPO Development Agenda projects). However, there is to date no organisation-wide system for collecting data and analysis so generated by Program staff. There is also no system for *ex ante* or *ex post* evaluations of impacts of the various WIPO treaties and proposed treaties, although some WIPO Committees have requested ad hoc evaluations of the outcomes of certain treaty provisions.

Finally, the Office of the WIPO Chief Economist produces and analyses statistics on a number of aspects of the IP system (such as a biannual report World Intellectual Property Report and the Global Innovation Index, published with INSEAD), which may assist Member States in some of their evaluation tasks. In addition, WIPO produces annual reports that provide data on trends, such as the annual report on the international patent system, entitled the *PCT Yearly Review*, which includes a review of the profile of the users of the PCT system.

### 3.4.3. Office of the Legal Counsel

The Office of WIPO's Legal Counsel performs a range of functions relevant to the governance and management of WIPO, as well as to the Secretariat's interaction with Member States. The Office is responsible for:

...providing legal advice and assistance to the Director General, to the bodies of the WIPO Member States and to the Secretariat on constitutional, administrative, contractual

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<sup>213</sup> See, for instance, JIU, *Analysis of the Evaluation Function in the United Nations System* JIU/REP/2014/6 (UN Joint Inspection Unit 2014); JIU, *Strategic Planning in the United Nations System* JIU/REP/2012/12 (UN Joint Inspection Unit 2012); and JIU, *South-South and Triangular Cooperation in the United Nations System* JIU/REP/2011/3 (UN Joint Inspection Unit 2011).

<sup>214</sup> Carolyn Deere Birkbeck and Santiago Roca, *Independent External Review of WIPO Technical Assistance in the Area of Cooperation for Development* CDIP/8/INF/1 (WIPO 2011).

<sup>215</sup> WIPO, *Annual Report by the Director of the Internal Oversight Division: Prepared by the Secretariat* (WIPO 2014).



and general legal matters and in respect of the depositary functions of the WIPO-administered treaties. It is also responsible for ensuring that WIPO fully complies with its internal rules and applicable laws.<sup>216</sup>

Examples of activities undertaken by the Office of the Legal Counsel include advising and defending WIPO in judicial proceedings, such as on complaints lodged by WIPO staff with the ILO Administrative Tribunal;<sup>217</sup> drafting and review of contracts entered into by WIPO; and preparation of treaty action notifications, such as notifications addressed to Member States of adherence to or denunciations of treaties.

The Legal Counsel is available to Member States in their intergovernmental meetings to clarify legal matters that arise and to reply to questions that arise on the decision-making process and structure, such as in regard to the meaning and interpretation of WIPO's General Rules of Procedure and the Special Rules of Procedure for various Governing Bodies and Committees.

#### 3.4.4. Other internal accountability mechanisms

##### Secretariat to Member States

Key mechanisms for Secretariat accountability to Member States include:<sup>218</sup> the Program and Budget Process (as described above); financial reporting (as described above); and Audit and Oversight (comprised of the Independent Advisory Oversight Committee (IAOC), the External Auditor, and the Internal Oversight Division (IOD)).

In 2014, WIPO Member States approved a WIPO 'accountability framework' proposed by the Secretariat to align WIPO with the three-pillar framework developed in a 2005 JIU report aimed at improving accountability frameworks in the UN system.<sup>219</sup> WIPO's framework provides an overview of each of the three pillars, describing their specific elements, systems and mechanisms as listed in brackets as follows:<sup>220</sup>

- Pillar 1: Covenant with Member States, Stakeholders and Users of WIPO's Services (WIPO Agreements and Treaties, WIPO Results Framework);
- Pillar 2: Risk Management and Internal Controls (WIPO's Control Environment, Risk Assessment Policies, Control Activities, Information and Communication, and Monitoring);
- and

<sup>216</sup> This description draws directly from the description provided on WIPO's website, see <[http://www.wipo.int/about-wipo/en/activities\\_by\\_unit/units/olc.html](http://www.wipo.int/about-wipo/en/activities_by_unit/units/olc.html)> accessed 15 March 2015.

<sup>217</sup> The ILO Administrative Tribunal can consider complaints alleging non-observance, in substance or in form, of the terms of appointment of officials and of the provision of staff regulations of international organisations that fall within its jurisdiction. See ILO, 'Administrative Tribunal', <<http://www.ilo.org/public/english/tribunal/about/index.htm>> accessed 15 March 2015.

<sup>218</sup> The WIPO website refers to these three components as its 'Accountability System' on its website, see <<http://www.wipo.int/about-wipo/en/oversight>> (last viewed 4 October 2014).

<sup>219</sup> See WIPO, *Accountability Framework* WO/PBC/22/12 (WIPO 2014) 1. The Joint Inspection Unit's report JIU, *Accountability Frameworks in the United Nations System* JIU/REP/2011/5 (UN Joint Inspection Unit 2011) provided 'a comparative analysis report on various accountability frameworks in the United Nations system' in response to the United Nations General Assembly resolution *Towards an Accountability System in the United Nations* A/RES/64/259 (UN 2010), para. 4. In its report, the JIU recommended that UN organisations without accountability frameworks should develop them as a 'priority inspired by the benchmarks contained in this report' and 'to evaluate their implementation for consideration in 2015.' In 2013, WIPO's then Internal Audit and Oversight Division (IAOD) recommended in its audit on results-based management that the 'WIPO Secretariat should engage with the General Assembly to define and get approval for an accountability framework in line with key components as defined and recommended in the report by the Joint Inspection Unit (JIU/REP/2011/5).'

<sup>220</sup> The WIPO website refers to these three components as its 'Accountability System' on its website, see WIPO, 'Oversight' <<http://www.wipo.int/about-wipo/en/oversight>> accessed 4 October 2014.

- Pillar 3: Complaints and Response Mechanisms (channels for complaints and response available to users of WIPO Services, Procurement Activities and WIPO Staff).

This paper has already reviewed most of the tools available to Member States (and sometimes stakeholders) for promoting accountability of the Secretariat to Member States, including: the Program and Budget process; financial reporting processes and requirements; and audit and oversight mechanisms (comprised of the Independent Advisory Oversight Committee (IAOC), the External Auditor and the Internal Oversight Division (IOD), which include evaluation and investigation.

### Staff accountability

A further set of accountability measures relate to regulations, rules, policies and standards applicable to WIPO staff. Such measures have an array of governance implications. Staff practices, the scope for staff action and procedures for addressing staff complaints may, for instance, impact the specific activities undertaken by the organization and the accountability of the organisation's senior management as well as the prospects for internal reform and changes to the Organization's internal culture.

As UN employees, WIPO staff are subject to the Standards of Conduct of the International Civil Service, promulgated by the International Civil Service Commission (ICSC).<sup>221</sup> WIPO staff belong to the UN salary system and can participate in the UN pension system (i.e., the UN Joint Staff Pension Fund), provided that their participation is not excluded by their letter of appointment. WIPO participates in the UN Safety and Security System and follows UN policy on occupational health.

The World Intellectual Property Organization's legal framework for human resources consists of: the WIPO Convention (which designates the Coordination Committee as responsible for decisions on human resources matters); the WIPO Staff Regulations and Rules (which set out the conditions of employment for WIPO staff); WIPO Office Instructions on Human Resources policies and practices; the WIPO Financial Regulations and Rules; and Headquarters Agreements with Host States (which can impact issues such as the diplomatic privileges and immunity of WIPO staff, and procedures for waiving these).<sup>222</sup> Since 2010, the performance of staff is managed through WIPO's Performance Management and Staff Development System (PMSDS).<sup>223</sup> WIPO staff are also bound by WIPO's internal Code of Ethics, which was issued by the Secretariat in an Office Instruction in 2012.

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<sup>221</sup> The latest version of these Standards was adopted in 2013 by the ICSC, updating the version prepared in 1954 and revised in 2001. See ICSC, *Standards of Conduct in the International Civil Service* (International Civil Service Commission 2013). The Standards were approved by the United Nations General Assembly, see UN, *United Nations Common System: Report of the International Civil Service Commission, Resolution Adopted by the General Assembly on 12 April 2013 A/RES/67/257* (UN 2013), <<http://icsc.un.org/resources/pdfs/general/standardsE.pdf>> accessed 1 May 2015. The intention of the Standards, as stated in the foreword, is to serve as a behavioural and ethical guide: to inform, to inspire and, when needed, to provide explanations. They reflect the philosophical underpinnings of the international civil service and inform its conscience. They trust that like the previous version, the present Standards become an indispensable part of the culture and heritage of the organisations and are of similarly enduring quality. The Standards include guiding principles (on integrity, tolerance, impartiality, incorruptibility, loyalty to the UN system, and accountability) as well as provisions on issues ranging from post-employment restrictions and conflicts of interest to the role of the secretariats.

<sup>222</sup> On the privileges and immunities of WIPO, see Edward Kwakwa and Marie-Lea Rols, 'The Privileges and Immunities of the World Intellectual Property Organization: Practice and Challenges', in Niels Blokker and Nico Schrijver (eds), *Immunity of International Organizations* (Brill Nijhoff 2015) 115–36.

<sup>223</sup> For the PMSDS guidelines, see WIPO, 'Performance Management and Staff Development System Guidelines' <[www.wipo.int/export/sites/www/about-wipo/en/strategic\\_realignment/pdf/pmsds\\_guidelines.pdf](http://www.wipo.int/export/sites/www/about-wipo/en/strategic_realignment/pdf/pmsds_guidelines.pdf)> accessed 1

A number of WIPO's Staff Regulations and Rules, which set out the conditions of employment for WIPO staff, are relevant to WIPO's governance, most notably those relevant to the duties, obligations and privileges of staff; the immunity of staff; principles governing the recruitment, appointment and promotion of staff; and provisions related to termination of employment, disciplinary measures, conflict resolution, and appeals as well as the rules of procedure of appointment boards.<sup>224</sup>

Regulations and rules on such staff matters – and their interpretation – have the potential to empower, or circumscribe the power, of WIPO's senior management and its ability to steward organisational changes approved by Member States. They can also influence management – staff relations, staff morale and staff performance, and thus the internal culture and effectiveness of the organisation. In addition, there are clear links between the provisions of the Staff Regulations and Rules and the wider governance of the organisation where charges of corruption, financial mismanagement and misconduct of either senior management or other staff arise. Further, provisions regarding staff performance, promotion and remuneration may be relevant where there is dissent among staff about the content of work they are expected to perform or where there are different visions – practical or political – between some staff and senior management on how WIPO's mandate and work program should be advanced. The Staff Regulations and Rules can be vehicles that dissenting staff may use to assert their rights, and alternatively may be used by the Secretariat's senior management to reinforce its decisions by underscoring the responsibilities and obligations of staff.

In recent years, WIPO's Staff Regulations and Rules have been the focal point of highly politicised debates on whether senior management and staff have acted appropriately in respect of disputes on promotion, dismissal, status or remuneration. These in turn have sometimes been linked to wider political debates about the management and direction of the organisation, the ability of senior management to pursue mandated organisational changes, the appropriate oversight by Member States of senior management; and controls over the conduct of WIPO's Directors General, as well as the extent of their powers and discretion.

The Staff Regulations and Rules are reviewed on an ongoing basis in light of evolving organisational and staff needs, and amended by Member States through the WIPO Coordination Committee (in the case of Regulations) and by the Director General (in the case of Rules). Before decisions by the WIPO Coordination Committee, the Program and Budget Committee reviews and debates proposed amendments to Regulations in response to proposals from Member States and/or the Secretariat, and makes recommendations to the WIPO Coordination Committee in favour of proposed amendments. The Coordination Committee amended the Staff Regulations in 2012, 2013, and 2014, for instance. The Staff Rules have been updated under the authority of the Director General on an ongoing basis in response to changing management needs and new policies. Staff are notified of such changes to Rules through Office Instructions. The WIPO Coordination Committee is also notified of such changes in a document prepared by the Director General in advance of the Committee's annual meeting.

As noted above, WIPO staff members are international civil servants. The WIPO Staff Regulations and Rules emphasise that staff obligations 'are not national but exclusively international', and that by 'accepting appointment they pledge themselves to discharge their functions and regulate their conduct only with the interests of the International Bureau in view'

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September 2014.

<sup>224</sup> See WIPO, *Staff Regulations and Rules* (WIPO 2014).

(Regulation 1.1). They further require that: ‘In the performance of their duties with the International Bureau, staff members shall neither seek nor accept instructions or assistance from any government or from any other authority outside the International Bureau’ (Regulation 1.4).

The WIPO Staff Regulations and Rules contain provisions relevant to the internal justice system, including on disciplinary procedures, terms of dismissal, temporary suspension, serious misconduct, the Ombudsperson’s Office and the WIPO Appeal Board. WIPO staff have the possibility to express views on management decisions through the WIPO Staff Association. In the case where complainants have exhausted all internal procedures open to them to settle disputes related to the terms of their appointment (such as on complaints of unfair promotion decisions and harassment), WIPO staff have ultimate recourse to the International Labour Organization (ILO) Administrative Tribunal.<sup>225</sup>

Further, in accordance with the WIPO Internal Oversight Charter, the IOD may receive complaints or information concerning the possible existence of alleged misconduct, wrongdoing or irregularities, including fraud, waste, abuse of authority, and violation of WIPO regulations and rules. Once an allegation is received, it is registered and evaluated to determine whether an investigation is warranted. If an investigation is needed, it is to be conducted in compliance with the WIPO Internal Oversight Charter and the WIPO Investigation Policy.

WIPO also has an Ethics Office, located within the Director General’s Office WIPO, charged with providing advice and guidance on ethical issues. The Ethics Office is also responsible for WIPO’s Whistleblower Protection Policy, issued by the Secretariat in the form of an Office Instruction in 2012,<sup>226</sup> which aims to provide protection against retaliation for reporting wrong-doing and sets out the Organization’s policy on preventing and deterring corruption, fraud, collusion, coercion, money laundering and the financing of terrorism. The Ethics Office publishes an Annual Report (contained in an Annex to the Secretariat’s Annual Report on Human Resources).

Finally, the WIPO Secretariat has also formulated a Code of Conduct for WIPO Suppliers as a reference for WIPO staff. Based on the UN Suppliers Code of Conduct, it provides guidelines for those WIPO staff involved in procurement activities, as well as for all commercial entities/vendors that wish to do business with WIPO.<sup>227</sup> The Code includes provisions, for instance, on bribery and corruption, conflict of interest, gifts and hospitality, and post-employment restrictions.

### 3.5. External relations and transparency

Several components of WIPO’s governance system have a bearing on the organisation’s external relations and transparency. This section reviews agreements and practices relevant to WIPO’s relations with the UN system and other international organizations; WIPO’s unique relationship with private sector stakeholders; it guidelines on observers; and policies and practices with regard to transparency and access to documents.

#### 3.5.1. Relations with the UN System and other international organisations

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<sup>225</sup> See footnote 217.

<sup>226</sup> See WIPO, *Office Instruction on the ‘Policy to Protect against Retaliation for Cooperating in an Oversight Activity or Reporting Misconduct or Other Wrongdoing (“Whistleblower Protection Policy”)’ (As May Be Amended from Time to Time)* Office Instruction 58/2012 (WIPO 2012). Also see WIPO, *Accountability Framework* WO/PBC/22/12 (WIPO 2014) 4.

<sup>227</sup> For the Code of Conduct for WIPO Suppliers, see <[http://www.wipo.int/export/sites/www/procurement/en/docs/code\\_of\\_conduct\\_for\\_wipo\\_suppliers.pdf](http://www.wipo.int/export/sites/www/procurement/en/docs/code_of_conduct_for_wipo_suppliers.pdf)> accessed 15 July 2015.

The World Intellectual Property Organization's 1974 Agreement with the UN includes a number of concrete provisions regarding the coordination of WIPO's policies and activities with the wider UN system, which are implemented to varying degrees by WIPO's Secretariat and Member States in their respective areas of responsibility.

In formally establishing WIPO's status as a UN specialised agency, Article 1 of the UN-WIPO agreement described the organisation's purpose as 'promoting creative intellectual activity and... facilitating the transfer of technology related to industrial property to...the developing countries in order to accelerate economic, social and cultural development.'<sup>228</sup> The purpose of cooperation provided for in the Agreement is 'to make fully effective the envisaged coordination of the policies and activities of the UN system, and to participate in UN bodies established for that purpose'. In this spirit, the WIPO Director General participates in the UN Chief Executives Board (CEB) (which meets bi-annually and brings together all executive heads of the UN system) and the UN High-Level Committee on Management (HLCM) (which is charged with addressing administrative and management issues of common concern to the UN system, and meets twice a year).<sup>229</sup> As noted in the introduction to this paper, there are diverse views among WIPO Member States and stakeholders, as well as within the Secretariat, on what is and should be the legal and political significance of the UN-WIPO Agreement in relation to WIPO's purpose, mandate and ongoing activities.

The UN-WIPO Agreement also provides for reciprocal representation of UN representatives in all WIPO bodies, and for WIPO to be invited to participate, without the right to vote, in the main committees and organs of the UN General Assembly and the Economic and Social Council, among other UN conferences and meetings (Article 3). At present, 17 UN agencies are accredited as WIPO observers. Further, WIPO and the UN each agree to include items proposed by the other in the provisional agendas of the appropriate bodies items (Article 4).

The Agreement calls on WIPO to submit to the appropriate organ of the Organization all formal recommendations that the United Nations may make to it (Article 5(a)). For several years, a document summarising UN decisions and resolutions relevant to WIPO was included in the documentation for the WIPO Assemblies, but this practice appeared to have stopped in 1999.<sup>230</sup> Since then, WIPO has reported on a more ad hoc basis to Member States on its relationship to the UN system, usually on particular issues. In 2013, for instance, the WIPO Secretariat produced a document on WIPO's contribution to the Millennium Development Goals (MDGs), which includes references to its activities with other UN agencies.<sup>231</sup>

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<sup>228</sup> See WIPO, *Agreement between the United Nations and the World Intellectual Property Organization* WIPO Publication No. 111 (WIPO 1975).

<sup>229</sup> See WIPO, 'WIPO Director General Francis Gurry to Chair the UN High-Level Committee on Management' *WIPO News Archive* (19 April 2012) <[http://www.wipo.int/portal/en/news/2012/article\\_0021.html](http://www.wipo.int/portal/en/news/2012/article_0021.html)> accessed 15 September 2014. The CEB is the successor of the Administrative Committee on Coordination referred to in Article 2 of the UN-WIPO Agreement.

<sup>230</sup> See WIPO, *Resolutions and Decisions of the United Nations, the Administrative Committee on Coordination and the Joint Inspection Unit: Report by the Director General WIPO General Assembly 24th Session WO/GA/24/3* (WIPO 1999). The report covered the period from July 1997 to July 1999. This report was preceded by several prior biennial reports, including, for instance, WIPO, *Resolutions and Decisions of the United Nations: Report by the Director General WIPO General Assembly 21st Session WO/GA/XXI/6* (WIPO 1997), which covered the period 31 July 1995 to 1 July 1997, and WIPO, *Resolutions and Decisions of the United Nations: Report by the Director General WIPO General Assembly 16th Session WO/GA/XVI/3* (WIPO 1995), which covered the period from 16 July 1993 to 31 July 1995.

<sup>231</sup> WIPO, *The Measurement of the Millennium Development Goals (MDGs) in Other United Nations Agencies and the Contribution of WIPO to the MDGs: Prepared by the Secretariat* CDIP/12/8 (WIPO 2013).



In Article 6, the Agreement calls on WIPO to submit an annual report to the United Nations on its activities, but this appears not to occur on a regular basis.<sup>232</sup> However, in response to requests from the UN Secretariat or other UN agencies, the WIPO Secretariat provides information on WIPO activities for inclusion in UN reports on various matters and also on WIPO's implementation of the recommendations and resolutions of the UN General Assembly and of other organs of the United Nations.<sup>233</sup>

The UN-WIPO Agreement also includes provisions regarding exchange of information and documents; cooperation in the area of statistical services; assistance to the UN, cooperation in the provision of technical assistance and in promoting and facilitating technology transfer; assistance to the International Court of Justice; relations with other international organisations; administrative cooperation; common personnel arrangements; conformity with UN standards, practices and presentation of budgets; and UN laissez-passer travel documents.

The World Intellectual Property Organization is also part of the UN staff pension system,<sup>234</sup> has accepted the jurisdiction of the ILO Administrative Tribunal, and is a participating organisation in the UN Joint Inspection Unit (JIU). The WIPO Secretariat designates a focal point for interaction with the JIU, such as for the provision of input and feedback on its reports on the UN system. It also reports to Member States on its implementation of UN JIU recommendations addressed to the WIPO Secretariat and/or WIPO Member States specifically as well as those to UN agencies in general.<sup>235</sup>

Beyond its Agreement with the UN, WIPO does not have a policy or set of guidelines on its partnerships with other agencies in the UN system or other international organisations. The WIPO Convention requires that the WIPO Coordination Committee approve any agreement entered into by WIPO with a view to establishing working relations and cooperation with other intergovernmental organizations (Article 13(1)). MOUs are thus prepared by the WIPO Director General with the relevant head of the organisation, and then presented to the Coordination Committee for approval. The Secretariat has not made a running list of all of its MOUs and the status of their implementation available to Member States or the public.<sup>236</sup>

WIPO has forged, for instance, Memoranda of Understanding (MOUs) with several UN agencies, such as the UN Food and Agriculture Organization (FAO) and the UN Industrial Development

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<sup>232</sup> For instance, no such reports are available through WIPO's website nor do they feature on the lists of documents presented to the UN General Assembly.

<sup>233</sup> Examples include the submission by WIPO of information on its activities to the UN Permanent Forum on Indigenous Issues. See, for instance, UN ECOSOC, *Information Received from the United Nations System and Other Intergovernmental Organizations: Secretariat on the Convention on Biological Diversity and WIPO* E/C.19/2008/4.Add.13 (UN 2008). In 2012, the Permanent Forum held an in-depth dialogue with WIPO, concluding with a number of recommendations to improve indigenous peoples' representation and engagement in WIPO's work. See UN ECOSOC, *Recommendations of the Permanent Forum: Comprehensive Dialogue with the World Intellectual Property Organization* E/C.19/2012/L.4 (UN 2012).

<sup>234</sup> The UN Joint Staff Pension Board presents a report to the UN General Assembly and to member organisations at least once every 2 years (which is made available in the UN General Assembly documentation, but not reproduced by the Secretariat).

<sup>235</sup> See, for instance, WIPO, *Joint Inspection Unit Report 'Review of Management and Administration in the World Intellectual Property Organization' (JIU/REP/2014/2) Progress Report on the Implementation of Recommendations: Document prepared by the Secretariat* WO/PBC/23/4 (WIPO 2015).

<sup>236</sup> At the 2010 meeting of the WIPO Coordination Committee, Egypt proposed that the Secretariat should prepare for Member States a list of all WIPO MOUs and other such instruments with other organizations. Egypt argued that such a list would help Member States to enhance WIPO's 'cooperation and collaboration with other UN agencies and international organisation, in keeping with the spirit of the Development Agenda Recommendation 40', but no decision to this effect was taken on the production of such a list, and the Secretariat has not otherwise made one publicly available. See WIPO, *Report: Adopted by the Coordination Committee* WO/CC/63/8/ (WIPO 2010) 2.

Organization (UNIDO), both approved by WIPO Member States in 2010, as well as with other international organizations such as the African Regional Intellectual Property Organization (ARIPO) (approved by Member States in 2008) and the American Intellectual Property Law Association (AIPLA) (signed in 2002).<sup>237</sup> Where such MOUs exist, they are generally written in very broad terms, and are supplemented by workplans for specific joint activities or collaborations when they arise.<sup>238</sup> WIPO DDGs or other senior WIPO staff also sometimes sign MOUs to advance specific Program activities. The Director of the WIPO Academy has, for instance, signed MOUs with universities and other partners for its training activities, the Director of WIPO's Mediation and Arbitration Centre signed an agreement with the Internet Corporation for Assigned Names and Numbers (ICANN) in 2013, and a WIPO DDG signed an agreement with the Hong Kong Trade and Development Council in 2014 to jointly promote the trading of IP through their respective online IP market places.

The Secretariat has also forged cooperation agreements with regional IP organisations such as the European Patent Organisation, signed in 2012,<sup>239</sup> and the African Regional Intellectual Property Organization (ARIPO). Although such agreements are usually of a general nature, like MOUs, they provide the framework for specific joint activities and cooperation. Examples of international organisations with which the WIPO Secretariat has forged formal cooperation agreements include the International Criminal Police Organization – Interpol. Noting the 'desirability of cooperation in combatting wilful infringement of IP rights,' the 2004 WIPO-Interpol agreement was signed by the two agency heads and includes commitments to sharing expertise in regard to technical assistance, mutual consultation and information exchange on policy issues and matters of common interest, and reciprocal representation at meetings in which the other party has an interest or technical competence.<sup>240</sup> The WIPO-administered Unions may also approve external partnerships. The PCT Assembly has approved a series of partnerships with national and regional IP offices regarding the administration of the PCT, resulting in a number of MOUs between the Secretariat and International Searching and International Preliminary Examining Authorities).<sup>241</sup>

WIPO also makes contributions to the work of other international organisations on an ad hoc basis and participates in a number of cooperative activities, partnerships and projects with UN and international organisations with which it does not have a broader MOU.<sup>242</sup> The WIPO Secretariat has, for instance, conducted a number of joint projects with the WHO and UNITAID, and its activities sometimes involve collaboration among several inter-governmental organisations simultaneously. In 2011, for instance, the WHO, WTO, Interpol and the World Customs Organization participated in a Multi-stakeholder Roundtable on the Technical

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<sup>237</sup> See, for instance, WIPO, *Report: Adopted by the Coordination Committee* WO/CC/63/8/ (WIPO 2010) 2.

<sup>238</sup> The Secretariat also submits for the approval of the WIPO Coordination Committee all proposed agreements with foreign governments determining the legal status of the WIPO external office in the country concerned.

<sup>239</sup> WIPO/EPO, 'EPO and WIPO Sign Agreement to Enhance Co-operation' WIPO/EPO Press Release, 3 May 2012 <[http://www.wipo.int/pressroom/en/articles/2012/article\\_0008.html](http://www.wipo.int/pressroom/en/articles/2012/article_0008.html)> accessed 1 May 2015.

<sup>240</sup> Interpol–WIPO, 'Co-operation Agreement between the International Criminal Police Organization and the World Intellectual Property Organization'

<[http://www.interpol.int/content/download/9466/69442/version/6/file/WorldIntellectualPropertyOrganization\(WIPO\).pdf](http://www.interpol.int/content/download/9466/69442/version/6/file/WorldIntellectualPropertyOrganization(WIPO).pdf)> accessed 1 May 2015.

<sup>241</sup> For the text of these agreements, see WIPO, 'ISA and IPEA Agreements' [http://www.wipo.int/pct/en/access/isa\\_ipea\\_agreements.html](http://www.wipo.int/pct/en/access/isa_ipea_agreements.html)> accessed 1 May 2015.

<sup>242</sup> The WIPO Secretariat lists a number of recent examples of WIPO's cooperation with various UN agencies in WIPO, *The Measurement of the Millennium Development Goals (MDGs) in Other United Nations Agencies and the Contributions of WIPO to the MDGs* CDIP/12/8 (WIPO 2013).

Assistance against Counterfeit Medicines held at WIPO,<sup>243</sup> and WIPO works with WHO and the WTO on a shared initiative to advance Trilateral Cooperation on Public Health, IP and Trade.<sup>244</sup>

In 1995, WIPO forged an agreement with the WTO that aims to establish a 'mutually supportive relationship' and 'appropriate arrangements for cooperation,' including in regard to notification of, access to and translation of national IP laws; implementation of procedures for the protection of national emblems; and technical cooperation.<sup>245</sup> The two organisations subsequently forged several initiatives on technical cooperation, including a 1998 effort to help developing countries meet their 1 January 2000 deadline for implementing the WTO's TRIPS Agreement, a 2001 programme to assist least-developed countries to implement TRIPS, and a 2005 agreement to intensify cooperation for least-developed countries upon the extension of their transition period for TRIPS implementation until 1 July 2013.<sup>246</sup> (WTO Member States subsequently extended the transition period until 2021, and in the case of patents for pharmaceutical products until 2033). The WIPO Secretariat reports annually to the WTO on its activities related to TRIPS implementation,<sup>247</sup> and the two organizations undertake a number of joint technical cooperation activities. Beyond individual staff efforts, no routine procedures or mechanisms exist for coordination on priorities, needs assessments or plans for assistance by country.

### 3.5.2. WIPO's unique relationship with private sector stakeholders

Among UN agencies, WIPO has a unique relationship with the private sector, and in particular with IP right-holders and applicants that pay fees in exchange for treaty-related services provided by the Secretariat (such as registration of IP rights). The fact that user-fees represent the majority of WIPO's income, and that most such users hail from a small sub-set of WIPO's total membership, has unsurprisingly generated a view among such users and WIPO's membership (most notably the sub-set of Member States that account for the greatest proportion of the users) and within the Secretariat, that they fee-paying users of WIPO's services should be viewed as the organization's key clients. It is hard to dispute that users of WIPO's services have direct interests in regard to the usefulness, cost, and efficiency of the fee-paying services the Secretariat provides and in regard to the substance of WIPO's normative activities. Strictly speaking, however, the fees that IP right-holders and applicants pay to WIPO are payments in exchange for specific services that the Secretariat provides (such as registration of IP rights). WIPO's governance system does not formally accord such stakeholders any special status, privileges, rights or obligations in respect of decision-making at WIPO, such as on the allocation of resources in the organisation's Program and Budget. Like other WIPO stakeholders, organisations that represent fee-paying users of WIPO's services are able to seek accreditation as observers to WIPO meetings.

Although the fact of WIPO's special relationship with the private sector is undisputed, the extent of the private sector's influence and its desirability are hotly debated among Member States and stakeholders. In addition to observer status at WIPO meetings (see section 3.5.3), private sector

<sup>243</sup> World Customs Organization, 'Capacity Building Cooperation with WTO and WIPO' <<http://www.wcoomd.org/en/media/newsroom/2011/january/capacity-building-cooperation-with-wto-and-wipo.aspx>> accessed 1 May 2015.

<sup>244</sup> Also see WIPO, 'WHO, WIPO, WTO Trilateral Cooperation on Public Health, IP and Trade' <[http://www.wipo.int/globalchallenges/en/health/trilateral\\_cooperation.html](http://www.wipo.int/globalchallenges/en/health/trilateral_cooperation.html)> accessed 1 May 2015.

<sup>245</sup> See WTO-WIPO Cooperation Agreement 1995 <[http://www.wto.org/english/tratop\\_e/trips\\_e/wtowip\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/wtowip_e.htm)> accessed 1 May 2015.

<sup>246</sup> See WTO, 'The WTO and World Intellectual Property Organization' <[https://www.wto.org/english/thewto\\_e/coher\\_e/wto\\_wipo\\_e.htm](https://www.wto.org/english/thewto_e/coher_e/wto_wipo_e.htm)> accessed 1 May 2015.

<sup>247</sup> See, for instance, WIPO, *Note on Technical and Legal Assistance of WIPO Relevant to the Implementation of the Agreement on TRIPS* (WIPO 2010).

users of WIPO's services interact with the WIPO Secretariat and Member States through informal, private meetings, participation in WIPO technical assistance activities, and through WIPO events, which they sometimes speak at or co-host. Further, associations of IP-right holders and the companies they represent often have long-standing relationships with national IP offices and can also shape decision-making and outcomes at WIPO through their influence on the positions their governments take in WIPO deliberations. A review of WIPO meeting reports confirms that those Member States that are home to the majority of WIPO's fee-paying clients, such as Japan and the United States, regularly promote the interests of particular groups of IP right-holders and professionals, although they face mounting pressures to better serve a broader range of private and public-interest constituents at WIPO. Here, it is important to underscore that a range of private sector actors have interests at WIPO, including large multinational R&D companies; manufacturing, entertainment and software industries; private collective management societies; SMEs; and associations of artists, creators, scientists and inventors, as well as generic producers. Among these, the larger international corporations and industry associations with long-standing relationships with WIPO, have greater resources for engaging with the Organization and lobbying Member States than smaller private sector stakeholders or those more recently engaged in the international IP system and related policy debates.

From 1998 to 2003, WIPO Member States approved the operation of two bodies aimed at giving a direct voice to the private sector and non-state actors, namely a Policy Advisory Commission (PAC) and an Industry Advisory Commission (IAC).<sup>248</sup> The PAC was comprised of 25 eminent people drawn from a range of fields, including politics, diplomacy and administration, which have bearing on IP.<sup>249</sup> The IAC was comprised of 20 top-level representatives from the private sector.<sup>250</sup> Although each of these Commissions ceased to exist after 2003, they are worth noting here because they have had an important and enduring influence on perceptions and expectations among Member States and stakeholders on what the role of the private sector should or should not be at WIPO.

### 3.5.3. Guidelines on observers

The WIPO General Rules of Procedure state that the Director General shall invite as observers to the various sessions such states and intergovernmental organisations as are entitled to observer status under a treaty or agreement (Rule 8). The Rules state that such observers may take part in debates at the invitation of the chair, but may not submit proposals, amendments or motions (Rule 24), may not have a vote (Rule 39) and that their expenses shall be borne by the States or organizations that have sent them (Rule 49(2)). In addition, the WIPO Director General may at any time invite States or organizations to send observers to follow the work of an Ad Hoc Committee of Experts (Rule 38(4)).

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<sup>248</sup> For a report of their first meetings, see WIPO, *Policy Advisory Commission and Industry Advisory Commission* WO/GA/24/6 (WIPO 1999) Annex 1.

<sup>249</sup> Its mandate was to 'enhance the Secretariat's capacity to monitor and respond in a timely, informed and effective manner to international and regional developments in intellectual property, in information technology, and in other fields bearing on WIPO's operations and its policy environment.' Members of the Commission included three former presidents (of Malta, Romania and Portugal), and its chair was HRH Prince El-Hassan of Jordan. The PAC created a taskforce (which met in July 1999 and March 2000) to develop a workplan, which included the review of several studies and presentations, as well as the formulation of a World Intellectual Property Declaration (WIPD). For the declaration, see WIPO, 'Policy Advisory Commission: World Intellectual Property Declaration' <[http://www.wipo.int/about-wipo/en/pac/ip\\_declaration.htm](http://www.wipo.int/about-wipo/en/pac/ip_declaration.htm)> accessed 26 October 2015.

<sup>250</sup> In opening the first IAC meeting, former Director General Kamal Idris stated that he considered it essential that the 'voice of the market sector is heard in order for the Organization is responsive to its [market sector] needs.' Although the role of the IAC was intended as purely advisory, the Director General stated that it was designed to ensure that there is 'a direct input of industry into the policy-making process in WIPO.' See WIPO, *Policy Advisory Commission and Industry Advisory Commission* WO/GA/24/6 Annex 1 (WIPO 1999) 1.

The World Intellectual Property Organization also has general guidelines for the admission of three categories of observers to WIPO meetings: intergovernmental organisations, international NGOs, and national NGOs (see Annex 4).<sup>251</sup> Requests by IGOs and NGOs for observer status are considered on an annual basis at the WIPO Assemblies; they are submitted to the Secretariat, which then presents the request to the General Assembly for approval. Once an intergovernmental organisation is admitted to attend the Assemblies as an observer, it is a WIPO practice that it is also invited to attend as an observer to meetings of committees, working groups or other bodies subsidiary to the Assemblies, if their subject matter seems to be of direct interest to that NGO.<sup>252</sup>

For national and international NGOs, WIPO requires basic information about the organisation, including its articles of incorporation, list of officers (and their nationality in the case of an international NGO), a complete list of national groups or members, a description of the composition of its members or its governing body or bodies (including geographical distribution in the case of an international NGO), a statement of its objectives and an indication of the field(s) of IP of interest to it. A number of additional principles are observed in extending invitations to national NGOs as observers.

As of August 2014, some 72 intergovernmental organisations were accredited at WIPO (i.e., 17 UN system organisations, 10 inter-governmental IP organisations, 33 regional intergovernmental organisations, and 12 other intergovernmental organisations), and 350 NGOs (i.e., 244 international NGOs and 75 national NGOs).<sup>253</sup>

Broadly speaking, there are five types of NGOs accredited at WIPO, namely those representing: (i) companies or groups of companies in a particular industry, such as publishers or pharmaceutical companies; (ii) professionals active in the realm of IP, such as patent and copyright lawyers; (iii) collecting societies in the area of copyright; (iv) individual creators, artists, musicians or authors; and (v) public interests, such as organizations concerned with public health, libraries and access to knowledge.

Within the UN system of organisations, WIPO attracts one of the highest rates of private sector interest and participation in its work. Of the 335+ NGOs with status as “accredited observers” to WIPO, the majority represent private interests, while an estimated 20–25 per cent have a public interest purpose.<sup>254</sup> The attendance and degree of participation by accredited organisations in meetings varies widely; some appear for only very targeted meetings. However, a small number of accredited NGOs regularly attend and engage in a range of different WIPO bodies.

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<sup>251</sup> These guidelines are available on the WIPO website at <http://www.wipo.int/members/en/admission/observers.html> (last viewed 1 August 2014). The granting of observer status to national NGOs was considered and approved at the 2002 WIPO Assemblies. See WIPO (2002) *Admission of Observers, Assemblies of the Member States of WIPO Thirty-Seventh Series of Meetings, A/37/8*. WIPO: Geneva.

<sup>252</sup> Catherine Monagle, *Observer Status and Access to Documents: Comparative Analysis across Selected International Organizations* (Berne: Berne Declaration and Development Fund 2011) 7.

<sup>253</sup> A full list of the 350 international and national NGOs currently accredited is available at: <http://www.wipo.int/members/en/admission/observers.html> (last viewed on 15 September 2014).

<sup>254</sup> Author's calculations based on names and mission statements of organisations. NGOs were classified as either private interest (representing primarily the commercial interests of industry, SMEs, lawyers or individual creators and artists) or public interest where their purpose is primarily to advance public policy or broad social goals.



Non-governmental organisations can also request ad hoc observer status with specific WIPO committees (providing the possibility for organisations that do not have permanent observer status to participate).<sup>255</sup> Two WIPO Committees that are particularly notable for the ad hoc accreditation of NGO observers (in addition to the 335+ permanent NGO observers that are entitled to attend) are the IGC (which has approved over 300 organisations as ad hoc observers) and the CDIP (which has admitted over the course of its sessions several dozen ad hoc observers for a period of one year without implications as to their status for future CDIP meetings). Rules for ad hoc observers vary by committee; whereas ad hoc observer status for the IGC applies to attendance at all subsequent IGC meetings, ad hoc observer status for the CDIP provides access for a period of 1 year only. The IGC, which is WIPO's most participatory body in terms of civil society engagement has the broad criteria for ad hoc observers, which can include not only NGOs but also representatives of indigenous and local communities and undertakes more activities than any other WIPO committee to engage NGOs in its work.<sup>256</sup> The WIPO General Assembly has encouraged Member States 'to include representatives of indigenous and local communities on their delegations' to the IGC.<sup>257</sup> In addition, a Voluntary Fund,<sup>258</sup> designed to facilitate the participation of representatives of local and indigenous communities in the IGC's work, has sponsored more than 80 groups, but now suffers a shortage of funds.<sup>259</sup>

Although the accreditation of NGOs is comparatively swift at WIPO<sup>260</sup> and observers have the right to speak at meetings, address negotiators, and submit documents, they cannot participate in the many off-the-record 'informal' closed door sessions that occur within and among regional groups of countries, which is where much of the real consensus-building and deal-making occurs at WIPO. Observers are generally invited to speak only after Members wishing to speak have done so and if time permits.<sup>261</sup> NGOs can, however, interact with delegates and distribute documents in rooms and halls outside the conference proceedings, and side events can be hosted by accredited NGOs on site, space permitting.

Beyond its guidelines on observers at meetings, WIPO does not have any further guidelines or policy framework for its engagement with stakeholders in other aspects of the organisation's work, such as its multi-stakeholder platforms, technical assistance, training, co-hosting of events, or financial or in-kind support to WIPO's activities.

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<sup>255</sup> The requests are submitted each year in a Memorandum of the Director General to the Assemblies on Admission of Observers. See, for instance, WIPO, *Admission of Observers: Document prepared by the Secretariat*, Assemblies of the Member States of WIPO, 54th Series of Meetings, A/54/2 (WIPO 2014).

<sup>256</sup> For instance, the IGC has a distinct webpage devoted to proposals, submissions and papers of observers, and the Secretariat offers briefings on the IGC's work to NGOs and civil society.

<sup>257</sup> See WIPO, *General Report: WIPO Assemblies of Member States, 37th Series of Meetings A/37/14* (WIPO 2002) sub para. 290(ii). This call was reiterated in 2003, see WIPO, *Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore: Report Prepared by the Secretariat* WIPO/GRTKF/IC/5/15 (WIPO 2003) para. 206.

<sup>258</sup> WIPO, *The WIPO Voluntary Fund: A Stronger Voice for Indigenous and Local Communities in WIPO's Work on Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources* WIPO Publication No. 936(E) (WIPO 2007).

<sup>259</sup> Catherine Saez, 'New Proposal to Keep Indigenous Peoples on WIPO Traditional Knowledge Committee, Intellectual Property Watch, 26 August 2014.

<sup>260</sup> UN ECOSOC, by contrast, has a long process for accreditation of observers. With the exception of its ministerial meetings and certain meetings of its dispute settlement bodies, the WTO has no general policy to enable the participation of NGOs and other stakeholders as observers at its regular meetings.

<sup>261</sup> Also see Jeremy Malcolm, Malcolm, J, 'Public Interest Representation in Global IP Policy Institutions' *Program on Information Justice and Intellectual Property (PIJIP) Research Paper No. 6* (American University Washington College of Law 2010). Malcolm observes that in formal meetings, 'civil society interventions are left until last and the time given for them is strictly limited' (and also must be shared with time allotted for the various business NGOs), 16.

### 3.5.4. Transparency and access to documents

There are several WIPO policies relevant to transparency, most notably in respect of access to WIPO meetings, documents and negotiating texts; the content on the WIPO website; and the public availability of data on the organisation's activities.

In terms of access to meetings, WIPO's Rules of Procedure and guidelines on observers define the terms on which NGOs and intergovernmental organisations actors can participate in WIPO proceedings. Other Secretariat practices relevant to stakeholder participation and the transparency of WIPO meetings and activities are 'Information Meetings' hosted on an informal basis on selected activities and issues that are open to Member States and the wider public (including those individuals and organisations not otherwise accredited to attend WIPO meetings), as well as press briefings for accredited journalists. In addition, WIPO's policy on webcasting makes it possible for those stakeholders without observer status or without adequate resources to attend WIPO meetings in Geneva to view formal components of WIPO meetings.<sup>262</sup> WIPO provides electronic recording of many conference proceedings as well as live webcasting and recorded meeting content, through video-on-demand, of a growing number of official WIPO meetings, such as the formal proceedings of the annual Assemblies, the PBC and Standing Committees.<sup>263</sup> In recent years, the Secretariat made free public Wi-Fi available in its buildings, which improved the ability of stakeholders participating in meetings to coordinate among themselves and to share information in real-time with those not present.

The WIPO Secretariat makes most official documents for intergovernmental sessions available on its website and in hard copies during meetings, as well as draft negotiating texts, although not always proactively.<sup>264</sup> The WIPO Secretariat generally publishes a summary of gavelled decisions and recommendations swiftly at the end of each meeting, as well as a detailed meeting report for adoption by Member States. However, on occasions where Member State debate has resulted in lengthy discussions and extended sessions, the Secretariat has sometimes not been able to produce the draft report in time for distribution and adoption at the meeting. In 2014, for instance, Member States agreed that the draft reports of the WIPO Assemblies would be published on WIPO's website and communicated to Member States in the following month, for comments within two months, and that the final reports would be deemed adopted one month later.

In the case of treaty negotiations, WIPO provides access to draft negotiating documents before and after each round of negotiation. At the most recent Marrakech Diplomatic Conference for a treaty to facilitate access to published works for persons who are visually impaired, the WIPO Secretariat webcast the negotiations and established listening rooms where stakeholders could hear discussions underway in break-out rooms where negotiators were working on specific issues. Where consensus on new language was forged, the new draft text of the agreement was released to the public.<sup>265</sup> In addition, a system for stakeholder consultations and input was

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<sup>262</sup> Webcasting was introduced for the first time at the 2010 WIPO Assemblies. See WIPO, *Webcasting at WIPO: Document Prepared by the Secretariat* WO/PBC/18/19 (WIPO 2011).

<sup>263</sup> See WIPO, 'Webcasting' <[www.wipo.int/webcasting/en](http://www.wipo.int/webcasting/en)> accessed 28 October 2014.

<sup>264</sup> Knowledge Ecology International, *Transparency of Negotiating Documents in Selected Fora* (KEI 2009) <[http://www.keionline.org/misc-docs/4/attachment2\\_transparency\\_ustr.pdf](http://www.keionline.org/misc-docs/4/attachment2_transparency_ustr.pdf)> accessed 15 August 2014. Also see Jeremy Malcolm, 'Public Interest Representation in Global IP Policy Institutions' (2010) *PIJIP Research Paper No. 6*.

<sup>265</sup> Sean Flynn, 'Inside Views: WIPO Treaty for the Blind Shows that Transparency Can Work (and Is Necessary)' *Intellectual Property Watch* (26 June 2013).

established, including stakeholder working groups composed of commercial and non-commercial interests alike, along with published reports and summaries of their deliberations.<sup>266</sup>

A further aspect of transparency relates to the accessibility and manageability of WIPO documents. Here, key issues are the languages in which documents are available to Member States and the public; the overall volume in terms of numbers and length of documents; and ease with which Member States and the public can locate, review and analyse the documentation. Together, these elements can impact the ability of Member States to fulfil their oversight role and the quality of their engagement in WIPO deliberations.

In 2010, WIPO Member States adopted a Policy on Languages, according to which documentation is to be provided in the six official languages of the United Nations (Arabic, Chinese, English, French, Russian and Spanish), for meetings of the WIPO main bodies, committees and working groups, as well as for core and new publications.<sup>267</sup> This policy has been introduced in a phased manner since 2011 and subject to approval of the resource requirements. Notably, the language policy decision noted that the extension of language coverage in the WIPO Committees would be reflected in the language section of the Special Rules of Procedure of the respective WIPO Committees (see paragraph (x) of the decision), which has not occurred to date. In respect of exceptionally voluminous documents and support papers (studies, surveys) commissioned by certain committees, Member States have stated that these should be made available only in the original languages with a summary to be prepared by the Secretariat in all six languages, with the proviso that if a Member State or group of Member States were to express specific interest in one of such documents, the Secretariat would translate its full text in the required language.

As observed above, the WIPO Secretariat produces a large volume of documents for the consideration of Member States. Some documents are produced to meet the requirements of various WIPO treaties, regulations and policies adopted by Member States, others respond to specific Member State decisions or requests, and others are produced by the Secretariat on its own initiative. Documents may include background information, proposals or recommendations, as well as meeting reports that detail the full proceedings and summaries of key decisions. The Secretariat also commissions and publishes many surveys and studies at the request of Member States. In 2011, as part of their decision to adopt the WIPO language policy, Member States called for better control and rationalisation of the total volume of WIPO documentation, including through more concise, reduced-length documents. The focus on the volume of documents was partly financially motivated – to reduce the costs of translation – but was also prompted by the recognition that few Member States had the capacity to critically review and respond to the range of documents in a timely manner.<sup>268</sup> As of 2014, the JIU estimated that the average combined length of documents submitted by the Secretariat to Member States each year was over 8,000 pages per year.<sup>269</sup>

A further documentation-related challenge to transparency and oversight at WIPO relates to the practice of extensive cross-referencing among WIPO documents. As noted in a 2014 JIU report,

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<sup>266</sup> Ibid.

<sup>267</sup> See WIPO, *Policy on Languages at WIPO* WO/PBC/18/15 (Geneva: WIPO 2011); WIPO, *Progress Report on the Implementation of WIPO Language Policy: Prepared by the Secretariat* WO/PBC/21/15 (WIPO 2013) 1–2. For the text of the language policy decision, see WIPO, *Summary of Recommendations Made by the Program and Budget Committee A/48/24* (2010 WIPO) Annex II.

<sup>268</sup> Ibid.

<sup>269</sup> JIU, *Review of Management and Administration in the World Intellectual Property Organization (WIPO)* JIU/REP/2014/2 (UN Joint Inspection Unit 2014) 8.

many documents that report on Member State meetings and decisions need to be read in 'conjunction with the (often divergent) comments made orally during the debates and cross-referenced with other background documentation.'<sup>270</sup> Although a common practice in UN documentation systems, this process is onerous and time-consuming, particularly for those not already well-versed in the intricacies of WIPO's decision-making practices. Moreover, this complexity constrains the capacity of many Member States to provide effective oversight and of stakeholders to monitor the Organization's work.

The WIPO website provides a further vehicle for transparency of the organisation's activities: it provides information on official meetings, events, and statistics, as well as access to studies commissioned by the Secretariat and official documents produced by the Secretariat. At present, there is no centralised online database of all WIPO documents, or that enables effective and efficient text searching, such as of studies undertaken under the auspices of particular WIPO committees. Instead, Member States and the public need to be able to identify the particular WIPO meeting where an issue or study may have been discussed, and then to consult the list of documents for that specific meeting. As of 2015, the documentation on WIPO meetings available on WIPO's website went back only to the mid-1990s in most instances (for documentation prior to that date, it is possible to consult the WIPO library for archival assistance), and the website remained under revision, such as in regard to translation.

A final aspect of transparency relates to the access of Member States and stakeholders to data about WIPO's activities – their cost, content, expected results and impact. WIPO has three channels for the provision of such data: its periodic financial and program performance reports; internal evaluation, investigation and audit reports; and online information published on the WIPO website. In some areas, WIPO provides access to extensive online databases, such as on national IP laws as well as patent and trademark applications. On the other hand, electronic databases designed to provide information on WIPO's capacity-building activities and consultants lack key substantive information needed to enable Member States and external stakeholders to monitor and make independent assessments of effectiveness (such as on budget, content of activities and evaluation).<sup>271</sup>

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<sup>270</sup> JIU, *Review of Management and Administration in the World Intellectual Property Organization (WIPO)* JIU/REP/2014/2 (UN Joint Inspection Unit 2014) 6.

<sup>271</sup> Carolyn Deere Birkbeck and Santiago Roca, *Independent External Review of WIPO Technical Assistance in the Area of Cooperation for Development* CDIP/8/INF/1 (WIPO 2011).

## PART 4. CONCLUSION

This Reference Guide has presented a factual overview of WIPO's complex governance system. The core focus has been on its formal components, such as those found in the WIPO Convention, the Organization's agreement with the UN and in the various rules, regulations and policies adopted by Member States or the Secretariat. The paper has also, however, documented areas where governance practices at WIPO diverge from the formal components of its governance framework or where relevant regulations, rules, policies, guidelines or reports are ambiguous, inconsistent or absent. It has provided numerous examples of where and how informal dimensions of WIPO's governance system impact how governance of the Organization and its activities actually occur. The paper has underscored, for instance, the prominent role of regional group of Member States as vehicles for consensus-building and consultation.

Beyond the more common focus on WIPO's decision-making structures and procedures, this Reference guide has taken a wider view of WIPO's governance system, arguing that it also comprises the Organization's formal rules, regulations and policies and informal practices in respect of practices for Member State representation and interaction with the Secretariat; financial arrangements and the Program and Budget process; audit, evaluation and oversight of the Secretariat, its leadership and staff; and external relations, stakeholder participation and transparency.

This Reference Guide has also drawn attention to the potential for WIPO's formal governance structure to shape the informal dimensions of the Organization's governance system, such as the political dynamics of decision-making by Member States and the Secretariat. A clear example relates to WIPO's unique financial arrangements – whereby the core of the Organization's income derives from fees paid by users of its treaty-based services, which although financially attractive for the Secretariat and Member States, gives rise to a special relationship between the WIPO Secretariat and its fee-paying clients. The result is a widely acknowledged tension between the quest to preserve the member-driven character of the Organization, where Member States are the core constituency and focus of accountability, and the quest to better serve WIPO's core private sector clients (IP applicants and right-holders) and by extension the sub-set of Member States that are the countries of origin for the majority of WIPO's fee-based income.

The WIPO Secretariat is more than a subject of WIPO's governance system; it is also an actor in it. This paper has illustrated how the Secretariat can play a role within WIPO's governance system, noting a diversity of ways that it can influence the agenda and decisions of Member States and outcomes of the Organization's work. In addition, the analysis in this paper has presented a clear view of WIPO's notoriously complex decision-making structure, setting out the Organization's governing bodies and committees, and describing their relationship to the many WIPO-administered IP treaties and Unions, as well as their respective governance bodies, financial arrangements and memberships.

Although beyond the scope of this Reference Guide, future efforts to understand (and improve) WIPO's governance will require deeper attention to the political, economic and cultural factors at play. Already, debates on the implementation of WIPO's Development Agenda have underscored that institutional culture and leadership; power politics among Member States; pressures from private sector and public interest stakeholder groups; and shifting economic, scientific, technological and cultural trends, as well as new models for innovation and creativity, shape the context for decision-making at WIPO. Together, they impact how WIPO's governance system works in practice and the prospects for organizational change. Similarly, changes in the



composition, origins and priorities of the core users of the IP system and the growing array of private and public-interest stakeholders interested in WIPO's work have the potential to alter the Organization's governance dynamics.

As noted in the introduction to this paper, the evolution of WIPO's governance system since is taken up in a second paper in this three-part series, which presents a chronological review of key governance decisions and reforms since 1967. A final paper provides a political analysis of how WIPO's governance occurs in practice, highlighting the power dynamics and challenges at play, as well as priorities for further reform.

*Annex 1. WIPO budget by program and development share of budget (in Swiss francs as estimated by the WIPO Secretariat) 2010–15*

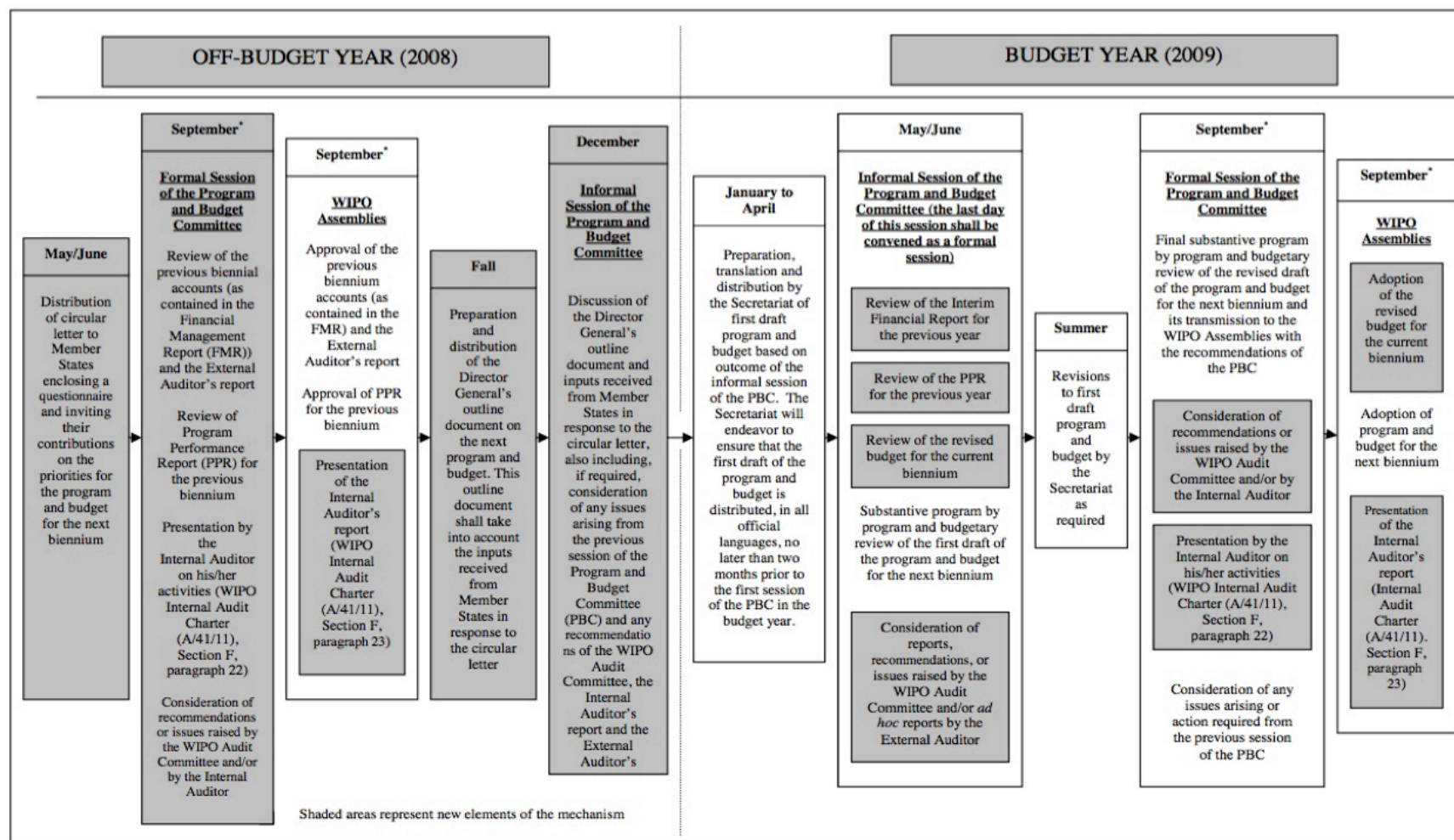
<b>Programs (Relevant Shares of Program Resources)</b>	<b>New Programs and Program Names</b>	<b>Budget 2010/11</b>	<b>Development Share Budget 2010/11</b>	<b>Budget 2012/13</b>	<b>Development Share Budget 2012/13</b>	<b>Budget Estimates 2014/15</b>	<b>Development Share of Budget Estimates 2014/15</b>
Patents	Patent Law	3,610	–	4,843	3,081	4,950	4,139
Trademarks, Industrial Designs and Geographical Indications		3,627	1,493	6,053	2,486	6,162	3,644
Copyright and Related Rights		12,813	5,459	18,593	14,492	16,430	13,095
Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources		7,159	6,443	7,980	6,322	7,864	5,576
The PCT System		183,748	4,052	178,600	5,453	197,973	4,727
Madrid, Hague and Lisbon Systems	Madrid and Lisbon Systems (since 2012/13)	58,477	2,368	52,094	4,821	55,245	6,889
	Hague System (from 2012/13)			6,970		7,587	
WIPO Arbitration and Mediation Center		10,190		10,585	303	11,175	188
Development Agenda Coordination		5,337	5,337	4,788	4,788	4,341	4,341
Africa, Arab, Asia and the Pacific, Latin America and the Caribbean Countries, LDCs		42,178	42,178	35,102	35,102	32,325	32,325
Small and Medium-Sized Enterprises (SMEs)	SMEs and Innovation (from 2012/2013)	4,729	4,729	11,261	11,261	6,696	6,507
Cooperation with Certain Countries in Europe and Asia		6,111	6,111	6,439	6,439	8,443	7,518
The WIPO Academy		10,193	10,193	10,332	10,322	11,883	11,883
International Classifications and WIPO IP Standards		8,520	419	6,932	1,213	7,317	1,181
Global IP Information Services		7,930	1,493	–	–	–	–
	Global Databases	–	–	4,503	1,126	4,692	1,173
	Services for Access to Information and Knowledge	–	–	7,038	7,038	7,539	7,293
IP Office Modernization	Business Solutions for IP Offices	4,898	4,653	7,813	5,221	11,628	9,323
Economic Studies, Statistics and Analysis	Economics and Statistics	2,918	2,236	4,585	1,508	5,336	1,205
Building Respect for IP		2,608	2,608	2,992	2,437	3,989	3,550
IP and Global Challenges		5,354	4,744	6,768	4,538	6,938	5,426
Communications		15,455	11,591	16,599	7,376	17,257	6,481
External Offices and Relations	External Relations, Partnerships and External Offices	11,309	2,440	10,912	4,563	12,435	5,621

Executive Management	Executive Management	14,529	–	18,948	2,102	18,945	1,939
Finance, Budget and Program Management	Program and Resource Management	16,305	–	18,901	605	28,032	–
Internal Audit and Oversight	Internal Oversight	3,565	–	5,050	1,741	5,116	937
Human Resources Management and Development		19,205	–	21,493	–	23,561	–
Administrative Support Services	General Support Services	53,303	–	45,271	–	47,400	738
Information and Communication Technology		42,597	–	50,408	–	45,269	–
Conference and Language Service		37,652	–	37,240	–	41,117	–
Security (Safety and)		9,762	–	12,159	–	10,786	–
New Construction		8,109	–	7,675	–	834	–
<b>TOTAL</b>		<b>612,191</b>	<b>118,548</b>	<b>647,430</b>	<b>137,932</b>	<b>673,993</b>	<b>144,128</b>
Funds earmarked for Development Agenda		4,540					
Unallocated		1,906		7,503		4,727	
<b>GRAND TOTAL</b>		<b>618,637</b>		<b>647,430</b>		<b>673,993</b>	
<b>Resources devoted to development activities as percentage of total budget</b>			<b>19.2%</b>		<b>21.3%</b>		<b>21.4%</b>

Sources: WIPO Program Budget 2010/2011, 2012/2013, and 2014/2015. The 2010/11 total for the development share of expenditure excludes Development Agenda project resources, which for that biennium were accounted for in a separate budget line. From 2012/13, the amounts include funds earmarked for Development Agenda projects. The data in the table reflect calculations by the Secretariat, including some rounding of figures.

## Annex 2. WIPO Program and Budget Mechanism

Preparation and Follow Up of Program and Budget – Full Implementation of the New Mechanism From the Next Biennium (2008/09) Onwards



\* or later, depending on the option that will be chosen. This issue will be discussed in 2007.

### **Annex 3. WIPO Development Agenda Recommendations**

#### **CLUSTER A: TECHNICAL ASSISTANCE AND CAPACITY BUILDING**

1. WIPO technical assistance shall be, *inter alia*, development-oriented, demand-driven and transparent, taking into account the priorities and the special needs of developing countries, especially LDCs, as well as the different levels of development of Member States and activities should include time frames for completion. In this regard, design, delivery mechanisms and evaluation processes of technical assistance programs should be country specific.
2. Provide additional assistance to WIPO through donor funding, and establish Trust-Funds or other voluntary funds within WIPO specifically for LDCs, while continuing to accord high priority to finance activities in Africa through budgetary and extra-budgetary resources, to promote, *inter alia*, the legal, commercial, cultural, and economic exploitation of intellectual property in these countries.
3. Increase human and financial allocation for technical assistance programs in WIPO for promoting a, *inter alia*, development-oriented IP culture, with an emphasis on introducing intellectual property at different academic levels and on generating greater public awareness on IP.
4. Place particular emphasis on the needs of SMEs and institutions dealing with scientific research and cultural industries and assist Member States, at their request, in setting-up appropriate national strategies in the field of IP. 5. WIPO shall display general information on all technical assistance activities on its website, and shall provide, on request from Member States, details of specific activities, with the consent of the Member State(s) and other recipients concerned, for which the activity was implemented.
6. WIPO's technical assistance staff and consultants shall continue to be neutral and accountable, by paying particular attention to the existing Code of Ethics, and by avoiding potential conflicts of interest. WIPO shall draw up and make widely known to the Member States a roster of consultants for technical assistance available with WIPO.
7. Promote measures that will help countries deal with IP related anti-competitive practices, by providing technical cooperation to developing countries, especially LDCs, at their request, in order to better understand the interface between intellectual property rights and competition policies.
8. Request WIPO to develop agreements with research institutions and with private enterprises with a view to facilitating the national offices of developing countries, especially LDCs, as well as their regional and sub-regional IP organisations to access specialized databases for the purposes of patent searches.
9. Request WIPO to create, in coordination with Member States, a database to match specific IP-related development needs with available resources, thereby expanding the scope of its technical assistance programs, aimed at bridging the digital divide.
10. To assist Member States to develop and improve national IP institutional capacity through further development of infrastructure and other facilities with a view to making national IP institutions more efficient and promote fair balance between IP protection and the public interest. This technical assistance should also be extended to sub-regional and regional organizations dealing with IP.
11. To assist Member States to strengthen national capacity for protection of domestic creations, innovations and inventions and to support development of national scientific and technological infrastructure, where appropriate, in accordance with WIPO's mandate.
12. To further mainstream development considerations into WIPO's substantive and technical assistance activities and debates, in accordance with its mandate.
13. WIPO's legislative assistance shall be, *inter alia*, development-oriented and demand-driven, taking into account the priorities and the special needs of developing countries, especially LDCs, as well as the different levels of development of Member States and activities should include time frames



for completion.

14. Within the framework of the agreement between WIPO and the WTO, WIPO shall make available advice to developing countries and LDCs, on the implementation and operation of the rights and obligations and the understanding and use of flexibilities contained in the TRIPS Agreement.

#### CLUSTER B: NORM-SETTING, FLEXIBILITIES, PUBLIC POLICY AND PUBLIC DOMAIN

15. Norm-setting activities shall: be inclusive and member driven; take into account different levels of development; take into consideration a balance between costs and benefits; be a participatory process, which takes into consideration the interests and priorities of all WIPO Member States and the viewpoints of other stakeholders, including accredited inter-governmental organizations and non-governmental organizations; and be in line with the principle of neutrality of the WIPO Secretariat.

16. Consider the preservation of the public domain within WIPO's normative processes and deepen the analysis of the implications and benefits of a rich and accessible public domain.

17. In its activities, including norm-setting, WIPO should take into account the flexibilities in international IP agreements, especially those which are of interest to developing countries and LDCs.

18. To urge the IGC to accelerate the process on the protection of genetic resources, traditional knowledge and folklore, without prejudice to any outcome, including the possible development of an international instrument or instruments.

19. To initiate discussions on how, within WIPO's mandate, to further facilitate access to knowledge and technology for developing countries and LDCs to foster creativity and innovation and to strengthen such existing activities within WIPO.

20. To promote norm-setting activities related to IP that support a robust public domain in WIPO's Member States, including the possibility of preparing guidelines which could assist interested Member States in identifying subject matters that have fallen into the public domain within their respective jurisdictions.

21. WIPO shall conduct informal, open and balanced consultations, as appropriate, prior to any new norm-setting activities, through a member-driven process, promoting the participation of experts from Member States, particularly developing countries and LDCs.

22. WIPO's norm-setting activities should be supportive of the development goals agreed within the UN system, including those contained in the Millennium Declaration. The WIPO Secretariat, without prejudice to the outcome of Member States considerations, should address in its working documents for norm-setting activities, as appropriate and as directed by Member States, issues such as: a) safeguarding national implementation of intellectual property rules b) links between IP and competition c) IP-related transfer of technology d) potential flexibilities, exceptions and limitations for Member States and e) the possibility of additional special provisions for developing countries and LDCs.

23. To consider how to better promote pro-competitive IP licensing practices, particularly with a view to fostering creativity, innovation and the transfer and dissemination of technology to interested countries, in particular developing countries and LDCs.

#### CLUSTER C: TECHNOLOGY TRANSFER, INFORMATION AND COMMUNICATION TECHNOLOGIES (ICT) AND ACCESS TO KNOWLEDGE

24. To request WIPO, within its mandate, to expand the scope of its activities aimed at bridging the digital divide, in accordance with the outcomes of the World Summit on the Information Society (WSIS) also taking into account the significance of the Digital Solidarity Fund (DSF).

25. To explore IP-related policies and initiatives necessary to promote the transfer and dissemination of technology, to the benefit of developing countries and to take appropriate measures to enable developing countries to fully understand and benefit from different provisions, pertaining to flexibilities

provided for in international agreements, as appropriate.

26. To encourage Member States, especially developed countries, to urge their research and scientific institutions to enhance cooperation and exchange with research and development institutions in developing countries, especially LDCs.

27. Facilitating IP-related aspects of ICT for growth and development: Provide for, in an appropriate WIPO body, discussions focused on the importance of IP-related aspects of ICT, and its role in economic and cultural development, with specific attention focused on assisting Member States to identify practical IP-related strategies to use ICT for economic, social and cultural development.

28. To explore supportive IP-related policies and measures Member States, especially developed countries, could adopt for promoting transfer and dissemination of technology to developing countries.

29. To include discussions on IP-related technology transfer issues within the mandate of an appropriate WIPO body.

30. WIPO should cooperate with other intergovernmental organizations to provide to developing countries, including LDCs, upon request, advice on how to gain access to and make use of IP-related information on technology, particularly in areas of special interest to the requesting parties.

31. To undertake initiatives agreed by Member States, which contribute to transfer of technology to developing countries, such as requesting WIPO to facilitate better access to publicly available patent information.

32. To have within WIPO opportunity for exchange of national and regional experiences and information on the links between IP rights and competition policies.

#### CLUSTER D: ASSESSMENT, EVALUATION AND IMPACT STUDIES

33. To request WIPO to develop an effective yearly review and evaluation mechanism for the assessment of all its development-oriented activities, including those related to technical assistance, establishing for that purpose specific indicators and benchmarks, where appropriate.

34. With a view to assisting Member States in creating substantial national programs, to request WIPO to conduct a study on constraints to intellectual property protection in the informal economy, including the tangible costs and benefits of IP protection in particular in relation to generation of employment.

35. To request WIPO to undertake, upon request of Member States, new studies to assess the economic, social and cultural impact of the use of intellectual property systems in these States.

36. To exchange experiences on open collaborative projects such as the Human Genome Project as well as on IP models.

37. Upon request and as directed by Member States, WIPO may conduct studies on the protection of intellectual property, to identify the possible links and impacts between IP and development.

38. To strengthen WIPO's capacity to perform objective assessments of the impact of the organization's activities on development.

#### CLUSTER E: INSTITUTIONAL MATTERS INCLUDING MANDATE AND GOVERNANCE

39. To request WIPO, within its core competence and mission, to assist developing countries, especially African countries, in cooperation with relevant international organizations, by conducting studies on brain drain and make recommendations accordingly.

40. To request WIPO to intensify its cooperation on IP related issues with UN agencies, according to

Member States' orientation, in particular UNCTAD, UNEP, WHO, UNIDO, UNESCO and other relevant international organizations, especially WTO in order to strengthen the coordination for maximum efficiency in undertaking development programs.

41. To conduct a review of current WIPO technical assistance activities in the area of cooperation and development.

42. To enhance measures that ensure wide participation of civil society at large in WIPO activities in accordance with its criteria regarding NGO acceptance and accreditation, keeping the issue under review.

43. To consider how to improve WIPO's role in finding partners to fund and execute projects for IP-related assistance in a transparent and member-driven process and without prejudice to ongoing WIPO activities.

44. In accordance with WIPO's member-driven nature as a United Nations Specialized Agency, formal and informal meetings or consultations relating to norm-setting activities in WIPO, organized by the International Bureau, upon request of the Member States, should be held primarily in Geneva, in a manner open and transparent to all Members. Where such meetings are to take place outside of Geneva, Member States shall be informed through official channels, well in advance, and consulted on the draft agenda and program.

#### CLUSTER F: OTHER ISSUES

45. To approach intellectual property enforcement in the context of broader societal interests and especially development-oriented concerns, with a view that "the protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations", in accordance with Article 7 of the TRIPS Agreement.

#### ***Annex 4. Criteria for Admission as Permanent Observer in WIPO***

Requests for admission as permanent observers in WIPO must be presented to the International Bureau, addressed to the WIPO Director General or to the WIPO Legal Counsel. The admission of NGOs to observer status lies within the competence of the WIPO General Assembly, which takes decisions on that matter at its sessions held every year. Requests must include the following information:

##### **INTERNATIONAL NON-GOVERNMENTAL ORGANIZATION (NGO)**

- Text of its constituent instrument (articles of incorporation, bylaws, etc.);
- Indication of the date and place where it was established;
- List of its officers (showing their nationality);
- Complete list of its national groups or members (showing their country of origin);
- Description of the composition of the members of its governing body or bodies (including their geographical distribution);
- Statement of its objectives; and
- Indication of the field or fields of intellectual property (e.g., copyright and related rights) of interest to it.

##### **NATIONAL NON-GOVERNMENTAL ORGANIZATION (NGO)**

- Text of its constituent instrument (articles of incorporation, bylaws, etc.);
- Indication of the date and place where it was established;
- List of its officers;
- Complete list of its national groups or members;
- Description of the composition of the members of its governing body or bodies;
- Statement of its objectives; and
- Indication of the field or fields of intellectual property (e.g., copyright and related rights) of interest to it.

In addition, the following principles are observed in extending invitations to national NGOs, as observers:

(a) The organization shall be essentially concerned with intellectual property matters falling within the competence of WIPO and shall, in the view of the Director General, be able to offer constructive, substantive contributions to the deliberations of the Assemblies of WIPO;

(b) The aims and purposes of the organization shall be in conformity with the spirit, purposes and principles of WIPO and the United Nations

(c) The organization shall have an established headquarters. It shall have democratically adopted statutes, adopted in conformity with the legislation of the Member State from which the NGO originates. One copy of the statutes shall be submitted to WIPO;

(d) The organization shall have authority to speak for its members through its authorized representatives and in accordance with the rules governing observer status; and

(e) The admission of national NGOs to observer status shall be the subject of prior consultations between Member States and the Secretariat.

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