

A Review of the Outcomes of WIPO Discussions on the Development Agenda Proposal

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The World Intellectual Property Organisation Assemblies held in September–October 2004 turned out to be one of the most significant in a long time and could herald a more development-friendly orientation of the institution.

The most high-profile issue at the Assemblies was the proposal by 13 developing countries to establish a WIPO ‘development agenda’. This article reviews the outcomes and the decisions that were made with respect to this proposal and maps out some of the challenges of taking the process forward.¹

The Development Agenda Proposal

On 26 August 2004, Argentina and Brazil presented a proposal for the ‘Establishing a Development Agenda for WIPO’ (Bridges Year 8 No.8, page 17). Co-sponsored by 11 other developing countries², the proposal for the first time in the institution’s recent history called upon its members to have a focussed discussion on how WIPO should place development at the heart of its activities. The closest equivalent to this initiative in living memory were developing country efforts in the 1970s and 80s to revise the Paris Convention.³

In terms of substance, the proposal laid a solid basis for crystallising the meaning and content of the development dimension of intellectual property policies and laws. Among its main suggestions were that WIPO members consider adopting a high-level declaration on intellectual property and development; amend the WIPO Convention; include provisions on technology transfer etc. in treaties under negotiation; establish technical assistance programmes based on the principles and objectives set out in the proposal; create a standing committee on intellectual property and transfer of technology; and establish a working group on the development agenda.

Strong Support from a Wide Range of Actors

The Assemblies took place on the heels of a hugely successful conference on the future of WIPO sponsored by the Transatlantic Consumer Dialogue, which not only brought together a diverse group of people and organisations to discuss WIPO’s programme and activities, but also focused significant media attention on the institution. The Geneva Declaration on the Future of WIPO⁴ inspired by this event stated that

“The proposal for a development agenda has created the first real opportunity to debate the future of WIPO. It is not only an agenda for developing countries. It is an agenda for everyone, North and South. It must move forward. All nations and people must join and expand the debate on the future of WIPO”.

Many others also expressed support⁵, but a counter-statement, called the Civil Society Declaration on the Future of WIPO, argued that “some aspects of the Development Agenda proposal would be positively dangerous”. At the time of this writing, the alternative statement had attracted 17 signatories while the Geneva Declaration backing the Brazil/Argentina initiative had close to 700 supporters ranging from Nobel laureates to students and politicians.

WIPO Debate on the Development Agenda Proposal

Presenting the proposal on behalf of the co-sponsors, Brazil made it quite clear that the proposal constituted a positive agenda and was aimed at addressing WIPO’s work in all dimensions.⁶ This is an important point as during the ensuing discussions a number of delegations seemed to confuse the development agenda as proposed and the technical assistance activities of WIPO, which in WIPO parlance are termed ‘development co-operation’. While technical assistance may have a role to play in ensuring that the implementation of intellectual property rules is development-sensitive, the development dimension in intellectual property goes far beyond technical assistance.

Discussions on the proposal also provided an important opportunity for WIPO members to express themselves, probably for the first time, on the question of the mandate of WIPO as a United Nations (UN) agency. Previously, the assertion that WIPO’s objective was ‘to promote intellectual property’ was taken as a given. By calling into question the compatibility of this conception and WIPO’s objectives as a UN agency, the proposal forced WIPO members, as well as the Secretariat and observers, to reassess that assumption.

No single member disputed the fact that the primary mandate of WIPO as a UN agency was “to promote creative intellectual activity and the transfer of technology to developing countries” as stated in the 1974 Agreement between the UN and WIPO, rather than promoting intellectual property protection as such. In essence, one can confidently conclude that WIPO members agreed, albeit implicitly, that although WIPO’s founding convention (before it became a UN agency) had the objective of promoting intellectual property, as UN agency the institution could only pursue that goal to the extent that such promotion was necessary to promote creative intellectual activity and the transfer of technology to developing countries.

Overall, although there may have been nuances with respect to the details, the proposal gathered very wide support. An overwhelming majority of countries supported the basic thrust of the proposal, which was to engage WIPO members in a focussed and comprehensive discussion on how the organisation should incorporate development into its various programmes and activities. Most of the countries that had difficulties with the proposal (mainly in the Group B of developed or industrialised countries) argued that WIPO already incorporated development into its activities.

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These countries, however, indicated their willingness to engage in constructive discussions on the various issues raised in the proposal.

The strongest and most direct opposition came from the United States. Its delegation argued that the development agenda proposal “appeared to be premised on the misconception that strong intellectual property protection might be detrimental to global development goals and that WIPO had disregarded development concerns”. The US also asserted that “the thought that weakening intellectual property would further development was flawed as the idea that an intellectual property system alone could bring about development”. The criticism, however, seemed at best based on a misreading of the proposal.

In fact, the proposal did not call for weakening intellectual property protection as such. Nor did it suggest that intellectual property alone could bring about development or imply that WIPO had, without exception, disregarded development issues. The proposal’s main thrust was that intellectual property protection – intended as an instrument to promote technological innovation, as well as the transfer and dissemination of technology – could not be seen as an end in itself nor could harmonisation of intellectual property leading to higher protection standards in all countries, irrespective of their levels of development.

The US seemed to agree with this premise when it pointed out that “WIPO treaties had flexibilities and that in implementing intellectual property framework a country’s circumstances, needs and objectives had to be taken into account”.

It is also interesting to note that at the end of its intervention, the US indicated that it “believed that WIPO’s existing resources and mechanisms could and should be harnessed to address the concerns raised in the proposal by Argentina and Brazil.” Consequently, although the United States expressed strong opposition to the proposal, a closer look at its arguments reveals that its concerns were based on a misreading and did not fundamentally challenge the conceptual basis of the proposal.

WIPO Decisions on the Proposal: The Way Forward

In the end, the WIPO General Assembly decided that the General Assembly of WIPO would convene inter-sessional intergovernmental meetings to examine the proposal, as well as any other views on the issue that may be subsequently submitted by other member states. In essence, this means that there will be at least more than one meeting and that the discussions in those meetings will be aimed at further reviewing the proposal and, in particular, addressing the specific measures proposed as action points.

Seen in this context, although the decision was an important victory in terms of the acceptance of the validity and importance of the issues raised, the future direction of WIPO remains an open question. This means that the co-sponsors and other developing countries, as well as civil society and other organisations that supported the proposal, have a lot of work to do in ensuring that there are concrete outcomes. Further refining the ideas in the proposal, as well as maintaining the focus and political importance of the issue will be crucial. The fairly favourable decisions should therefore be seen as marking the beginning and not the end of hard work.

It is important to remember that there were other issues on the agenda of the Assemblies, which may have been considered by Group B, and the US in particular, to be of a higher priority. Given the attention that the proposal had attracted and the other issues on the agenda, it could be suggested that for Group B the basic interest was to ensure that no decision was taken on any specific action. They could therefore be reading the decision as having postponed the fight to another day, a day on which they may be better prepared.

Second, it was decided that the WIPO Secretariat would undertake immediate arrangements to organise, with other relevant international organisations, including UNCTAD, the WHO, UNIDO and the WTO, a joint international seminar on intellectual property and development, open to the participation of stakeholders including NGOs, civil society and academia. In strategic terms, this seminar will be important in at least three respects.

First, it will ensure that the issues raised in the proposal remain visible on the international agenda. Second, it will provide an important opportunity for widening the constituencies involved in these discussions. Although the number of civil society observers at WIPO has been increasing, there is still a way to go in ensuring adequate civil society representation. Since participation in the seminar is not tied to observership at WIPO, other groups can get involved. Finally, by bringing together other UN agencies, the seminar will force those agencies to start playing a more active role in WIPO activities and bringing their work to bear on their outcomes. So far, their participation in critical WIPO negotiations and processes has been wanting to say the least. Although some UN agencies may have attended the Assemblies sessions, none of them – including UNCTAD, the WHO, UNESCO and UNDP, which have carried out significant work on issues related to intellectual property and development – participated actively in the debate on the development agenda.

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ENDNOTES

¹ For the outcomes of the other issues see Musungu, S., “The WIPO Assemblies 2004: A Review of the Outcomes”, *South Bulletin* 89, 15 October 2004, available at <http://www.southcentre.org>.

² The co-sponsors were Bolivia, Cuba, the Dominican Republic, Ecuador, Egypt, Iran, Kenya, Sierra Leone, South Africa, Tanzania and Venezuela. The full text of the proposal (WO/GA/31/11) and additional documents are available at <http://www.wipo.int>.

³ See Musungu *supra* note 1 and South Centre, “Establishing a ‘Development Agenda’ for the World Intellectual Property Organization (WIPO): Commentary on Proposal by Argentina and Brazil”, *South Centre Analytical Note*, SC/TADP/AN/IP/3, September 2004.

⁴ Available at <http://www.cptech.org/ip/wipo/futureofwipodeclaration.doc>.

⁵ See, for instance, the NGO statement at <http://www.ciel.org>.

⁶ For a complete transcript of the discussions see the Draft Report of the WIPO General Assembly. WIPO document WO/GA/31/15 Prov dated 5 October 2004.