

Foresight into the Future of WIPO's Development Agenda

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The Development Agenda for the World Intellectual Property Organization (WIPO) was proposed in 2004 to reinvigorate the operations of WIPO, given its mandate as a special operating agency of the United Nations (UN). Formal recommendations for reform were adopted in 2007, and implementation of those recommendations through various projects is now underway. Both optimism and pessimism surround the prospects for successful implementation and sustainability of the Development Agenda. Whether the agenda succeeds or fails, however, the implications for global knowledge governance are likely to be significant. Challenges associated with implementation are therefore important to reflect upon and overcome.

Foresight into an array of alternative scenarios is not only warranted but necessary in order to cope with possible developments or, even better, to influence the future. Using the foresight research techniques of scenario building and backcasting, an expert working group met in Prangins, Switzerland, in March 2010 to discuss progress of the agenda's implementation, and to identify a range of future possibilities and corresponding strategic actions, focusing on a medium and long-term view of the WIPO Development Agenda as a catalyst for sustainable changes in global knowledge governance.¹ This article outlines analysis and insights regarding the Development Agenda accumulated over several years of research and meetings, culminating in that retreat. It highlights a number of priorities and possible research directions, particularly in the context of a transition in strategic focus from short to medium and long-term thinking about the impact of WIPO's Development Agenda on global knowledge governance.

Future gazing is not a new practice, but in recent decades increasingly sophisticated methodologies have evolved that enable people to concretely envision and, more importantly, strategically plan for a variety of alternative futures in areas of interest to them. There are many good reasons that foresight techniques are becoming more widely used around the world. Expert consensus builds around two central principles:

1. It is vitally important that we think deeply and creatively about the future, or else we run the risk of being surprised and unprepared.

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¹ The EDGE Network's independent expert working group on global IP policy, led by Jeremy de Beer, previously produced an edited collection of essays entitled *Implementing the WIPO's Development Agenda* (Ottawa: IDRC/CIGI/WLU Press, 2009), at http://www.idrc.ca/en/ev-139311-201-1-DO_TOPIC.html [Accessed November 2, 2010]. Participants at the latest retreat included academic experts, WIPO staff, representatives of think tanks and civil society, and international diplomats from developed countries, developing countries and countries with economies in transition. To facilitate openness, the participants met under the Chatham House Rule, which is that "participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed": <http://www.chathamhouse.org.uk/about/chathamhouserule/> [Accessed November 2, 2010].

2. At the same time, the future is uncertain so we must prepare for multiple plausible futures, not just the one we expect to happen.²

Scenario building can help to think through and envision future possibilities and plan for the future, not only by asking how favourable scenarios might be encouraged and how unfavourable scenarios might be avoided, but also by planning for unforeseen possibilities. Evidence is also emerging that foresight research itself can “facilitate the creation of social capital and open up new opportunities for various forms of information sharing and collaboration”.³

At the recent expert working group retreat, a pilot test was conducted on the foresight research methodology’s viability and utility in the specific context of the WIPO Development Agenda, and several active exercises were conducted. The first was a roundtable discussion to identify drivers of change in the implementation of the WIPO Development Agenda. The second focused on identifying future scenarios based around these drivers of change. Based on these pilot exercises, the expert working group was able to identify several key drivers of change that could dramatically shape the future of the Development Agenda, and a range of scenarios that might arise as a result of these changes.

This article outlines, in the first part, the background of the Development Agenda and where it stands today. In the second part, it surveys the immediate challenges and opportunities facing the Development Agenda, based on the insights and analyses of the working group. It then presents the results of the exercises conducted by the working group, suggesting that the foresighting and backcasting methods used are useful instruments in planning and envisioning the future of the Development Agenda.

Brief update on the WIPO Development Agenda⁴

In 2004 a group of countries coalesced as the Friends of Development and supported a proposal, led by Brazil and Argentina, to the General Assembly of WIPO.⁵ In it, they called for the implementation of a Development Agenda for WIPO, aimed to better integrate the goals and needs of developing countries into the work of the organization, and to better align the organisation with its role as a UN Agency. Brazil submitted that this “was necessary for the sake of WIPO, for its legitimacy and credibility as an institution”.⁶ Academics, scientists, NGOs and members of civil society, for their part, signed the Geneva Declaration on the Future of the World Intellectual Property Organization, in support of the proposal for a Development Agenda for WIPO.⁷

Despite some initial opposition to the provocative ideas and language underlying the initiative, discussions during several years proceeded to establish a set of specific recommendations to be adopted by the General Assembly. In September 2007, a set of 45 recommendations refined in a Provisional Committee on the Development Agenda (PCDA) was adopted unanimously by the WIPO General Assembly. These focused on six thematic areas: technical assistance and capacity building; norm-setting, flexibilities, public policy and public domain; technology transfer, information and communication technologies and access to knowledge; assessment, evaluation and impact studies; institutional matters including mandate and governance; and other issues.

² Some of the organisations that were pioneers or early adopters of “foresight” research include Royal Dutch Shell and the Global Business Network, IBM, the United States Military and NASA, to name just a few examples. Peter Bishop, Andy Hines and Terry Collins, “The current state of scenario development: An overview of techniques” (2007) 9(1) *Foresight* 8.

³ T. Lang, “Building social capital with scenario work”, DPhil Thesis Summary (University of Oxford) (unpublished, on file with authors).

⁴ Further details and analysis can be found in de Beer (ed.), *Implementing the WIPO’s Development Agenda*, 2009, at http://www.idrc.ca/en/ev-139311-201-1-DO_TOPIC.html [Accessed November 2, 2010].

⁵ Proposal by Argentina and Brazil for the Establishment of a Development Agenda for WIPO, WO/GA/31/11 (August 27, 2004).

⁶ Proposal by Argentina and Brazil for the Establishment of a Development Agenda for WIPO, WO/GA/31/11 (August 27, 2004).

⁷ Geneva Declaration on the Future of the World Intellectual Property Organization, at <http://www.cptech.org/ip/wipo/genevadeclaration.html> [Accessed August 25, 2010].

The 2007 General Assembly also established a Committee on Development and Intellectual Property (CDIP).⁸ The mandate of the Committee was to develop a work-programme for implementation of the adopted recommendations; to monitor, assess, discuss and report on the implementation of all recommendations adopted, and for that purpose co-ordinate with relevant WIPO bodies; and to discuss intellectual property and development related issues as agreed by the Committee, as well as those decided by the General Assembly.⁹ The CDIP replaced the Provisional Committee on the Development Agenda and another former Permanent Committee on IP and Development. The CDIP meets twice a year, reporting annually to the General Assembly.¹⁰

Implementation of the Development Agenda has proven inherently challenging. The negotiations that led to the 45 recommendations had taken place between parties who often had dramatically opposed visions of what the Development Agenda would be. The wording of the recommendations was therefore purposely ambiguous. The challenge is to convert these recommendations into actions acceptable to all concerned.

Progress implementing the Development Agenda began more slowly than some people had hoped. By the end of the first year of implementation, only five of the 45 Development Agenda recommendations had been discussed by the CDIP. But it is important to put this pace in the context of WIPO's nearly 150-year history. Nobody could credibly argue that the organisation could have moved as dramatically as proposed overnight.

Nevertheless, a turning point occurred in the third meeting when a project-based approach to the implementation of the Development Agenda was established. At the third meeting of the CDIP, April 27–May 1, 2009, the WIPO Secretariat proposed a new thematic grouping of the recommendations “after hearing concerns from members that recommendations might overlap, did not contain sufficiently detailed financial information, and were moving too slowly”.¹¹ This grouping has resulted in a number of thematic projects that deal with a cross-cutting set of recommendations.

The project approach was generally welcomed. It brought momentum back to the Development Agenda and established clearer strategies, budgets, timelines and benchmarks for success. Some controversy did emerge over the various aspects of the projects proposed, and the extent to which they fit with the vision of the Development Agenda. WIPO hosted an Open-ended Forum on Proposed Development Agenda Projects in October 2009, allowing stakeholders to provide input into the Development Agenda projects.¹²

By the end of the fourth meeting of the CDIP, a number of projects had been approved, many had begun to be implemented and a few were complete. Some required specific financial resources to be allocated, while others were considered to fall under WIPO's existing activities, requiring no additional resources. Most of the projects consist of studies, workshops, conferences, seminars, and training. Some projects are dedicated to providing resources to IP-related institutions, including national and regional IP offices and collective management organisations. A few projects relate to WIPO itself and projects for mainstreaming the Development Agenda through procedures, databases and management systems. Fourteen projects are currently ongoing, with several more projects to be discussed at future meetings of the Committee. Some of the projects include:

- convening a donor conference;
- creating new nodes of the WIPO Worldwide IP Academy;
- conducting studies on the public domain;

⁸ Assemblies of the Member States of WIPO, Forty-Third Series of Meetings, *General Report*, A/43/16 (November 12, 2007), p.152.

⁹ *General Report*, A/43/16, 2007, p.152

¹⁰ *General Report*, A/43/16, 2007, p.152.

¹¹ William New, “WIPO Members Discuss New Methodology for Development Agenda,” *IP-Watch*, April 27, 2009, at <http://www.ip-watch.org/weblog/2009/04/27/wipo-members-discuss-new-methodology-for-development-agenda/> [Accessed August 25, 2010].

¹² WIPO, *Open-ended Forum on Proposed Development Agenda Projects*, http://www.wipo.int/meetings/en/2009/wipo_pda_ge_09/index.html [Accessed August 25, 2010].

- holding events on IP and competition policy;
- putting detailed information about technical assistance on WIPO's website;
- providing access to specialised databases for patent searches;
- building a database to match IP development needs with available resources; and
- compiling a menu of options showing what technical assistance WIPO can offer.

The thematic project approach came along with what proponents of the Agenda saw as a positive sign from the WIPO Secretariat: the establishment of a Development Agenda Coordination Division (DACD). Francis Gurry became the Director General of WIPO in 2008, and then assured participants that he personally attached a great deal of importance to the Development Agenda; that he viewed successful implementation as being vital to the future of WIPO.¹³ At the third meeting of the CDIP, Gurry announced that co-ordination would take place under the DACD, reporting directly to him.¹⁴ The DACD would serve as the secretariat for the committee, and co-ordinate the Development Agenda recommendations and mainstreaming activities within WIPO.¹⁵

Short-term priorities and long-term issues

The following sections of this article provide an overview of the key insights generated at the expert working group's most recent retreat. These reflections represent the range of views that emerged through formal and informal interactions with diverse groups of stakeholders.

Immediate challenges and opportunities

Some of the most pressing short-term issues relate to the progress of implementation to date, the leadership of and vision for the Development Agenda, institutional matters, practical difficulties entailed with implementation, distributed implementation, evaluation, the geopolitics and group dynamics of implementation, and issues affecting international organisations generally.

Progress of the Development Agenda

A great deal of optimism surrounds the progress made on the Development Agenda over the past several years. According to many observers, the very fact that WIPO has established the Development Agenda indicates that change is taking place at WIPO. Some believe that a paradigm shift has occurred, one that is reflected in the language now used at WIPO and the priority given to developing countries' concerns. Insofar as this has occurred, it might be attributed to an incremental shift toward a more nuanced, recalibrated view of intellectual property that is taking place internationally. This paradigm shift could be even more important than particular projects established under the Development Agenda.

The extent to which the Development Agenda is "mainstreamed" has become an important indicator of its success. Mainstreaming involves not just implementation of the various Development Agenda recommendations, but also the diffusion of the constructively ambiguous principles embedded in the Development Agenda throughout WIPO as an organisation. It is not exactly the same as implementing particular recommendations; mainstreaming demands an overarching cultural shift throughout WIPO.

¹³ Committee on Development and Intellectual Property, Second Session, *Report*, CDIP/2/4 (April 27, 2009), p.4.

¹⁴ William New, "WIPO Members Move Ahead on Development Agenda Implementation," *IP-Watch*, May 4, 2009, at <http://www.ip-watch.org/weblog/2009/05/04/wipo-members-move-ahead-on-development-agenda-implementation/> [Accessed August 25, 2010].

¹⁵ WIPO, Development Agenda Coordination Division, at <http://www.wipo.int/ip-development/en/dacd.html> [Accessed August 25, 2010].

Despite some people's optimism, other stakeholders are sceptical about whether a transformation of WIPO's culture has been achieved, whether a "paradigm shift" has occurred at WIPO, and about the extent to which such a shift can be evidenced. It is hard for WIPO to evidence, and for outsiders to see, whether a real change has taken place. There is a danger, or a potential perception, that WIPO activities are now simply being relabelled as "development-related".

It is conceivable that the progress of the Development Agenda may have actually weakened WIPO's position as a forum for IP norm-setting. The changes taking place at WIPO may have reduced the organisation's ability to prioritise developed countries' concerns, and the ability of Member States to discuss those concerns in a frank and open manner. Problems such as the patent backlog and IP piracy, which some feel are undermining the IP system, are now being discussed outside of WIPO. Developed countries may be coming to a point where they feel that WIPO has fundamentally reoriented itself toward the interests of developing countries, and therefore is no longer a forum in which developed-country issues can move forward. Whereas the negotiating structure and culture of other international organisations, such as the World Trade Organization, tend to ensure that tradeoffs take place—that if the interests of one group of countries go forward in one area, the interests of the other group will go forward somewhere else—WIPO's structure and processes do not encourage, to the same extent, such tradeoffs. The engagement of developed countries with the organization, therefore, could be jeopardised.

The shift in focus toward developing-country issues could also be viewed as an historical rebalancing of a past in which developing countries' needs and interests had not been adequately taken into account. The international intellectual property system, on this view, has been structured over many years according to the agendas of the now-developed countries. The Development Agenda represents only a small corrective to a broader global IP agenda that was formed largely during a time of imperialism, when many countries had no voice in the development of international law in general or the international IP system in particular.

Some stakeholders refer regularly to the "spirit" of the Development Agenda. This spirit, however, is hard to define.¹⁶ While the letter of the agenda may be clear, the spirit is not. Is there a spirit? What is it? Is it possible to agree on what it is? How is it possible to implement the "spirit" of the Development Agenda in the absence of such consensus?

Steering the Development Agenda

Visions differ not only with regard to the spirit, but also with regard to steering the direction and implementation of the Development Agenda. Some wish to ensure that it is a Member State-led process. Here, concerns have been raised that, although Member States initiated the agenda, they may now be allowing the Secretariat to lead it. WIPO is viewed, from some perspectives, as a secretariat-led organisation; when WIPO is spoken of, it is usually the Secretariat that is being referred to, rather than the General Assembly of Member States.

Others view implementation as a partnership between various parties. Many groups, according to this view, are important to ensuring the success of the Development Agenda. Those include civil society, academia, industry, Member State governments and other international organisations.

Still others view the Development Agenda as a broader phenomenon occurring (or potentially occurring) not just at WIPO but also beyond. It is something that impacts and therefore should be implemented by grassroots actors: from classrooms, courts, and educational institutions where WIPO may or may not have any direct influence.

¹⁶ Jeremy de Beer, "Defining the Development Agenda" in *Implementing the World Intellectual Property Organization's Development Agenda*, 2009.

Diverging views about who is or should be leading the Development Agenda at WIPO have a practical effect, for example, on the production of project documents. Whereas some may feel that the Secretariat has the most concrete idea of requirements to structure the projects that it will carry out, others feel that Member States must have significant input in the production of project documents in order to retain their ability to control the implementation of the Agenda. As well, there are legitimate concerns that an overly broad conceptualisation of the Development Agenda could have the practical effect of overburdening the Agenda and diverting attention away from core issues where concrete progress can be made.

Internal structural/organisational issues at WIPO

The governance and structure of WIPO are key in the implementation of the Development Agenda. Various changes have been suggested to the working practices, decision-making processes, institutional culture, institutional arrangements and financial structure of WIPO.¹⁷ The use of outside organisations to facilitate the transformation of WIPO has been put forward as a way of facilitating transformation.¹⁸ And the role of WIPO leadership in implementing the Development Agenda has been emphasised.¹⁹ Along with these general issues are the questions of whether WIPO is structured as a development organisation, the transparency of the organisation, and the ability of WIPO to increase its capacity in this area by partnering with other organisations.

A number of general structural and organisational issues affect the organisation as a whole and the implementation of the Development Agenda in particular. Although the Secretariat is viewed as having genuinely adopted a pro-Development Agenda view of intellectual property, there continues to be a desire from some groups to examine various aspects of WIPO governance.

This could include the revision of WIPO statutes, an examination of the structure and independence of WIPO committees and/or an examination of the question of how chairpersonships are decided. In relation to the evaluation of the Development Agenda itself, the creation of an independent evaluation office is one possibility. A number of obstacles and problems are associated with such reforms. Some developed countries were opposed to the idea of a revision of WIPO statutes and the creation of an independent evaluation office during the early debates about the WIPO Development Agenda, and proposals for major structural reforms were thus removed from the negotiating table in those early stages. Changes to the structure of WIPO committees can be a similarly difficult issue.

Along with general issues of structure and governance, the possibility remains that, in putting forth the Development Agenda for WIPO, the wrong people have been asked to do the right thing. WIPO staffing, hiring, expertise, structure and historical mandate do not reflect those of a development agency. Some argue that WIPO is not a development organisation, and questions remain as to whether it can be transformed into one. The structure and governance of WIPO, and its technical assistance programmes, have been built around the mandate of promoting intellectual property, not around issues of development. The organisation's practical ability to focus on the UN's Millennium Development Goals, or development in general, has been questioned.

Transparency is a concern at WIPO. In particular, the transparency of how technical assistance is offered, and by whom, has been emphasised as a part of the Development Agenda. Such transparency is important in eliminating conflicts of interest in technical assistance provision. At the same time, WIPO deserves credit for being very transparent compared to other international organisations. Meeting documents are made available online, NGOs are permitted to participate in WIPO meetings, and the application process

¹⁷ Carolyn Deere, "Reforming Governance to Advance the WIPO Development Agenda" in *Implementing the World Intellectual Property Organization's Development Agenda*, 2009.

¹⁸ Richard Gold and Jean-Frédéric Morin, "From Agenda to Implementation: Working Outside the WIPO Box" in *Implementing the World Intellectual Property Organization's Development Agenda*, 2009.

¹⁹ Sisule F. Musungu, "The Role of WIPO's Leadership in the Implementation of WIPO's Development Agenda" in *Implementing the World Intellectual Property Organization's Development Agenda*, 2009.

to gain observer status at WIPO is simple and straightforward. Several other international organisations are far less transparent. They do not make meeting documents available online, and observer status is difficult to obtain.

The adopted recommendations of the Development Agenda require:

“WIPO to intensify its cooperation on IP related issues with United Nations agencies, according to Member States’ orientation, in particular UNCTAD, UNEP, WHO, UNIDO, UNESCO and other relevant international organizations, especially the WTO, in order to strengthen the coordination for maximum efficiency in undertaking development programs.”²⁰

Such partnerships could strengthen WIPO’s ability to undertake development programmes and bring in development expertise, and could help WIPO in addressing broader issues such as the relationship between IP and health, IP and human rights, or IP and the environment. To a certain extent, such linkages are already being made. Similar partnerships could also benefit IP offices and WIPO Technology and Innovation Support Centres. However, appropriate stakeholders must be chosen with which to partner, and care must be taken not to partner with just the most vocal NGOs. Care must also be taken not to overburden the Development Agenda or WIPO with too great a focus on “IP and ...” agendas.

Practical difficulties

There are a number of difficulties associated with the ability of some developing countries to participate in the implementation of the Development Agenda. These include the ability of developing countries to articulate their own needs and approaches with regard to intellectual property, the ability of developing countries to participate in the project-based approach to implementation, and financial assistance for developing country participation.

There may be difficulty on the part of some developing countries in articulating their own needs and considering their own approaches to intellectual property. One of the recommendations of the Development Agenda is that technical assistance should be demand-driven.²¹ Some countries may have difficulty in articulating their own needs. For example, some developing country representatives see the proposals used to structure Development Agenda projects as being complex and difficult to produce. Institutional capacity is required for the production of such documents, and this could create a gap between the ideas of developing countries and their ability to present those ideas to the CDIP.

The gap in expertise and resources between the International Bureau and local actors leaves room for developing countries to lose control of the articulation of their own needs and approaches. Developing country bureaucrats may feel that, since WIPO specialises in intellectual property, WIPO must know what is best. Technical assistance can be offered to them not only by WIPO, but also by so many different groups that it leaves little time for countries to consider their own approach before they meet with technical assistance providers.

In this context, technical assistance is very much a norm-setting, or at least a norm-reinforcing, exercise. But issues of development are complex, there are many questions and contests as to what “development” means, and there are competing interpretations of whether and how IP and development are linked together. The articulation of needs is, to a certain extent, a practical difficulty for which it is important to find solutions.

²⁰The 45 Adopted Recommendations under the WIPO Development Agenda, Recommendation 40, at <http://www.wipo.int/ip-development/en/agenda/recommendations.html> [Accessed August 25, 2010].

²¹The 45 Adopted Recommendations under the WIPO Development Agenda, Recommendation 1, at <http://www.wipo.int/ip-development/en/agenda/recommendations.html> [Accessed November 2, 2010].

Distributed implementation

Several commentators have emphasised the importance of local, national, and regional implementation of the Development Agenda.²² If work in Geneva proceeds without equivalent change in countries themselves, a gap will be created between the work at WIPO and the fundamentally related work in the capitals and regions. Although the Development Agenda will “never have legs on the ground unless member states go home and implement it”, localisation of the Development Agenda adds to the complexity of implementation, because domestic groups generally have varying views about IP issues.²³

In September 2009 ICTSD hosted an event titled “IP Offices and the Implementation of the WIPO Development Agenda: Challenges and Opportunities”.²⁴ At this event, the Acting Director of the DACD noted that the Development Agenda had been taking place “mostly in Geneva”. Panellists further stressed the important role to be played by national intellectual property offices in implementing the Development Agenda.²⁵ Some work distributing awareness of and responsibility for the agenda has begun with regional seminars on the Development Agenda held in late 2009 in Zimbabwe and Tunisia, and in early 2010 in China. These events demonstrated very clearly, however, that significant work lies ahead in spreading implementation beyond WIPO itself, and into and through regional and national IP offices and other agencies.

Perhaps the Development Agenda can be divided into elements that are, on the one hand, top-down and, on the other hand, bottom-up. In one respect, it could be said that the Development Agenda is still at the top. Knowledge of the Development Agenda, notions of calibrated IP and knowledge about development in general have not necessarily percolated down to the local and regional levels in IP offices. Part of the capacity-building process in these offices could, therefore, be to introduce a more critical and complex appreciation of the ways that intellectual property and development may (or may not) be linked, so as to facilitate a more nuanced understanding of IP.

The socialisation process may be one of the reasons that certain views of IP and its connection to development are often presented at local IP offices. Those from developing countries who are funded to come to WIPO meetings or to participate in IP events may feel required to present a particular view of IP in order to be invited to such meetings. International organisations, including international IP advocacy organisations, may cultivate particular ideologies in IP offices, especially in areas where there is only one agency in a country dealing with IP. However, there are factors mitigating this situation: decentralisation is occurring in some countries, in the sense that more agencies are coming to deal with IP. This is not necessarily a result of the Development Agenda, but it may be a result of a greater awareness of IP generally.

Although IP offices may view themselves as custodians of the IP system, other government agencies must also be involved in implementing the Development Agenda. WIPO often receives duplicative or even conflicting requests from various parties within the same country. The organisation cannot practically

²² Lihong Li called on WIPO to attend to local economic, cultural, and political circumstances in implementing the Development Agenda; V.C. Vivekanandan examined how local conditions of research funding might interact with the Development Agenda; and Pedro Paranaquá called on grassroots organisations to take a role in implementing the Development Agenda; Lihong Li, “Localizing WIPO’s Legislative Assistance: Lessons from China’s Experience with the TRIPs Agreement” in *Implementing the World Intellectual Property Organization’s Development Agenda*, 2009; V.C. Vivekanandan, “The Public-Private Dichotomy of Intellectual Property: Recommendations for the WIPO Development Agenda” in *Implementing the World Intellectual Property Organization’s Development Agenda*, 2009; Pedro Paranaquá, “Strategies to Implement WIPO’s Development Agenda: A Brazilian Perspective and Beyond” in *Implementing the World Intellectual Property Organization’s Development Agenda*, 2009.

²³ Carolyn Deere as quoted in Kaitlin Mara, “Academics Debate How to Release ‘Revolutionary’ Power of Development Agenda”, *IP-Watch*, July 28, 2009, at <http://www.ip-watch.org/weblog/2009/07/28/academics-debate-how-to-release-revolutionary-power-of-development-agenda/> [Accessed August 25, 2010].

²⁴ Kaitlin Mara, “Panel: IP Offices Must be Engaged to Implement Development Agenda,” *IP-Watch*, September 23, 2009, at <http://www.ip-watch.org/weblog/2009/09/23/panel-intellectual-property-offices-must-be-engaged-to-implement-development-agenda/> [Accessed August 25, 2010].

²⁵ Mara, “Panel: IP Offices Must be Engaged to Implement Development Agenda,” *IP-Watch*, September 23, 2009, at <http://www.ip-watch.org/weblog/2009/09/23/panel-intellectual-property-offices-must-be-engaged-to-implement-development-agenda/> [Accessed August 25, 2010].

mediate among potentially contradictory messages conveyed by national representatives from different offices, agencies or departments, nor can it fairly be expected to do so. Co-ordination between government departments is therefore especially important to implementation.

Brazil and the European Union, as examples, have particularly strong mechanisms between government departments to co-ordinate policy on intellectual property. Geneva diplomats who work on various issues with various agencies can also play a co-ordinating role, as can bureaucrats generally, insofar as bureaucrats may stay in their positions while governments change; bureaucrats can provide an element of continuity. Ultimately, the particular responsibility for such co-ordination must lie with Member States.

Structural considerations may affect co-ordination, in cases where one government department had more power than another, or where departments are competing for technical assistance funds. For example, many countries' IP offices are weak relative to other government agencies; as offices, they are lower on the hierarchy than ministries such as finance or industry. Other factors, including the democratic structure of the government, or the relative centralisation or decentralisation of the government generally, might also affect co-ordination.

There are a number of problems that could arise out of co-ordination. In situations where various government agencies are required to agree on an issue, often the approach taken is to try to "balance" policies so as to come to an agreement between the various agencies. This can result in ineffectiveness if the goal of achieving a practical solution is replaced with the goal of achieving consensus.

A number of questions remain about the way that implementation of the Development Agenda will be distributed. At what level (organisational — regional — national — sub-national — transnational) will the activities of the Development Agenda take place? Which types of activities most penetrate which levels? Who will the projects employ? Who will the projects empower? What organisations and groups should be involved in implementing the Development Agenda? Where do the Development Agenda, WIPO, and governments generally locate and recognise expertise?

Evaluation

A focus on monitoring and evaluation is crucial to moving the Development Agenda forward. Such evaluation consists of various types: monitoring and evaluation of the impact of IP on development; monitoring and evaluation of the impact of WIPO's work; and the monitoring and assessment of the progress of the Development Agenda projects themselves.²⁶ At the fourth meeting of the CDIP, November 16–20, 2009, discussion took place as to how high-level co-ordination and monitoring of the Development Agenda should take place. The mandate of the Committee was to "monitor, assess, discuss and report" on the implementation of all recommendations adopted and "for that purpose it shall coordinate with relevant WIPO bodies". Debates surrounded various interpretations of how that should happen.²⁷ Algeria, Brazil, and Pakistan suggested, among other things, that all WIPO bodies at every level should identify and report on the specific ways in which Development Agenda recommendations would be "mainstreamed" in their work. Group B's proposals were less ambitious, but the group also proposed that the General Assembly should instruct chairs to work towards mainstreaming the Development Agenda, and should

²⁶ Xuan Li, "A Conceptual and Methodological Framework for Impact Assessment" in *Implementing the World Intellectual Property Organization's Development Agenda*, 2009.

²⁷ Committee on Development and Intellectual Property, Fourth Session, Draft Report, CDIP/4/14 Prov. (December 30, 2009); William New, "WIPO Power Struggle Looms over Development Agenda Coordination", *IP-Watch*, November 4, 2009, at <http://www.ip-watch.org/weblog/2009/11/04/wipo-power-struggle-looms-over-development-agenda-coordination/> [Accessed August 25, 2010].

report on the contributions of their committee on the implementation of the Agenda. They proposed that all WIPO committees should be considered equal, and that co-ordination should not create new financial obligations on Member States.²⁸ This issue was to be further discussed at future meetings of the Committee.

Questions remain about how best to evaluate the results of the Development Agenda. A management approach to evaluation, involving a tallying of outputs, is not a sufficient method to evaluate the impact of the Development Agenda. The sociological discipline of social impact assessment, and the technique of outcome mapping,²⁹ which examines behavioural change, are methods used by other organisations to evaluate impact. Canada's IDRC, an organisation with decades of experience assessing the impact of its development-related activities, presents one useful model that might be followed. WIPO might look to other organisations more generally, and to organisations that specialise in assessing the development impact in particular, of projects for guidance as it seeks ways to evaluate the implementation and impact of the Development Agenda.

Geopolitics and group dynamics

As the Development Agenda continues to be implemented, economic and geopolitical situations continue to change. Developing countries do not all have the same interests or priorities, and some countries are emerging such that they might, in the not too distant future, be better grouped with developed countries. Such changes could certainly have an impact on the Development Agenda, its priorities, its implementation, and its effects.

At WIPO countries are organised into seven groups: the African group, the Asian group, the Latin American and Caribbean group (GRULAC), the eastern European and Baltic group, the central Asian group and "Group B", consisting of Europe, North America, and other developed countries including Japan, Australia, Canada and New Zealand. China is also a "group". The group system is, however, imperfect, and perhaps no longer reflective of the current geopolitical situation. It may, at times, operate as a straitjacket, limiting the positions individual countries within each group can take, and tying individual countries too strongly to the positions taken by their respective groups.

Challenges facing other international institutions

The Development Agenda at WIPO responds to a set of criticisms that have been targeted not only at WIPO but also at international institutions generally. The IMF, the World Bank, the G8 and the United Nations have been criticised as being fragmented, unrepresentative, ineffective, irrelevant, and as generally suffering a decline in their legitimacy.³⁰ A number of international institutions have, in response, embarked on reform agendas. Some organisations have successfully implemented such agendas, while some are still underway. These include efforts toward IMF reforms intended to give greater representation to emerging

²⁸ Committee on Development and Intellectual Property, Fourth Session, *Draft Report*, CDIP/4/14 Prov. (December 30, 2009); William New, "WIPO Power Struggle Looms over Development Agenda Coordination", *IP-Watch*, November 4, 2009, at <http://www.ip-watch.org/weblog/2009/11/04/wipo-power-struggle-looms-over-development-agenda-coordination/> [Accessed August 25, 2010].

²⁹ Sarah Earl, Fred Carden and Terry Smutylo, *Outcome Mapping: Building Learning and Reflection into Development Programs* (International Development Research Centre, 2001), at http://www.idrc.ca/en/ev-9330-201-1-DO_TOPIC.html [Accessed August 25, 2010]. See also <http://www.outcomemapping.ca/> [Accessed August 25, 2010].

³⁰ Colin I. Bradford and Johannes F. Linn, *Reform of Global Governance: Priorities for Action* (Brookings Institution, October 2007), at <http://www.brookings.edu/~media/Files/rc/papers/2007/10/global%20governance/pb163.pdf> [Accessed August 25, 2010].

markets and low-income countries, along with other reforms.³¹ There have been efforts at the World Bank to increase voting power by developing countries and increase transparency.³² There have also been calls for reform of the WTO.³³

Outlooks for broad UN reform appear pessimistic. This set of challenges faces all international institutions: they must address changing demographics and shifting economic power; increasing interdependence of economies and issues; and global risks such as financial imbalances, global warming, and global epidemics.³⁴ With the reform processes that are taking place, questions remain as to whether reform will be successfully achieved, or whether reform efforts will lapse into stalemate.

Foresight into scenarios for the future

Foresight research techniques were initially developed and deployed in the private sector, by multinational companies like Shell and IBM. They have also been used by government agencies such as the US National Aeronautics and Space Administration (NASA). Subsequently, aspects of foresighting methodologies have been embraced by a wide variety of other organisations. For instance, some national governments adapted foresight research methods to understand their national economies and then to identify niche markets that their nations were strategically placed to grow a market in. The use of foresighting to guide strategic behaviour continues to be most prevalent, however, not by national governments but by international/regional organisations and private sector firms. Bain and Company reported in the *Harvard Business Review* that their most recent survey of companies' use of management tools and techniques shows "an abrupt and sustained surge ... in the use of scenario-and-contingency (S&C) planning tools".³⁵

Though foresighting has in the past been primarily a tool for strategic decision-making in business, in fact it is or can be used by any organisation interested in adaptability to the inherent uncertainty of the future. The author of a seminal work in this field, van der Heijden, refers to scenario practice (the key component of foresight research) as a tool to enable an organisation to undertake research and discuss that research and its implications in a strategic conversation. He also emphasises that the success of any organisation depends on the unique insights and inventions it can generate to set it up apart from others, and how scenarios can enable them.³⁶

Several academic researchers and civil society organisations working in the field of IP have likewise highlighted the need for or explored the potential of foresighting exercises.³⁷ By far the most serious and comprehensive foresighting effort, however, is the European Patent Office's *Scenarios for the Future* project.³⁸ That is an extraordinarily useful resource for anyone contemplating the future of global IP systems.

³¹ "U.S. Congress Vote Marks Big Step for IMF Reform, Funding," *IMF Survey Magazine*, June 18, 2008. <http://www.imf.org/external/pubs/ft/survey/so/2009/NEW061809A.htm> [Accessed August 25, 2010].

³² "World Bank Reform: What the World Bank is Doing", February 4, 2010, at <http://www.worldbank.org/html/xdtr/worldbankreform/> [Accessed August 25, 2010].

³³ Debra Steger (ed.), *Redesigning the WTO for the Twenty-first Century* (Wilfrid Laurier University Press/CIGI/IDRC, 2010), at http://www.idrc.ca/en/ev-148745-201-1-DO_TOPIC.html [Accessed August 25, 2010].

³⁴ Colin I. Bradford and Johannes F. Linn, *Reform of Global Governance: Priorities for Action* (Washington, D.C.: Brookings Institution, October 2007), at <http://www.brookings.edu/~media/Files/rc/papers/2007/10global%20governance/pb163.pdf> [Accessed August 25, 2010].

³⁵ D. Rigby and B. Bilodeau, "Bain's global 2007 management tools and trends survey" [2007] *Strategy & Leadership* 21, as cited in T. Lang, "Systemizing the Organizational Scenario Literature Using Morgan's Metaphors" (2008) (Unpublished, on file with authors).

³⁶ K. van der Heijden, *Scenarios: Art of Strategic Conversation* (John Wiley & Sons, 1996), as cited in Lang, "Systemizing the Organizational Scenario Literature Using Morgan's Metaphors", 2008.

³⁷ M. Gollin, G. Hinze and T. Wong, "Scenario Planning on the Future of IP" in G. Dutfield and T. Wong (eds), *Intellectual Property and Human Development* (UK: Cambridge University Press, forthcoming 2010); D.J. Halbert, "Intellectual Property in the Year 2025" (2001) 6 *Journal of Futures Studies* 25.

³⁸ European Patent Office, *Scenarios for the future: How might IP regimes evolve by 2025? What global legitimacy might such regimes have?* (2007), available at [http://documents.epo.org/projects/babylon/eponet.nsf/0/63A726D28B589B5BC12572DB00597683/\\$File/EPO_scenarios_bookmarked.pdf](http://documents.epo.org/projects/babylon/eponet.nsf/0/63A726D28B589B5BC12572DB00597683/$File/EPO_scenarios_bookmarked.pdf) [Accessed August 25, 2010].

Foresight research is much more than simply contemplating what the future will bring, or forecasting upcoming events based on current trends. Realising most of the benefits that foresight techniques can yield requires challenging, usually unfamiliar and potentially uncomfortable exercises. Thinking about the future in ways that are familiar and comfortable is unlikely to generate novel insights. Systems that affect the future are inherently dynamic and chaotic. And if one thing *is* relatively certain about the future, it is that the future will probably not be what most people predict. Foresight research is a tool to help us to acknowledge and address that fact.

This section of the article presents the results of the pilot test of the foresighting and backcasting technique carried out at the expert working group retreat. The results suggest that the foresighting and backcasting methods used are useful instruments in planning and envisioning the future of the Development Agenda. First, the working group identified a number of drivers of change that relate to the future of the Development Agenda. Secondly, using insights from foresighting, the group identified drivers of change seen as being a high priority for examination and research. Beginning with these, the group used the foresighting method to imagine future scenarios, presented here. The group then used backcasting to identify possible paths to an ideal future scenario. The results of the backcasting exercise, as well as a creative presentation of some of the ideas highlighted in the backcasting exercise, are presented here as a future retrospective article in *Intellectual Property Watch*.

The “scenario” has been called the “archetypical product of futures studies”.³⁹ A review of the basic theory and practice of scenario development explains a scenario as:

“a product that describes some possible future state and/or that tells the story about how such a state might come about. The former are referred to as end state or ‘day in the life’ scenarios; the latter are ‘chain of events’ scenarios or future histories.”⁴⁰

Another way of describing this division is to distinguish between *exploratory* and *normative* scenario techniques.

The exploratory scenario technique starts in the present moment and asks “what if” questions, for example, asking about the most impactful and uncertain drivers of change. Scenarios are then created as a result of this discussion. This approach tends to be more focused around dialogue, idea generation or highlighting different ways of thinking, and issues to consider.

The normative scenario technique starts at a point in the future and asks “how” questions. This generally involves examining a preferable and feasible scenario placed in a future time period, and then backcasting to generate a series of actions that might have resulted in the creation of this desirable future. Unlike a forecast, which is based on current trends or immediately predictable chains of events, a backcast involves an unconstrained leap forward to any point in the future, and from there deconstructs what must have transpired. This is sometimes called a “future history”. Working backwards, step-by-step, previously unpredictable events can be imagined and then prepared for, or even worked toward. This approach seems to be more appropriate where the exercise will result in decisions or policy recommendations; it is more focused on strategic planning.

Drivers of change that will shape the future of the Development Agenda are not events per se, but are pressure forces that drive and influence the unfolding of events. The somewhat diverse expert group collaboratively brainstormed a long list of relevant forces, from which were discerned several thematic groupings of drivers. With the luxury of further time and resources, no doubt this list could have been distilled even further, and additional or alternative drivers might have been identified. But experts generally agreed upon the relevance of the following clusters of change drivers.

³⁹ European Patent Office, *Scenarios for the future*, 2007, available at [http://documents.epo.org/projects/babylon/eponet.nsf/0/63A726D28B589B5BC12572DB00597683/\\$File/EPO_scenarios_bookmarked.pdf](http://documents.epo.org/projects/babylon/eponet.nsf/0/63A726D28B589B5BC12572DB00597683/$File/EPO_scenarios_bookmarked.pdf) [Accessed August 25, 2010].

⁴⁰ European Patent Office, *Scenarios for the future*, 2007, available at [http://documents.epo.org/projects/babylon/eponet.nsf/0/63A726D28B589B5BC12572DB00597683/\\$File/EPO_scenarios_bookmarked.pdf](http://documents.epo.org/projects/babylon/eponet.nsf/0/63A726D28B589B5BC12572DB00597683/$File/EPO_scenarios_bookmarked.pdf) [Accessed August 25, 2010].

The first major driver of change identified by the expert group was the level of engagement by Member States in WIPO. The revitalisation of member-driven processes at WIPO and increased engagement of Member States, or, conversely, disengagement of Member States would be a major driver of change. Disengagement could arise out of processes that are primarily Secretariat-led, or could arise out of a perceived lack of response to Member State demands (especially on the part of developed countries, who may feel that developing country interests are taking priority), or arising from expectations being set too high and therefore remaining unmet.

A second major driver of change is the engagement of external stakeholders. This includes the level of engagement between WIPO and the private sector, civil society, external experts, and the media—all of which could affect the future direction of WIPO and the Development Agenda.

Thirdly, WIPO financing is an important driver of change. WIPO financing comes primarily from fees charged under the Patent Cooperation Treaty (PCT), but is also affected by donor funding. Any changes to PCT fees or donor funding would be important drivers of future events.

Fourthly, the domestic circumstances and policies of WIPO Member States were identified as a major driver of change. Domestic circumstances could include anything from the changing economic circumstances of Member States, the transition periods for least developed countries under the TRIPS Agreement, to US health care reform and its effects on the pharmaceutical industry.

Fifthly, WIPO staffing was also identified as a driver of change. The type of and emphasis of staffing, the leadership within the organisation, human resource turnover and recruitment, and the workload faced by staff could all influence the implementation of the Development Agenda.

Sixthly, the structure and procedures of WIPO are important potential drivers of change. This includes WIPO governance, mission, processes and the assessment and evaluation mechanisms used within WIPO, especially as they pertain to the Development Agenda.

Seventhly, policy forums outside of WIPO could affect the implementation of the Development Agenda. The progress of the Anti-Counterfeiting Trade Agreement (ACTA), the Patent Prosecution Highway (PPH) and the Doha Round of Trade Negotiations under the World Trade Organization could impact on the implementation of the Development Agenda, as could policies developed under the G20 and the IP5 (meetings of the heads of the European Patent Office (EPO); the Japan Patent Office (JPO), the Korean Intellectual Property Office (KIPO), the State Intellectual Property Office of China (SIPO) and the United States Patent and Trademark Office (USPTO)). Intergovernmental relations and relations among inter-governmental organisations, as well as relations among technical assistance providers, could also have an impact on implementation.

Finally, global public policy challenges could affect the future of WIPO and the Development Agenda. Challenges discussed included climate change, global economic crises, food insecurity and technological change.

Drivers of change can be relatively more or less significant in terms of their impact. Some drivers are likely to have high impact, while others are likely to have lower impact. Drivers of change are all surrounded by varying degrees of uncertainty. For any change driver, it is relatively more or less certain whether or not it will impact particular events, which events if any it will impact, when it will impact events, how events that it does impact will unfold, and so on.

Once certain drivers of change were identified, it was possible to plot the clusters on two axes: impact and uncertainty. The expert working group broke into small groups to build consensus around the positioning of change drivers, which was aggregated to generate basic agreement about a scatter plotting, recorded graphically on flip-charts at the meeting and reproduced more formally as Figure 1.

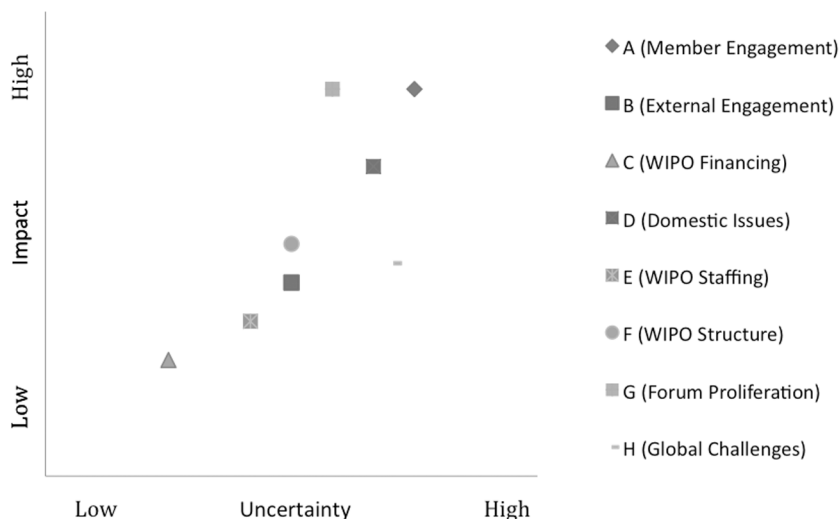


Figure 1: Significance of change drivers

To interpret the figure generated through expert consensus building, notice how change drivers situated toward the upper right are characterised as both highly impactful and highly uncertain. Member engagement, for example, was seen as having a high impact on the implementation of the Development Agenda; there was also a high level of uncertainty associated with member engagement. Drivers toward the lower left are relatively less impactful and less uncertain. For example, WIPO financing was seen to have a relatively low impact on the implementation of the Development Agenda (because the Development Agenda was seen as requiring a relatively low level of financing) and as being associated with a low level of uncertainty (WIPO's budget was seen as being relatively stable). Some drivers are highly impactful, but involve only moderate uncertainty, such as forum proliferation (proliferation is fairly likely to occur, though precisely when and how it might happen is unclear). Similarly, some drivers, including global challenges such as climate change or technological changes, are moderately impactful, but highly uncertain (it is uncertain what the impact of climate change or technological change might be on the Development Agenda). All of these characterisations are not absolute but relative to each other.

Foresight research experts would encourage anyone interested in understanding, preparing for and even shaping possible futures to concentrate their attention on change drivers toward the upper right of Figure 1. These issues are probably the least well studied and most misunderstood because it is extremely difficult to grasp, let alone develop hypotheses and methodologies to empirically investigate, issues engulfed by uncertainty. At the same time, these are the issues that have a high impact and are therefore likely to shape the future most profoundly.

There are several research tools available to begin to unpack the complex ways in which the highest priority could shape the future. The simplest of these with which the expert working group experimented involves constructing scenarios. Four different quadrants can be created by taking two high-priority change drivers and placing one on an X-axis and another on a Y-axis. Polarised outcomes for each driver are placed at both ends of both axes, and the axes are made to intersect somewhere in the middle. Lines thereby move in four different directions, with each corresponding quadrant representing a possible scenario for the future.

To experiment with the technique, experts began by examining drivers A (Member Engagement) and G (Forum Proliferation), contemplating scenarios one decade in the future, in the year 2020. Not surprisingly, these two high-priority drivers are somewhat correlated. The more Member States engage with WIPO, the less forums might proliferate, and visa versa. Of course, this is not to suggest any causal relationship: forum proliferation could be a cause or an effect of engagement/disengagement with WIPO. It could even be a little of both. Regardless, when the expert group examined these drivers—placing more or less Member State engagement on the horizontal X-axis and more or less forum proliferation on the vertical Y-axis—to create quadrants, the outcome was as reflected in Figure 2. The working group found that, based on these two variables, four situations might emerge.



Figure 2: Scenarios based on member engagement and forum proliferation

As rich discussion ensued about the scenarios that might develop given different combinations of Member State engagement and forum proliferation, retreat participants began to describe and then later label each possible outcome. The results of the exercise surprised most participants. It eventually became obvious from discussions that two of the future scenarios (#2: Gridlock, and #3: Hegemony) basically reflect the present and past situations at WIPO, while two other scenarios (#1: Free for all, and #4: Progress) represent new kinds of futures.

More specifically, scenario #2 (the “Gridlock” scenario, arising from more member engagement and more forum proliferation) seems to accurately describe the status quo at WIPO. The numerical majority of WIPO Member States are now more engaged than they have been in the past, but this fact has in several circumstances made it more difficult to build consensus around new norm-setting initiatives. Meanwhile, new substantive rules are being negotiated elsewhere. An agreement on access and benefit sharing under the Convention on Biological Diversity, and the plurilateral Anti-Counterfeiting Trade Agreement are timely examples of these phenomena.

Scenario #3 (the “Hegemony” scenario, arising from less member engagement and less forum proliferation) is basically where WIPO was throughout most of the 20th century. Because many developing and least developed countries were much less engaged at WIPO than they are now, but during the same time there was also relatively less forum proliferation in global IP policymaking, normative discourse was geared toward the interests of a hegemonic group of developed countries.⁴¹

Generally speaking, scenarios #1 and #4 involve previously unseen combinations of engagement and proliferation. Either future is likely to be significantly different than the past or the present. Scenario #1 (“Free for all”, arising from less engagement at WIPO and more forum proliferation) could occur if a significant number of Member States, or even a small number of important and influential Member States, disengage from developments at WIPO. If Member States engage less at WIPO, other IP norm-making forums will probably proliferate. The result could be a future with less engagement at WIPO and more proliferation elsewhere; in other words, a relative free for all. Again, the exercise does not suggest that there is a causal relationship between these variables. It simply recognises that they may be correlated, and speculates about possible implications of that correlation.

Scenario #4 (“Progress”, arising from more engagement at WIPO and less forum proliferation) would also represent a new situation for WIPO and the Development Agenda, but unlike scenario #1, progress is a scenario that many stakeholders are likely to want to experience. It would be characterised by a high degree of engagement by all WIPO Member States, and relatively low levels of forum proliferation. There would be little need to pursue norm-making processes outside of WIPO, because most or all Member States could obtain their desired outcomes. Power structures would necessarily shift, but current incumbents could resist little because the system overall might function better for everyone involved. Of course, this is a utopian ideal. But conceptualising this future and the factors that might drive it is nonetheless helpful in framing strategic courses of action at the present time.

For that reason, the next exercise at the expert working group retreat was to backcast how we might have arrived at this future utopia. Unlike a forecast, which is based on current trends or immediately predictable chains of events, a backcast involves an unconstrained leap forward to any point in the future, and from there deconstructs what must have transpired. This is sometimes called a “future history”. Working backwards, step by step, previously unpredictable events can be imagined and then prepared for, or even worked towards. Participants at the expert working group were asked: if the future were as described in the scenario #4, how did that happen? The scenarios and events that emerged were based around several of the themes already highlighted: the progress of the implementation of the Development Agenda and of IP norm-setting generally; the vision and leadership of the Development Agenda and of WIPO; institutional changes at WIPO; geopolitical forces; and events affecting international organisations broadly.

Progress of the implementation of the Development Agenda and of IP norm-setting generally. The expert group backcasted movement in norm-setting as a key element leading to the “progress” scenario. This could include movement in the areas of enforcement, disclosure of origin, patent law and/or traditional knowledge. Momentum of Development Agenda projects had also led to progress and to better alignment of technical assistance to member states’ needs.

Vision and leadership of the Development Agenda and of WIPO. At the same time, forum proliferation had been reduced through discontent with and lack of progress in other forums, and through a prevailing view that saw WIPO as the best and most legitimate forum for issues of IP—as a leader in the area. Backcasting from the progress scenario saw developing countries taking a sense of ownership over IP. The Development Agenda had encouraged this sense of ownership and had helped countries to find ways of using and innovating within the IP system to their benefit.

⁴¹ Forum proliferation and competing IP systems such as the Montevideo Convention and the Universal Copyright Convention did exist, but faded, leading to effective hegemony.

Institutional changes at WIPO. Some experts backcasted a rebranding of WIPO as the “World Innovation Promotion Organization”, focusing on the general promotion of innovation rather than solely on intellectual property. Experts saw improved evaluation and impact assessment, an investment of greater trust and power in the Secretariat, greater diversity in staffing in terms of geography and expertise, an increased focus on research, increased interaction with epistemic communities outside WIPO, and the facilitation of links with other international organisations as being key elements leading towards “progress”.

Geopolitical forces. Experts saw favourable shifts in global economic conditions as being an important factor leading to the “progress” scenario. Shifts in industry and in geopolitics (new business models, new models of innovation, the rise of the BRIC countries, or the financial crisis) were seen as being relevant. Changes in the group structure used within WIPO were also key.

Events affecting international organisations generally. The state of international organisations generally were seen as being important factors leading to the “progress” scenario. Experts differed, however, on whether it was the decline of competing forums, or successes in multilateralism generally, that would lead to progress.

The following retrospective, drafted as a hypothetical feature published by *Intellectual Property Watch*, has been compiled based on the themes outlined above and the expert backcasting from scenario #4 (“Progress”). *Intellectual Property Watch* may, by 2020, be an even more valuable source than it already is for transparency of and engagement with global knowledge governance. Square brackets in the story indicate where retreat participants held different views of precisely how the second decade of the 21st century might unfold toward the chosen scenario.

Intellectual Property Watch — Special Feature

25 April 2020

Past Decade Sees Progress on IP Issues for Developed and Developing Countries

By Jeremy de Beer and Sara Bannerman for *Intellectual Property Watch*

An epistemic community of development-oriented IP experts gathered in Geneva this week to reflect on the past decade of challenges and changes in global IP policies, and to assess what the next decade might hold. The annual roundtable summit, which was initiated in 2012 by [former] WIPO Director General Francis Gurry, brings independent, recognised academic authorities on the subject of IP and development together with World Innovation Promotion Organization (WIPO) officials, Member State diplomats and industry and civil society representatives.

At this year’s summit, most experts acknowledged that the [energy] [environmental] [food] [pandemic] crisis of 2012 was instrumental in renewing stakeholders’ resolve to reform global knowledge governance. That year marked a major breakthrough in the momentum that had been building over the previous five to ten years.

In part because of that crisis, all Member States began to recognise that the current IP system was not working optimally for anyone. Following the global economic recovery that took place between 2010 and 2012, countries of all kinds realised improvements in IP systems were needed to make the world’s knowledge economy work better.

In the same year, another turning point came when talks among a select group countries about a proposed Anti-Counterfeiting Trade Agreement led to little real change because of disagreements about scope, and the weight of the non-inclusive and non-transparent process adopted at the outset of those talks. Because parties eventually acknowledged that IP enforcement efforts that failed to include countries where counterfeiting is a serious problem could never succeed, WIPO’s Advisory Committee on Enforcement (ACE) emerged as the key forum for debating the issues.

Appreciative of the opportunity to be included in the discussion process, and recognising legitimate concerns about the problem of counterfeiting throughout the world, all WIPO Member States reached a carefully defined agreement on anti-counterfeiting in 2013.

A return to multilateralism happened during the first part of the past decade [in part because of the success] [despite the failure] of the Doha Round of WTO negotiations. Related to that, consensus began to emerge within the WTO about how to approach regional and bilateral trade agreements generally, which has helped to reinforce the role of multilateral and bilateral negotiations.

With BRICs countries solidifying their positions as geopolitical and global economic superpowers, they began taking greater ownership of IP problems that had previously impacted mainly members of the OECD. Countries with economies in transition, as well as many less developed countries, began to find ways to adapt IP systems to suit local circumstances rather than simply adopting foreign models based upon inappropriate technical assistance.

In 2014, countries including China, India, Brazil and Korea joined with the United States, Japan and European Union to spearhead patent process revisions to address an unacceptable backlog of applications in all jurisdictions.

In an effort to reform the system, the broadening scope of patentable subject-matter, falling substantive standards for patentability, inadequate patent disclosures and a lack of quality controls were targeted alongside bureaucratic administrative issues such as work sharing.

Regarding work sharing, a growing proportion of PCT application processing steps were outsourced from the “IP5” group of historically busiest patent offices to India, China and elsewhere. That measure helped reinforce the sense of ownership that countries with economies in transition have taken over practical IP problems. Resulting cost savings were redirected to finance new development-oriented activities.

Projects created and administered through the Development Agenda Coordination Division (DACD), which at that time had fewer human and financial resources than it has now in 2020, contributed greatly to successes in this regard.

Projects designed to implement the 2007 Development Agenda recommendations by building information technology infrastructure and human resource capacity around patent databases helped to create a tremendous library of publicly accessible information. Because that information requires know-how and other infrastructure in order to exploit, databases with landscapes combining technical, legal and commercial information were used to dramatically increase technology transfer through partnerships among developing countries, countries with economies in transition and developed countries too.

Once key developed countries had seen concrete proof that WIPO could in fact still be a forum for addressing their own priorities, there was a new willingness to make concessions on the issues that had long interested less powerful Member States.

Arguably the most important of these concessions came in the context of a formal treaty proclaimed in force in 2015 on traditional knowledge, cultural expressions and genetic resources. The willingness by many developing countries to accept the EU’s position on geographic indications, under certain conditions, has during the past decade served as a model for conciliation in norm-making endeavours.

Owing in part to improved mechanisms for inter-organisational co-operation, provisions of this new WIPO treaty dovetailed well with parts of the CBD’s Nagoya Protocol on Access and Benefit Sharing, as well as [still ongoing proposals for] changes to the WTO TRIPS Agreement regarding informed consent and disclosures of origin regarding genetic resources in patent applications.

Also in 2015, there was a major breakthrough in prolonged discussions about limitations and exceptions in both copyright and patent laws. The result was [a binding instrument on these and other access to knowledge issues] [a soft law solution involving WIPO, WTO and other relevant organisations].

New attitudes toward IP among developed countries were in part attributable to dramatic changes in the perspectives of their most powerful private sector actors. Creativity and innovation were spurred on by new, open and collaborative business models that took advantage of IP flexibilities and managed IP in profoundly different ways from the influential lobbies of the 20th century.

Progressive changes in WIPO's governance structure complemented, and perhaps contributed to, successful norm-making initiatives during the period between 2010 and 2020. An important step was realigning the regional groupings that had characterised discussions at WIPO for most of its history.

The European Union broke ground for major changes when in 2011 it revised policies for its interaction with both Group B and the Group of Central European and Baltic States. Similar moves were made soon afterwards by Egypt and Morocco, in respect of the African and Arab Regional Groups. Brazil also instigated a new approach to its dealings with the GRULAC Group of Latin American and Caribbean countries, as did several countries including Canada, Australia and New Zealand with respect to Group B.

Since 2013, the former regional groupings have ceased to have significant influence. Discussions among like-minded Member States now occur in a more open, ad hoc, nuanced and productive manner. Experts attribute this approach to the success experienced by the Group of Friends of Development, which essentially drove the Development Agenda forward between 2004 and 2007.

Perhaps the most significant change within WIPO during the past decade, according to experts, has occurred at the WIPO Academy. After its establishment near the end of the 20th century, the Academy devoted significant resources to build capacity to deliver highly impactful IP training and education.

Leading up to the proposal for a Development Agenda in 2004, however, critics targeted the nature of WIPO's training and technical assistance programmes. A project launched to implement education-related aspects of the Development Agenda had a profound effect on the Academy's pedagogical approach.

WIPO also made a concerted effort to change its staffing profile, recruiting a large number of development experts. Personnel and structural changes in 2009 and 2010 rejuvenated the Academy's, and indeed, the entire organisation's ability to conduct valuable, objective IP research and educational activities. Development Agenda implementation projects on, for example, studies of the public domain, were precedent-setting for much of this work.

Collaborative partnerships were established soon afterwards to connect the epistemic community of researchers working with WIPO's Chief Economist and Academy leaders. The independent Research and Impact Assessment Unit and the Capacity Building Unit, both formally established in the early part of the last decade, have significantly changed the way that research and education are conducted by and with WIPO.

Meetings such as the one taking place this week have become increasingly important events, helping to define problems and strategic priorities in global IP policymaking. The roundtable's roots can be traced to a major conference on IP and global challenges held in the summer of 2009, the format of which evolved substantially over the years.

Expert authorities are now integrated into the Secretariat and other WIPO bodies to actively engage with key decision-makers in an open, transparent and inclusive process of discussing the world's most pressing IP problems. Consequently, people and processes throughout the organisation are both more trusting and more trustworthy now than they were a decade ago. Several activities were modelled

on the successful experiences of the Intergovernmental Panel on Climate Change (IPCC), a joint initiative of the World Meteorological Organization (WMO) and United Nations Environment Programme (UNEP).

Heads of myriad other international bodies no longer just meet with WIPO officials, but have all signed meaningful memoranda of understanding. One of WIPO's main roles in that process, traceable to recommendation #40 of the Development Agenda adopted in 2007, is to help facilitate interactivity among the epistemic IP and development community and these other international bodies.

By the conclusion of the 2020 IP and Development experts summit, it became clear that much progress had been made. Perhaps because the Development Agenda was not overburdened at the outset with the unrealistic expectation to overhaul the entire global IP system alone, manageable projects were able to facilitate incremental progress.

When the Development Agenda was adopted in 2007, it was difficult to predict the cumulative contribution that an ongoing set of relatively modest projects might make. Reflecting backwards, however, the agenda's effect on global knowledge governance reforms has been substantial.

One of the purposes of backcasting from a future scenario is to reveal possible chains of events that might not have been clear starting from the status quo. The nature of the exercise encourages thinking outside the box about drivers of change. By better understanding *how* scenarios might develop, actors are better able to influence outcomes. They can hone in from a range of *possible* scenarios, to the realm of the *plausible* and even *probable*. More usefully, actors might be able to shape the future into one that is *preferable*. Figure 3 depicts the idea.

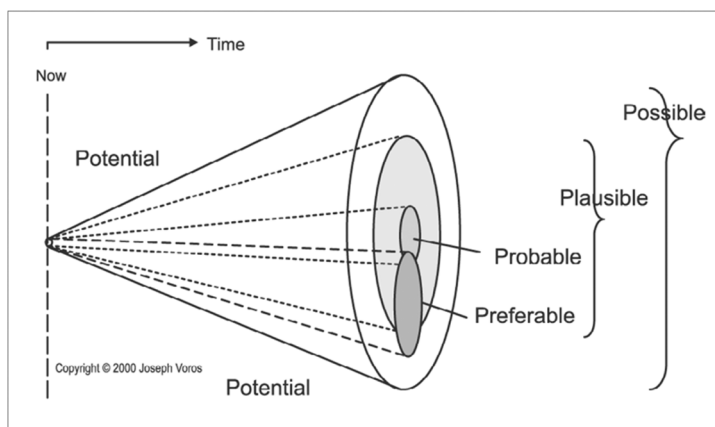


Figure 3: The “Futures Cone” from Voros (2003).⁴²

One very important thing to note about all of the analysis reported over the previous pages is that the scenario-building exercise that the expert group performed is barely the tip of the iceberg. A full foresight research project would not only devote much more time and energy to exploring drivers of change, it would also analyse various interconnections among many of these drivers. At this particular workshop, participants cross-referenced only two drivers (member engagement and forum proliferation) to create four quadrants and four scenarios.

Cross-referencing other drivers (member engagement and WIPO staffing issues, or forum proliferation and external engagement, or global challenges and domestic policies, for examples) could yield entirely different future scenarios. Moreover, it is more than somewhat artificial to select and compare only two

⁴²Using foresight research to move towards preferable futures, Source: Joseph Voros, “A generic foresight process framework” (2003) 5(3) Foresight 10.

drivers at a time. In reality, drivers interact with each other in a non-linear, chaotic fashion to influence behavioural changes. With only the eight drivers of change that retreat participants quickly brainstormed, it would be possible to create 40,320 different combinations. Each of those combinations might lead to a different future scenario.

It is easy to see how, therefore, the methodologies for executing foresight research can become extraordinarily complex and eventually unmanageable. But techniques, including algorithms and computer-aided analysis, do exist to exploit foresight research possibilities efficiently and effectively. The objective of this expert working group's retreat has been to pilot some of the simplest but still useful foresight research methods in order to demonstrate the utility of the framework, hopefully as a stepping stone to a fuller foresighting exercise into the long-term future of WIPO's Development Agenda.

Conclusions and directions for further research

Foresight research can, as demonstrated, be useful for generating insight into future planning and areas for further research into the Development Agenda. This pilot research project led to a number of conclusions about possible areas of uncertainty and possibilities for future research.

First, several drivers of change could dramatically shape the future of the Development Agenda. High levels of uncertainty are associated with several of these drivers, and these are possible areas of future research: member engagement, forum shifting and Member States' domestic circumstances/policies. Secondly, various drivers of change could interact in unforeseen ways. Foresight exercises, such as the one piloted here, can help to think through these various interactions and to help in envisioning future possibilities. Thirdly, the pilot project shows a number of possible future scenarios: free for all, gridlock, hegemony, and progress. These possible futures, or others that could be developed using the techniques of foresight research, can help interested groups to plan for the future, not only by asking how favourable scenarios might be encouraged and how unfavourable scenarios might be avoided, but also by planning for unforeseen possibilities.

Uncertainties and differences of opinion continue to surround issues such as the progress of implementation to date, the vision and leadership of the Development Agenda, institutional matters, practical difficulties associated with the implementation of the Development Agenda, the geographical distribution of implementation, evaluation of the Development Agenda, how changing geopolitics will continue to affect implementation, and how international institutions will deal with the challenges they face generally. All these issues have had and will continue to have a tremendous impact on the vision and implementation of the Development Agenda. The uncertainties surrounding these issues make continued examination of, and foresight into, future possible scenarios, an important tool in the successful implementation of the Development Agenda.